

**Team Code: 2268**

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**26<sup>TH</sup> STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2021**

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**THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE**

**THE HAGUE, NETHERLANDS**



**THE CASE CONCERNING**

**PROTECTED AREAS AND ARMED CONFLICT**

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**FEDERAL STATES OF ANHUR**

**(APPLICANT)**

**V.**

**REPUBLIC OF RONGO**

**(RESPONDENT)**

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**MEMORIAL FOR THE RESPONDENT**

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## LIST OF ABBREVIATIONS

¶	Paragraph
ANP	Anhuri New Party
ANP-FF	Anhuri New Party Freedom Fighters
ARSIWA	Articles on Responsibility of States for Internationally Wrongful Acts
CBD	Convention on Biological Diversity
Clarifications	Clarifications to the 26 <sup>th</sup> Annual Stetson International Environment Moot Court Competition Record
EIA	Environmental Impact Assessment
ha	Hectares
IAC	Inter-American Convention for the Protection and Conservation of Sea Turtles
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ILC	International Law Commission
IHL	International Humanitarian Law
IUCN	International Union for Conservation of Nature
km	kilometres
MWC	Menhit Wetland Complex
NOAA	National Oceanic and Atmospheric Administration
R	26 <sup>th</sup> Annual Stetson International Environment Moot Court Competition Record
Ramsar Convention	Convention on Wetlands of International Importance especially as Waterfowl Habitat
Ramsar Site	Wetland of International Importance
SCW	Scute Coastal Wetland
UN	United Nations
UNEP	United Nations Environment Programme
UNWTO	United Nations World Tourism Organisation
VCLT	Vienna Convention on the Law of Treaties
WHC	Convention Concerning the Protection of the World Cultural and Natural Heritage

## **QUESTIONS PRESENTED**

- I. WHETHER THE FEDERAL STATES OF ANHUR VIOLATED INTERNATIONAL LAW THROUGH ITS ACTIONS IN THE MENHIT WETLAND COMPLEX
  
- II. WHETHER THE REPUBLIC OF RONGO VIOLATED INTERNATIONAL LAW THROUGH ITS PROPOSED HOTEL DEVELOPMENT IN THE SCUTE COASTAL WETLAND

## **STATEMENT OF JURISDICTION**

On 23 July 2021, the Federal States of Anhur (“Anhur”) and the Republic of Rongo (“Rongo”) submitted the following dispute to this Honourable Court by Special Agreement pursuant to Article 40(1) of the Statute of the ICJ. The Registrar of the Court acknowledged receipt of the joint notification on 30 July 2021. Anhur and Rongo have accepted jurisdiction of the ICJ pursuant to Article 36(1) of the Statute and request this Court to adjudicate the dispute in accordance with the rules and principles of international law, including any applicable treaties.

## **STATEMENT OF FACTS**

Anhur and Rongo are neighbouring States on the Caribbean island of Caretta (R.1). They are members of the UN (R.5) and parties to the VCLT (R.6), Ramsar Convention (R.7), WHC (R.8), IAC (R.9), CBD (R.10) and the 1949 Geneva Conventions (R.11).

Rongo designated MWC as a Ramsar Site (R.14) and MWC is on its WHC Tentative List (R.15). MWC supports over 150 tree species, 34 fish species, 3 endangered bird species and 8 species of notable mammals (R.14).

After Anhur's national parliamentary elections in 2019, approximately 50 members of the ANP-FF, a paramilitary arm of a local Anhuri political party, crossed the border into Rongo and set up camp in MWC (R.19). In early November 2019, the ANP-FF launched attacks with armed drones on the territory of Anhur from the MWC (R.20).

On 6 November 2019, Anhur responded by employing unarmed drones to locate the ANP-FF's camp and fired approximately 200 high explosive artillery rounds at the camp (R.20). Consequently, most of the ANP-FF's members were killed or injured (R.20) and the artillery rounds sparked a fire that burned 80,000 ha of peat swamp in MWC (R.21).

Anhur designated SCW as a Ramsar Site (R.17). SCW is located on Kemp Key (R.3) is the world's largest nesting site for the critically endangered Royal Ridley (R.17). On 27 September 2020, Rongo granted a permit to build a hotel complex within SCW to promote eco-tourism and help the impoverished local community (R.35). An EIA was prepared and lighting alterations were made to the proposed hotel development (R.36).

Negotiations between Anhur and Rongo ensued. Thereafter, the Parties agreed to submit the matter to the ICJ for determination (R.40).

## **SUMMARY OF ARGUMENTS**

### **I. ANHUR HAS VIOLATED INTERNATIONAL LAW THROUGH ITS ACTIONS IN THE MENHIT WETLAND COMPLEX**

IHL applies as there is an international armed conflict between Anhur and Rongo. IHL is violated as MWC is not a legitimate military objective and Anhur's artillery attack violated the prohibition against widespread, long-term, severe damage to the natural environment. Anhur would also have violated Article 6.3 of the WHC and Article 3.1 of the Ramsar Convention, as both Conventions apply during armed conflict and peacetime. Even if IHL does not apply, Anhur has violated the principle of sovereignty and the prohibition against use of force. Anhur would also have violated Article 4 read with Article 8(d) of the CBD. The wrongfulness of Anhur's actions cannot be precluded by self-defence, force majeure, and necessity. Therefore, Rongo is entitled to compensation and satisfaction as Anhur has violated international law.

### **II. RONGO DID NOT VIOLATE INTERNATIONAL LAW THROUGH ITS PROPOSED HOTEL DEVELOPMENT IN SCUTE COASTAL WETLAND**

Rongo's proposed hotel development is consistent with international law. Rongo has sovereignty over Kemp Key and is entitled to not recognise SCW as a Ramsar Site. Its acts are consistent with Article 8(f) of the CBD and Article IV 2(c) and 2(d) of the IAC. Rongo can also not regard SCW as a Ramsar Site and would also have fulfilled its obligations under Article 3.1 of the Ramsar Convention. Assuming Anhur has sovereignty over Kemp Key, the hotel development is still consistent with international law as it is an ecological intervention to protect the critically endangered Royal Riddleys.

