
26TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

BEFORE

THE INTERNATIONAL COURT OF JUSTICE

LA COUR INTERNATIONALE DE JUSTICE



AT THE PEACE PALACE,
THE HAGUE, NETHERLANDS

GENERAL LIST NO.303, YEAR 2021

CASE CONCERNING PROTECTED AREAS AND ARMED CONFLICT

THE FEDERAL STATES OF ANHUR

(APPLICANT)

V.

THE REPUBLIC OF RONGO

(RESPONDENT)

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT

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QUESTIONS PRESENTED

- I. WHETHER THE ACTIONS OF ANHUR WITH RESPECT TO THE MENHIT WETLAND COMPLEX VIOLATED INTERNATIONAL LAW.

- II. WHETHER THE ACTIONS OF RONGO WITH RESPECT TO THE PROPOSED HOTEL DEVELOPMENT IN THE SCUTE COASTAL WETLAND VIOLATED INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

On 23 July 2021, The Federal States of Anhur (“Anhur”) and the Republic of Rongo (“Rongo”), submitted by Special Agreement to the International Court of Justice (the ICJ) their differences concerning questions in Annex A, including the Clarifications, relating to protected areas and armed conflict, in accordance with Article 40(1) of the Statute of the ICJ. The Registrar of the ICJ addressed notification to the parties on 30 July 2021. Anhur and Rongo have accepted jurisdiction of the ICJ pursuant to Article 36(1) of the Statute and request that the Court adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

The parties have agreed to respect the decision of this Court.

STATEMENT OF FACTS

Anhur and Rongo are neighbouring States located on the island of Caretta (R.1). Kemp Key is a small, impoverished island to the south of Caretta assigned to be part Anhur during the 1500's (R.3). When Rongo and Anhur achieved independence, they agreed for Kemp Key to remain under the sovereignty of Anhur. They did however recognise that people of Kemp Key have the right of self determination (R.4).

The Menhit Wetland Complex in Rongo was designated as a 'Ramsar Site' by Rongo in accordance with the Ramsar Convention (R.14). The Scute Coastal Wetland, located on Kemp Key, was designated as a 'Ramsar Site' by Anhur. This wetland is home to the critically endangered Royal ridley sea turtles (R.17).

Following on from civil disturbances within Anhur, a paramilitary arm known as ANP-FF crossed the border into Rongo and set up camp in the Menhit Wetland Complex. No support was provided to ANP-FF by either Rongo or Anhur (R.19). ANP-FF launched a drone attack on Anhur from the Wetland and in response to this attack, Anhur fired at paramilitary members camped in this Ramsar site (R20). This action caused a fire which burned the peat swamp in the Wetland, destroying much of the natural environment (R.21). Rongo heavily condemned these actions.(R.23).

Following concerns about the safety of ethnic Rongoans in Kemp Key, the Rongoan government took action to protect them (R.28). They took control of Kemp Key without causing any serious injuries (R.29). In accordance with the right of self-determination, Rongo held a referendum where ninety six percent of voters voted for Kemp Key to be a province of Rongo (R.32). In order to help this local, impoverished community, Rongo announced that a permit was being granted to build a hotel complex (R.35). An EIA was prepared in accordance

with domestic legislation and the permit granted for the hotel was adjusted accordingly (R.36). Anhur protested this development. (R.37), Rongo responded by noting they have fully complied with international obligations (R.39).

SUMMARY OF ARGUMENTS

I. ANHUR'S ATTACK ON THE MENHIT WETLAND COMPLEX (MWC) WAS A FUNDAMENTAL BREACH OF INTERNATIONAL LAW

Anhur launched an unjustified attack on a protected wetland in the territory of Rongo. This infringed Rongo's sovereignty. The attack violated the Geneva Conventions as it failed to consider the environment a civilian object and was disproportionate for the military advantage sought. Anhur's actions cannot be justified on the grounds of self-defence. Anhur breached its treaty obligations under Ramsar, the CBD, and the WHC and has caused transboundary harm to Rongo. Accordingly, Rongo is due compensation from Anhur for the damage.

II. RONGO COMPLIED WITH ALL RELEVANT OBLIGATIONS WITH RESPECT TO ITS PROPOSED DEVELOPMENT ON KEMP KEY

Rongo's proposed hotel development is in furtherance of the obligation to promote sustainable tourism in developing nations. Rongo has a sovereign right to develop and the ethnic Rongoans of Kemp Key have a right to develop based on their right to economic self-determination. The impoverished population is subject to less onerous environmental protection obligations than developed populations in line with the differentiated responsibility principle. Nonetheless, Rongo complied with its treaty obligations in Ramsar, the CBD, the WHC and the IAC as it has taken measures to mitigate any harm to turtles.

ARGUMENTS ADVANCED

I. ANHUR'S ATTACK ON THE MENHIT WETLAND COMPLEX (MWC) WAS A FUNDAMENTAL BREACH OF INTERNATIONAL LAW

A. Anhur breached Rongo's sovereignty

When Anhur fired 200 high-explosive artillery rounds at the Menhit Wetland Complex (MWC)¹ in Rongo with no advance warning,² Anhur breached Article 2(4) of the UN Charter. It is a foundational principle of international law that one State cannot use force that would interfere with the territorial integrity or independence of another State.³ This military attack was a violation of Rongo's sovereignty.⁴

B. Anhur violated its obligations under the law of conflict

1. Anhur failed to treat the environment as a civilian object

The MWC, a vast area of undisturbed peat and freshwater swamp forest⁵ has been obliterated by Anhur's actions. This is not only an important environmental site with respect

¹ R¶20.

² R¶23.