## ARGUMENTS

### I. ANHUR HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS ARTILLERY ATTACKS

#### A. *Anhur has violated IHL and treaty obligations which continue to apply during armed conflicts*

IHL applies when there is an armed conflict.<sup>1</sup> The threshold for an armed conflict is low and can be satisfied with little actual fighting.<sup>2</sup> Anhur's artillery attack on Rongo's territory meets this threshold. Since Rongo's consent was not obtained, the armed conflict is of an international character.<sup>3</sup> Additionally, it is a misconception that IHL only concerns the "protection of human rights".<sup>4</sup> In any event, the natural environment has been recognised to be civilian in character<sup>5</sup> and IHL applies even though there are currently no civilians residing in MWC.<sup>6</sup>

##### 1. MWC is not a legitimate military objective

It is international custom that in an international armed conflict, an attack cannot be directed against the natural environment unless it becomes a military objective.<sup>7</sup> A military objective needs to make an effective contribution to military action "by nature, location, purpose or use,"

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<sup>1</sup> Noam Lubell, *Extraterritorial Use of Force Against Non-State Actors* 85 (Vaughan Lowe et al. eds., 1st ed. 2011) [hereinafter Lubell].

<sup>2</sup> *Id.* at 94-95.

<sup>3</sup> Dapo Akande, *Are Extraterritorial Armed Conflicts with Non-State Groups International or Non-International?*, (Oct. 18, 2011), <https://www.ejiltalk.org/are-extraterritorial-armed-conflicts-with-non-state-groups-international-or-non-international/>.

<sup>4</sup> Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* 19 (2nd ed. 2010).

<sup>5</sup> ICRC, *Guidelines on the Protection of the Natural Environment in Armed Conflict* (2020), ¶95 [Hereinafter ICRC Guidelines].

<sup>6</sup> R¶15.

<sup>7</sup> ICRC Guidelines, *supra* note 5, ¶98.

and “its destruction, capture or neutralisation, in the circumstances ruling at the time, must offer a definite military advantage”.<sup>8</sup> MWC does not satisfy these elements.

For the first element, only the area of environment directly contributing to military action is a military objective.<sup>9</sup> Anhur cannot regard the entire MWC as a military objective given that the wetland spans across 150,000 ha and the ANP-FF only consists of approximately 50 members. It is highly unlikely for ANP-FF’s camp to span across the entire MWC.

For the second element, the advantage gained must be concrete, perceptible, military, and not merely political.<sup>10</sup> Anhur’s attack on the ANP-FF was likely motivated by purely political objectives. There is an ongoing political dispute between Anhur and ANP-FF,<sup>11</sup> and Anhur utilised 200 high explosive artillery rounds against a group of approximately 50 members.<sup>12</sup> The attack was likely an attempt by Anhur to showcase its military prowess to quell political threats posed by the ANP.

## 2. The principles of necessity and proportionality were violated

The environment must be taken into consideration in deciding what is necessary and proportionate when pursuing legitimate military objectives.<sup>13</sup> It is international custom that in an international armed conflict,<sup>14</sup> incidental damage on the natural environment which are not military objectives cannot be excessive.

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<sup>8</sup> *Id.* ¶100.

<sup>9</sup> *Id.* ¶101.

<sup>10</sup> *Id.* ¶93.

<sup>11</sup> R¶19.

<sup>12</sup> *Id.*

<sup>13</sup> Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶30 [Hereinafter Nuclear Weapons].

<sup>14</sup> ICRC Guidelines, *supra* note 5, ¶114.

Anhur's artillery attack was unnecessary, as Anhur could have minimally informed Rongo before pursuing anything in response.<sup>15</sup>

The artillery attack was also disproportionate. The ICRC Guidelines state that the burning of an entire forest to eliminate a small enemy camp of minute importance would be disproportionate.<sup>16</sup> This is analogous to our case as Anhur had caused a fire which burnt 80,000 ha in an attempt to target ANP-FF, which is a group of 50 members.

3. Anhur has violated the prohibition against causing widespread, long-term, and severe damage to the natural environment

The prohibition against widespread, long-term, and severe damage to the natural environment is international custom, applicable in international armed conflicts.<sup>17</sup> It is enshrined in Principle 13(2) of the International Law Commission's Draft Principles on the Protection of the Environment in Relation to Armed Conflict<sup>18</sup> and Rule 2 of the ICRC Guidelines.<sup>19</sup>

The three conditions of this prohibition are cumulative<sup>20</sup> and satisfied on the facts. The first requirement of widespread damage requires a scale of several hundred square km to be affected.<sup>21</sup> The area of damage equating to 800 square km was reasonably foreseeable.<sup>22</sup> Anhur utilised drones to locate the ANP-FF's camp and would have seen the dried peat in the MWC, which looks drastically different from healthy peat.<sup>23</sup> Even if Anhur was not aware of the

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<sup>15</sup> Oil Platforms (Iran v. U.S.), 2003 I.C.J. 161, ¶76 [Hereinafter Oil Platforms].

<sup>16</sup> ICRC Guidelines, *supra* note 5, ¶122.

<sup>17</sup> *Id.* ¶47.

<sup>18</sup> Rep. of the Int'l Law Comm'n, 71st Sess., Apr. 29-June 7, July 8-Aug. 9, 2019, U.N. Doc. A/74/10, at 213

<sup>19</sup> ICRC Guidelines, *supra* note 5, at ¶29.

<sup>20</sup> *Id.* ¶50.

<sup>21</sup> *Id.* ¶60.

<sup>22</sup> *Id.* ¶57.

<sup>23</sup> E Maftu'ah et al., *Changes in degraded peat land characteristic using FTIR-spectroscopy*, IOP Conf. Ser.: Earth Environ. Sci 393, at 1.



drought, the high explosive artillery rounds utilised had a kill radius of at least 20m,<sup>24</sup> making it reasonably foreseeable that a fire or large scale may be ignited under normal conditions.

The second requirement of long-term damage requires impacts lasting 10 to 30 years.<sup>25</sup> The artillery attack caused damage which will take decades or even centuries to recover.<sup>26</sup> The long-term requirement is satisfied.

The third requirement of severity was satisfied where burning of oil wells led to huge emissions of harmful gases and deposition of soot.<sup>27</sup> Similarly, the burning of 80,000 ha of peat swamp will release large amounts of greenhouse gases.<sup>28</sup> This would result in significant peat haze<sup>29</sup> and smoke<sup>30</sup> which is harmful to the environment. The use of warfare against endangered species is also a factor going towards severity,<sup>31</sup> and MWC is home to three endangered species of birds.<sup>32</sup> The requirement of severity is satisfied and therefore, Anhur has violated this prohibition.

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<sup>24</sup> Alan Catovic & Elvedin Kljuno, *A novel method for determination of lethal radius for high-explosive artillery projectiles*, 2021 Defence Technology 17(4), at 1231 [Hereinafter Catovic & Kljuno].

<sup>25</sup> ICRC Guidelines, *supra* note 5, ¶61.

<sup>26</sup> R¶24.

<sup>27</sup> ICRC Guidelines, *supra* note 5, ¶70.

<sup>28</sup> IUCN, *Issues Brief: Peatlands and Climate Change*, <https://www.iucn.org/resources/issues-briefs/peatlands-and-climate-change#:~:text=Peatlands%20are%20a%20type%20of%20wetlands%20that%20occur%20in%20almost.habitat%20growing%20on%20its%20surface> (last visited Oct. 30, 2021).

<sup>29</sup> University of Leicester, *Peat wildfires*, <https://www2.le.ac.uk/departments/geography/research/projects/tropical-peatland/peat-fires#:~:text=Dry%20peat%20ignites%20very%20easily,and%20highly%20unpredictable%20and%20uncontrollable> (last visited Oct. 28, 2021).

<sup>30</sup> Department of Health, Government of Western Australia, *Minimising the impacts of peat smoke*, [https://www.healthywa.wa.gov.au/Articles/J\\_M/Minimising-the-impacts-of-peat-smoke](https://www.healthywa.wa.gov.au/Articles/J_M/Minimising-the-impacts-of-peat-smoke) (last visited Oct. 27, 2021).

<sup>31</sup> ICRC Guidelines, *supra* note 5, ¶71.

<sup>32</sup> R¶14.

#### 4. Anhur has violated its obligations under Article 3.1 of the Ramsar Convention

The Ramsar Convention applies even amidst an armed conflict.<sup>33</sup> Although focused on protecting wetlands through national action,<sup>34</sup> parties share a common responsibility to protect any sites in the List, regardless of whether they have jurisdiction over the sites.<sup>35</sup> This is reflected in Article 3.1 of the Ramsar Convention, where “Contracting Parties shall formulate and implement their planning so as to promote the conservation of the wetlands included in the List.”<sup>36</sup> Under this provision, parties must maintain the ecological character of wetlands.<sup>37</sup>

Anhur’s artillery attack has resulted in a change of the ecological character of the MWC through burning 80,000 ha of its peatland.<sup>38</sup> This would be a “human-induced adverse alteration of any ecosystem component, process, and/or ecosystem benefit/service” under Ramsar Resolution IX.1.<sup>39</sup> It has detrimentally impacted the ecosystem service provided by the MWC through changing its biodiversity,<sup>40</sup> reducing the benefits obtainable<sup>41</sup> from the MWC.

Anhur cannot allege that Rongo has violated Article 3.2 of the Ramsar Convention.<sup>42</sup> Reports under Article 3.2 are only warranted when there are human-induced ‘changes in ecological

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<sup>33</sup> UNEP, *Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law*, 37 (2009) [Hereinafter UNEP Report] and ILC, *Draft Articles on the Effects of Armed Conflicts on Treaties*, with Commentaries, art 7, annex (g), U.N.Doc. A/66/10 (2011) [Hereinafter EACT].

<sup>34</sup> Ramsar Convention Secretariat, *An Introduction to the Ramsar Convention on Wetlands* (7th ed. 2016) at 2 [Hereinafter Ramsar 5th Edition].

<sup>35</sup> Ornella Ferrajolo, *State Obligations and Non-Compliance in the Ramsar System*, 14 J. Int’l Wildlife L. & Pol’y 243 (2011), at 245.

<sup>36</sup> Convention on Wetlands of International Importance especially as Waterfowl Habitat, art 3.1, Feb. 2, 1971, 996 U.N.T.S. 14583 [Hereinafter Ramsar Convention].

<sup>37</sup> Ramsar Convention Secretariat, *Wise use of Wetlands: Concepts and approaches for the wise use of wetlands* (4th ed. 2010) at 6.

<sup>38</sup> R¶21.

<sup>39</sup> 9th Meeting of the Conference of the Parties to the Convention on Wetlands, Resolution IX.1: A Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character (2005), at 5 [Hereinafter Ramsar Resolution IX.1].

<sup>40</sup> Joseph Alcamo et al., *Millennium Ecosystem Assessment, Ecosystems and Human Well-being* 55 (Gilberto Gallopin et al.eds., 2003).

<sup>41</sup> *Id.* at 53.

<sup>42</sup> Ramsar Convention, *supra* note 36, art 3.2.

character'.<sup>43</sup> The drought conditions in the MWC were a result of extended periods of droughts<sup>44</sup> and not human-induced 'changes in ecological character'.

5. Anhur has violated its obligations under Article 6.3 of the WHC

The WHC applies even amidst an armed conflict.<sup>45</sup> Article 6.3 requires States to not take deliberate measures which might damage natural heritage in the territory of other States.<sup>46</sup> MWC would qualify as a natural heritage under Article 2 of the WHC<sup>47</sup> as it houses three endangered species of birds.<sup>48</sup> Unlike other provisions,<sup>49</sup> Article 6.3 does not make reference to Article 11 of the WHC which relates to the World Heritage List.<sup>50</sup> Article 6.3 of the WHC hence applies even though MWC is merely on the WHC Tentative List.

Anhur would have violated this obligation if acts that damage MWC are attributable to Anhur.<sup>51</sup> Anhur had deliberately engaged in an artillery attack burnt 80,000 ha of MWC,<sup>52</sup> which is situated in Rongo. This is a violation of Article 6.3 of the WHC.

***B. Even if IHL does not apply, Anhur has violated international law***

If IHL does not apply, Anhur's artillery attack has violated the principle of sovereignty and the prohibition against use of force. Anhur's actions would also have violated Article 4 read with

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<sup>43</sup> Ramsar Resolution IX.1, *supra* note 44, at 6.

<sup>44</sup> R¶16.

<sup>45</sup> 2009 UNEP Report and EACT, *supra* note 33.

<sup>46</sup> Convention Concerning the Protection of the World Cultural and Natural Heritage, art. 6.3, Nov. 16, 1972, 1037 U.N.T.S. 15511 [Hereinafter WHC].

<sup>47</sup> *Id.* at art 2.

<sup>48</sup> R¶17.

<sup>49</sup> WHC, *supra* note 46, art 12.

<sup>50</sup> *Id.* art 11.

<sup>51</sup> Craig Forrest, *International Law and the Protection of Cultural Heritage* 249 (1<sup>st</sup> ed. 2010)

<sup>52</sup> R¶21.

Article 8(d) of the CBD. These are in addition to violations of the WHC and Ramsar Convention, which apply during peacetime and armed conflict.

1. Anhur has violated the principle of sovereignty

The principle of sovereignty is part of international custom.<sup>53</sup> Under this principle, States have freedom over their choice of political, social, economic and cultural systems.<sup>54</sup> The unauthorised flight of an aircraft qualifies as a violation of sovereignty.<sup>55</sup> The artillery attack conducted by Anhur is not only an incursion into Rongo's airspace, it has caused damage to Rongo's territory. It therefore violates Rongo's sovereignty.

2. Anhur has violated Article 2(4) of the UN Charter

Article 2(4) of the UN Charter prohibits members from engaging in any threat or use of force,<sup>56</sup> such prohibition is also international custom.<sup>57</sup> The use of weapons to carry out attacks which resulted in destruction<sup>58</sup> constituted infringements of this custom.<sup>59</sup> Anhur's act of firing approximately 200 high explosive artillery rounds at the ANP-FF's camp, which is in Rongo's territory, is a similar use of weapons<sup>60</sup> that infringes this prohibition.

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<sup>53</sup> Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Merits, 1986 I.C.J. 14, ¶212 [Hereinafter *Nicaragua*].

<sup>54</sup> *Id.* ¶263.

<sup>55</sup> *Nicaragua*, *supra* note 50, ¶251.

<sup>56</sup> Charter of the United Nations, art 2(4), Oct. 24, 1945, 1 U.N.T.S. XVI [Hereinafter UN Charter].

<sup>57</sup> Oliver Dorr, *Use of Force, Prohibition Of*, in Max Planck Encyclopaedias of International Law (Rüdiger Wolfrum ed., 2019), ¶9.

<sup>58</sup> *Nicaragua*, *supra* note 50, ¶81.

<sup>59</sup> *Id.* ¶227.

<sup>60</sup> R¶20.

3. Anhur has violated its obligations under Article 4 read with Article 8(d) of the CBD

Under Article 4 of the CBD, provisions relating to processes and activities can apply beyond the limits of national jurisdiction.<sup>61</sup> Article 8(d) of the CBD states that parties shall promote protection of natural habitats and ecosystems.<sup>62</sup> This provision relates to processes and activities and Anhur has to abide by it even with respect to regions beyond its own national territory. In initiating an artillery attack on MWC, which is situated in Rongo, Anhur caused a fire which burnt 80,000 ha of MWC. This act of destroying natural habits is contrary to protection of it. Therefore, Anhur has violated Article 4 read with Article 8(d) of the CBD.

***C. There is no justification present for Anhur's acts***

Anhur may attempt to rely on self-defence, *force majeure*, and necessity to preclude the wrongfulness of its actions. The circumstances for these defences do not arise on the facts.

1. Anhur cannot rely on the defence of self-defence

Article 51 of the UN Charter recognises that members have a right to self-defence in an armed attack.<sup>63</sup> Armed attacks refer to the most grave forms of use of force<sup>64</sup> and not mere frontier incidents.<sup>65</sup> The ANP-FF's single drone attack is insufficient to meet the high threshold.

Moreover, the armed attack must be initiated by a State<sup>66</sup> or minimally be attributable to it. The ANP-FF is a non-state actor whose acts are not attributable to any State. There are no signs that ANP-FF acted under the instructions of any State,<sup>67</sup> and neither Anhur nor Rongo provided any

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<sup>61</sup> Convention on Biological Diversity, art 4, Jun. 5, 1992, 1760 U.N.T.S 79 [Hereinafter CBD].

<sup>62</sup> *Id.* art 8(d).

<sup>63</sup> UN Charter, *supra* note 56, art. 51.

<sup>64</sup> *Nicaragua*, *supra* note 50, ¶91.

<sup>65</sup> *Id.* ¶195.

<sup>66</sup> *Id.*

<sup>67</sup> Lubbell, *supra* note 1, at 39-40.

support to the ANP-FF.<sup>68</sup> To date, Anhur has not notified the UN Security Council of any purported exercise of self-defence<sup>69</sup> required under the UN Charter.<sup>70</sup> The absence of such a report may indicate that the State in question is unconvinced of its act of self-defence.<sup>71</sup> Therefore, the right to self-defence has not arisen.

Even if the right to self-defence arose, Anhur has not exercised this right in a necessary and proportionate manner.<sup>72</sup> Self-defence is unnecessary if carried out after the threat is diminished.<sup>73</sup> There are no signs that the ANP-FF posed any threat after the drone attack. Proportionality must be assessed in light of the whole operation rather than isolated incidents.<sup>74</sup> Anhur's response of firing approximately 200 105mm high explosive rounds from towed M119 Howitzers, which have a kill radius of at least 20m<sup>75</sup> will be disproportionate against the ANP-FF which comprises of approximately 50 members.<sup>76</sup> More importantly, Anhur knew the location of the ANP-FF as drones were used to locate the ANP-FF's camp.<sup>77</sup> This would have allowed a targeted attack, reducing amount of ammunition required. Also, Anhur's proportionality analysis<sup>78</sup> was inadequate and has not sufficiently taken into account the environment.<sup>79</sup> This is because the artillery attack caused 80,000 ha of MWC to be burnt, including the consequent loss of vegetation, soil and wildlife.<sup>80</sup> Therefore, self-defence was not exercised in a necessary and proportionate manner.

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<sup>68</sup> R¶19.

<sup>69</sup> UN Charter, *supra* note 56, art 51.

<sup>70</sup> *Id.*; see also *Nicaragua*, *supra* note 50, ¶200.

<sup>71</sup> *Nicaragua*, ¶200.

<sup>72</sup> *Id.* ¶194.

<sup>73</sup> *Id.* ¶237.

<sup>74</sup> *Oil Platforms*, *supra* note 15, ¶77.

<sup>75</sup> *Catovic & Kljuno*, *supra* note 24, at 1231.

<sup>76</sup> R¶19.

<sup>77</sup> R¶20.

<sup>78</sup> R¶25

<sup>79</sup> Clarifications A11.

<sup>80</sup> R¶21.

Moreover, self-defence only precludes the wrongfulness of Anhur's use of force,<sup>81</sup> not Anhur's wrongfulness in IHL.<sup>82</sup>

## 2. Anhur cannot rely on the defence of *force majeure*

Under Article 23 of the ARSIWA, for *force majeure* to apply, there must be an "occurrence of an irresistible force or of an unforeseen event" which is "beyond the control of the State" making it "materially impossible in the circumstances to perform the obligation."<sup>83</sup>

The requirement of material impossibility is not satisfied. It is insufficient that compliance to an obligation is merely made more difficult or burdensome.<sup>84</sup> The action must be involuntary or involves no element of free will.<sup>85</sup> Anhur's artillery attack against the ANP-FF was a voluntary choice. Anhur could have communicated with Rongo before initiating the attack, or attempted negotiations with the ANP-FF, especially since Anhur is likely familiar with their backgrounds and demands. Therefore, material impossibility is not satisfied.

Even if it was indeed a situation of *force majeure*, wrongfulness will only be precluded if such a situation subsist.<sup>86</sup> There are no signs that the ANP-FF members intended to continue further attacks. Therefore, *force majeure* will not apply.

## 3. Anhur cannot rely on the defence of necessity

Under Article 25 of the ARSIWA,<sup>87</sup> necessity requires the act to be the "only way for the State to safeguard an essential interest against a grave and imminent peril" and "does not seriously

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<sup>81</sup> ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries, at 74, U.N.Doc. A/56/10 (2001) [Hereinafter ARSIWA].

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 76.

<sup>84</sup> Rainbow Warrior (N.Z. v. Fr.) Judgement, Fr.-N.Z. Arb. Trib., 82 I.L.R. 500 (1990) ¶77.

<sup>85</sup> ARSIWA, *supra* note 74, at 76.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 80.

impair an essential interest of the State”.<sup>88</sup> the provides for the defence of necessity. This defence operates on an exceptional basis.<sup>89</sup>

These cumulative requirements are not satisfied. The state of peril required must be imminent and objectively established.<sup>90</sup> It is insufficient for the peril to be merely apprehended or contingent.<sup>91</sup> The attack by the ANP-FF caused several deaths and damaged 3 buildings. Further, there were no signs of a second attack by the ANP-FF. Hence, the peril to Anhur is not grave and remains a mere apprehension.

Moreover, the course of action must also be the only way to safeguard that interest, leaving no other lawful means available.<sup>92</sup> Anhur could have informed Rongo about the threats posed by the ANP-FF. Additionally, Anhur’s interest in protecting against a speculative attack does not necessarily outweigh Rongo’s environmental interest in protecting a prestigious Ramsar Site.<sup>93</sup>

Moreover, when the State’s act or omission brought about the state of necessity, reliance on this defence is precluded.<sup>94</sup> Anhur contributed to the situation of necessity.<sup>95</sup> Anhur failed to contain ANP-FF within its territory, allowing the ANP-FF to travel into the MWC. Therefore, the defence of necessity cannot be relied upon.

#### ***D. Rongo’s right to compensation and satisfaction arises***

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<sup>88</sup> ARSIWA, *supra* note 74, at 80.

<sup>89</sup> Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 I.C.J. 7, ¶51 [Hereinafter *Gabčíkovo-Nagymaros*].

<sup>90</sup> *Id.* at 83.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at ¶57.

<sup>93</sup> ARSIWA, *supra* note 74, at 83-84.

<sup>94</sup> *Gabčíkovo-Nagymaros*, *supra* note 81, ¶57.

<sup>95</sup> ARSIWA, *supra* note 74, at 80.



Since Anhur had violated international law, Anhur is obligated to compensate Rongo under Article 36 of the ARSIWA.<sup>96</sup> Article 36(2) requires the damage to be financially assessable.<sup>97</sup> Environmental damage can extend beyond what is readily quantifiable, to include loss of environmental values such as biodiversity losses.<sup>98</sup>

In *Costa Rica v Nicaragua*, a Ramsar Site was similarly damaged<sup>99</sup> and monetary compensation was awarded.<sup>100</sup> Compensation is appropriate where restitution is materially impossible.<sup>101</sup> It will be materially impossible for Anhur to restore the 80,000 ha of burnt peat swamp given the wide extent of damage. Therefore, monetary compensation for the loss of environmental goods<sup>102</sup> is appropriate.

Article 37 of the ARSIWA provides that Rongo may seek satisfaction from Anhur. Satisfaction is available where “the injury cannot be made good by restitution or compensation”.<sup>103</sup> This would include “non-material injury” such as violations of sovereignty.<sup>104</sup> The satisfaction that Rongo is seeking is for a competent tribunal to declare Anhur’s artillery attack as a wrongful act.<sup>105</sup>

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<sup>96</sup> ARSIWA, supra note 74, at 98.

<sup>97</sup> *Id.* at 99.

<sup>98</sup> *Id.* at 101.

<sup>99</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.)*, 2018 I.C.J. 15, at ¶45.

<sup>100</sup> *Id.* ¶157.

<sup>101</sup> *Id.* ¶31.

<sup>102</sup> *Id.* ¶42.

<sup>103</sup> ARSIWA, supra note 74, at 105.

<sup>104</sup> *Id.* at 106.

<sup>105</sup> *Id.* at 106.

## II. RONGO HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS PROPOSED HOTEL DEVELOPMENT

### A. *Rongo has not violated its treaty obligations in the event that Rongo is the proper sovereign over Kemp Key.*

Rongo has not violated Article 8(f) of the CBD. It is entitled to not recognise SCW as a Ramsar Site. Regardless, the hotel development is consistent with Article 3.1 of the Ramsar Convention. Finally, Rongo has not violated Article IV 2(c) and 2(d) of the IAC. In any case, Article IV 3(d), which acts an exception, applies.

#### 1. Rongo has not violated its obligations under Article 8(f) the CBD

Article 8(f) of the CBD requires contracting parties to “rehabilitate and restore degraded ecosystems and promote the recovery of threatened species”.<sup>106</sup> The hotel development satisfies these requirements. It restores the present degradation of SCW caused by inappropriate agricultural practices, subsistence hunting, overexploitation of marine resources, and development pressures.<sup>107</sup> This is through offering alternative employment for the local community engaged in such practices. The hotel development also involves ecotourism which encourages appreciation for the turtle population.<sup>108</sup>

#### 2. Rongo has not violated Article 3.1 of the Ramsar Convention

##### 2.1. Rongo does not recognise Scute Coastal Wetland as a Ramsar Site

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<sup>106</sup> CBD, *supra* note 71, art 8(f).

<sup>107</sup> R¶17.

<sup>108</sup> Clement A. Tisdell & Clevo Wilson, *Ecotourism for the survival of sea turtles and other wildlife*, Biodiversity and Conservation 11, 1521-1538 (2002) at 1527 [Hereinafter Tisdell].

Rongo does not regard SCW as a Ramsar Site<sup>109</sup> although it was designated as a Ramsar Site by Anhur.<sup>110</sup> Resolution IX.6 contemplates situations where a successor country wishes to indicate a different wetland boundary from a former contracting party.<sup>111</sup> When taking over sovereign control of Kemp Key, pursuant to the referendum,<sup>112</sup> Rongo is entitled to not regard SCW as a Ramsar Site.

## 2.2. Rongo's actions are in line with Ramsar Resolution X.17 and Ramsar Resolution XI.9

Article 3.1 of the Ramsar Convention requires parties to promote the conservation of Ramsar Sites and the wise use of wetlands in their territories.<sup>113</sup> Article 3.1 hence gives rise to obligations regardless of whether SCW remains as a Ramsar Site. Article 3 of the Ramsar Convention contains an implied obligation to conduct an EIA for projects involving wetlands to ensure it is in line with its wise use.<sup>114</sup>

Ramsar Resolution X.17 sets out a seven-stage EIA framework for applying impact assessment to Ramsar Sites.<sup>115</sup> Rongo has complied with this. Step one entails screening to determine which developments require an impact assessment study<sup>116</sup> which Rongo has done by identifying the hotel development as one requiring an EIA. An EIA was required as the hotel development involves a change in land use and coastal ecosystem.<sup>117</sup>

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<sup>109</sup> R¶39.

<sup>110</sup> R¶7.

<sup>111</sup> 9<sup>th</sup> Meeting of the Conference of the Parties to the Convention on Wetlands, Resolution IX.6: Guidance for addressing Ramsar Sites or parts of sites which no longer meet the Criteria for designation (2005), at 5 [Hereinafter Ramsar Resolution IX.6].

<sup>112</sup> R¶32.

<sup>113</sup> Ramsar Convention, *supra* note 36, art 3.1.

<sup>114</sup> Ramsar Convention Secretariat, Handbook 16: Impact Assessment (4th ed., 2010), at 14.

<sup>115</sup> 10<sup>th</sup> Meeting of the Conference of the Parties to the Convention on Wetlands, Resolution X.17: Environmental Impact Assessment: Updated scientific and technical guidance (2008) [Hereinafter Ramsar Resolution X.17].

<sup>116</sup> *Id.* at 7.

<sup>117</sup> *Id.* at 11.

Step two entails scoping the focus of the EIA and identifying alternatives.<sup>118</sup> Remedial actions can take the form of avoidance, mitigation and compensation.<sup>119</sup> At this stage, Resolution XI.9 provides guiding questions which aid in deciding between avoidance, mitigation, and compensation as a response to potential wetland losses.<sup>120</sup>

Rongo concluded from its EIA that avoidance of the hotel development was not required.<sup>121</sup>

The hotel development will only occupy 17 ha,<sup>122</sup> in contrast to the Yamuna River Floodplain case study where developments were halted as 3,250 ha of floodplain was threatened.<sup>123</sup> In applying the risk-based approach, the likelihood and impact of the hotel development is not high enough to warrant avoidance or relocation.<sup>124</sup> This is because the hotel development had made adequate modifications to reduce impacts on the Royal Ridleys. It was not feasible for the hotel development to be relocated,<sup>125</sup> as the hotel needs to be close to the nesting site to promote on-site ecotourism.

Rongo's mitigation efforts are also adequate. It has identified light pollution from the hotel development to be a key threat<sup>126</sup> to the Royal Ridleys<sup>127</sup> and chose to focus mitigation efforts here. This is effective in reducing sea turtle hatchlings' deaths because artificial lighting

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<sup>118</sup> *Id.* at 12-13.

<sup>119</sup> *Id.* at 13.

<sup>120</sup> 11<sup>th</sup> Meeting of the Conference of the Parties to the Convention on Wetlands, Resolution XI.9: An Integrated Framework and guidelines for avoiding, mitigating and compensating for wetland losses (2012) , at 1 [Hereinafter Ramsar Resolution XI.9].

<sup>121</sup> *Id.* at 13.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.* at 15-16.

<sup>124</sup> *Id.* at 12.

<sup>125</sup> *Id.*

<sup>126</sup> Ecological Society of Australia, *The impacts of artificial light on marine turtles* (Dec. 13, 2019) <https://www.ecolsoc.org.au/?hottopic-entry=the-impacts-of-artificial-light-on-marine-turtles>.

<sup>127</sup> Ramsar Resolution XI.9, *supra* note 130, at 13.

interferes with the hatchling's orientation, leading them away from the sea surface<sup>128</sup> and results in increased deaths due to exhaustion, dehydration, and predation.<sup>129</sup>

No mitigation steps were taken with regard to the marina as Royal Ridleys nest only once every 1-3 years. Rongo also has the prerogative to determine in its domestic legislation the specific content of the EIA required.<sup>130</sup> Additionally, the marina only sits on part of the nesting site and Royal Ridleys which are similar to the Kemp Ridleys, tend to breed in large groups in daylight hours.<sup>131</sup> Therefore, the EIA considered the threat posed by the marina and concluded that not no mitigation measures are warranted.

Rongo has complied with step three which entails assessment and evaluation of the potential impacts by seeking alternatives<sup>132</sup> through making lighting adjustments.<sup>133</sup> The presumption of compliance<sup>134</sup> also operates to assume that Rongo reported<sup>135</sup> and reviewed<sup>136</sup> the EIA under step four and five of the EIA framework respectively since there are no facts to suggest otherwise. Accordingly, Rongo conducted an adequate EIA and its decision to proceed with the hotel development under step 6 of the EIA framework is not in violation of Article 3.1 of the Ramsar Convention.

### 2.3. Rongo's actions are consistent with Ramsar Resolution XI.7

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<sup>128</sup> Michele Thums et al., *Artificial light on water attracts sea turtle hatchlings during their near shore transit*, R. Soc. open sci. 3: 160142, at 2

<sup>129</sup> *Id.*

<sup>130</sup> *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, 2010 I.C.J. 14, ¶205.

<sup>131</sup> NOAA, *Kemp's Ridley Turtle*, <https://www.fisheries.noaa.gov/species/kemps-ridley-turtle> (last visited Oct. 31, 2021).

<sup>132</sup> Ramsar Resolution XI.9, *supra* note 130, at 18.

<sup>133</sup> R¶36.

<sup>134</sup> Caroline E. Foster, *Burden of Proof in International Courts and Tribunals*, 29 Aust. YBIL 27 (2010) at 36.

<sup>135</sup> Ramsar Resolution X.17, *supra* note 125, at 20.

<sup>136</sup> *Id.* at 21.

For tourism plans to be aligned with the wise use of wetlands under Article 3.1 of the Ramsar Convention,<sup>137</sup> Ramsar Resolution XI.7 states that plans should integrate a wide range of economic benefits for local communities<sup>138</sup> and align with the UNWTO principles of sustainable tourism.<sup>139</sup> Rongo's proposed project is consistent with Article 3.1 as it has suitably struck a balance between the environmental, economic and socio-cultural aspects of the tourism project.<sup>140</sup>

Rongo's hotel development promotes ecotourism. It aims to alleviate existing threats posed to SCW and the Royal Ridleys.<sup>141</sup> In doing so, it will simultaneously generate revenue from tourist expenditure, which can be reinvested to enhance the conservation of SCW, and provide jobs to the impoverished local community in Kemp Key.<sup>142</sup>

The Tortuguero National Park in Costa Rica is a successful case study of sea turtle ecotourism involving critically endangered sea turtles.<sup>143</sup> Local shops and hotels situated within the national park have offered villagers a steady source of income<sup>144</sup> while coexisting with sea turtle nesting.<sup>145</sup> Rongo's hotel development has similar potential and is unlike destructive-type tourism which utilise turtles unsustainably through turtle-based goods.<sup>146</sup> The balance hence tilts in favour of allowing the hotel development.

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<sup>137</sup> Ramsar Convention, *supra* note 36, art 3.1.

<sup>138</sup> 11<sup>th</sup> Meeting of the Conference of the Parties to the Convention on Wetlands, Resolution XI.7: Tourism, recreation and Wetlands (2012), at 8 [Hereinafter Ramsar Resolution XI.7].

<sup>139</sup> *Ibid.*

<sup>140</sup> *Ibid.*

<sup>141</sup> R¶17.

<sup>142</sup> R¶35.

<sup>143</sup> Sea Turtle Conservancy, *Tortuguero National Park* <https://conserveturtles.org/tortuguero-national-park/> (last visited Oct. 28, 2021).

<sup>144</sup> *Id.*

<sup>145</sup> Tortuguero Info, *Hotels and Lodges, Tortuguero Costa Rica*, [https://www.tortugueroinfo.com/usa/packages\\_hotels.htm](https://www.tortugueroinfo.com/usa/packages_hotels.htm) (last visited Sept. 25, 2020).

<sup>146</sup> Tisdell, *supra* note 118, at 1524.

#### 2.4. Rongo's actions are consistent with Ramsar Resolution XIII.24

The wise use of wetlands under Article 3.1 of the Ramsar Convention is promoted through the conservation of sea turtles<sup>147</sup> articulated in Resolution XIII.24. This stresses the urgent need for Contracting Parties to take measures to “reduce threats to nesting areas, such as noise and light pollution and beach erosion”.<sup>148</sup> The possible effects of the lighting conditions in the hotel development had been mitigated and there will be no significant harm to the Royal Ridleys.

The Resolution urges parties to “develop best practices to guide the interaction of humans and marine turtles”<sup>149</sup> and encourages parties to work with “local communities, relevant stakeholders and institutions to raise awareness on the importance of conserving marine turtles”. The hotel development provides alternative employment to alleviate the inappropriate agricultural practices<sup>150</sup> and the presence of turtle-watching visitors diminishes the opportunity of subsistence hunting<sup>151</sup> that is currently ongoing in SCW.<sup>152</sup> Tourists will also develop greater appreciation for turtle populations through their experience with the Royal Ridleys.<sup>153</sup> The hotel development is hence aligned with Resolution XIII.24.

#### 3. Rongo has not violated Article IV 2(c) and 2(d) of the IAC

Article IV 2(c) provides that states should follow measures which includes “[t]o the extent practicable, the restriction of human activities that could seriously affect sea turtles, especially

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<sup>147</sup> 13th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, Resolution XIII.24: The enhanced conservation of coastal marine turtle habitats and the designation of key areas as Ramsar Sites (2018) , at 3 [Hereinafter Ramsar Resolution XIII.24].

<sup>148</sup> *Id.* at 3.

<sup>149</sup> *Id.*

<sup>150</sup> R¶35.

<sup>151</sup> Tisdell, *supra* note 118, at 1530.

<sup>152</sup> R¶17.

<sup>153</sup> Tisdell, *supra* note 118, at 1527.

during the periods of reproduction, nesting and migration.”<sup>154</sup> The hotel development helps restrict human activities that seriously affect the Royal Ridleys by alleviating the pre-existing threats faced by the Royal Ridleys in SCW.<sup>155</sup> Although the development brings tourists into SCW, with proper precautions in place,<sup>156</sup> those human activities will not seriously affect sea turtles.

Article IV 2(d) provides that States should follow measures which include “protection, conservation and if necessary, the restoration of sea turtle habitats and nesting areas”.<sup>157</sup> Annex II of the IAC further states that parties shall consider measures to protect and conserve sea turtle habitats, such as “managing and, when necessary, regulating the use of beaches and coastal dunes with respect to the location and design of buildings, the use of artificial lighting and the transit of vehicles in nesting areas.”<sup>158</sup> Rongo has abided by this by making lighting adjustments and Rongo has not foreclosed the possibility of introducing more measures as the hotel development progresses.

In any event, the exception in Article IV 3(d) applies. The exception requires the approval of all contracting parties and the adducing of special considerations.<sup>159</sup> It must also be aligned with the objective of the Convention.<sup>160</sup> Preventing the subsistence hunting currently threatening the Royal Ridleys in SCW<sup>161</sup> and providing alternative income for the impoverished local community<sup>162</sup> ought to suffice as special considerations. The overall

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<sup>154</sup> Inter-American Convention for the Protection and Conservation of Sea Turtles, art IV(2)(c), Dec. 1, 1996, 2164 U.N.T.S. 37791 [Hereinafter IAC].

<sup>155</sup> R¶17.

<sup>156</sup> SeeTurtles, *Sea Turtle Nesting Beaches*, <https://www.seeturtles.org/sea-turtle-nesting-beaches> (last visited Nov. 6, 2021).

<sup>157</sup> IAC, *supra* 154. Art IV(2)(d).

<sup>158</sup> *Id.* Annex II(2).

<sup>159</sup> *Id.* Art IV(3)(d).

<sup>160</sup> *Id.*

<sup>161</sup> R¶17.

<sup>162</sup> R¶35.



objective of the IAC is found in Article II.<sup>163</sup> This would entail conserving sea turtles while taking into account the party's environmental, socioeconomic and cultural characteristics. Rongo is merely a middle-income developing country<sup>164</sup> and its hotel development is in its best efforts to alleviate the threats faced by Royal Ridleys, as Anhur has not taken any action despite awareness of such threats. Since the exception aligns with the overall objective of the IAC, parties should approve it. Therefore, Article IV 3(d) will preclude any violation of Article IV 2(c) and 2(d) obligations.

***B. Rongo has not violated its treaty obligations in the event that Anhur is the proper sovereign over Kemp Key***

Even if Anhur has sovereignty over Kemp Key, Rongo's hotel development is not a violation of international law as it is a form of ecological intervention. Rongo would have abided by the CBD and Ramsar, while the IAC ceases to apply.

1. The hotel development was a form of ecological intervention

Ecological intervention is the threat by a State within the territory of another State without its consent, in order to prevent grave environmental damage.<sup>165</sup> It is carried out to protect the integrity of another State's ecosystem.<sup>166</sup> After all, State sovereignty entails both rights and responsibilities.<sup>167</sup> The sovereignty of States must make concessions for the environment and this gives rise to the opportunity for other States to engage in ecological intervention.<sup>168</sup>

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<sup>163</sup> IAC, *supra* note 154, at Art II.

<sup>164</sup> Clarifications A7.

<sup>165</sup> Robyn Eckersley, *Ecological Interventions: Prospects and Limits*, *Ethics & International Affairs* 21(3) (2017), at 293.

<sup>166</sup> Erik Axelsson & Victor Schill, *Eco-Intervention, the Protection of Sovereignty and the Duty of the Sovereign State to Protect the Environment: An Analysis of Eco-Intervention in Connection with the Principle of Sovereignty and Other Norms of International Law* (2021) (unpublished A.B. thesis, Örebro University) at 13.

<sup>167</sup> *Id.* at 16.

<sup>168</sup> *Id.* at 25.

Rongo's proposed hotel development is an ecological intervention seeking to prevent grave environmental damage existing in SCW.

Anhur's inaction facilitated the perpetuation of threats to the Royal Ridleys population, allowing for ecological intervention.<sup>169</sup> These pose as grave threats as not only are the Royal Ridleys critically endangered, those threats are likely to escalate as Kemp Key progresses economically. Additionally, SCW houses 35% of the nests from the global Royal Ridley population.<sup>170</sup> The hotel development is hence a means of intervention to protect Anhur's ecosystem and the critically endangered Royal Ridleys. The development will offer alternative employment for the locals to reduce the proliferation of at least some of those threats such as subsistence hunting and inappropriate agricultural practices.<sup>171</sup>

## 2. The hotel development is also consistent with Rongo's treaty obligations

Article 8(d) and 8(f) of the IAC are obligations that relate to processes and activities. Hence, they apply beyond the limits of national jurisdiction when read with Article 4 of the CBD. Moreover, parties have agreed that achieving conservation "of biodiversity in marine areas beyond the limits of national jurisdiction" is important.<sup>172</sup> The aforementioned analysis shows that Rongo had not violated these provisions.

Even though Rongo will not be able to delist SCW as a Ramsar Site, it would still have abided by Article 3.1 of the Ramsar Convention, which applies regardless of whether SCW is a Ramsar Site.

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<sup>169</sup> *Id.*, 26.

<sup>170</sup> R¶17.

<sup>171</sup> *Id.*

<sup>172</sup> Decision VIII/24 Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Eighth Meeting, ¶38, U.N. Doc. UNEP/CBD/COP/DEC/VIII/24 (June 15, 2006).

Article III of the IAC states that the IAC applies within the land territory of each contracting party.<sup>173</sup> Therefore, no obligation arises.

The hotel development has not violated international law.

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<sup>173</sup> IAC, *supra* note 154, Art III.

**CONCLUSION AND PRAYER FOR RELIEF**

The Respondent, the Republic of Rongo, respectfully requests that Court to adjudge and declare that:

1. The Federal States of Anhur violated international law with respect to its actions in the Menhit Wetland Complex, and
2. The Republic of Rongo did not violate international law with respect to its proposed hotel development in the Scute Coastal Wetland.

Respectfully submitted,

**AGENTS FOR THE RESPONDENT**

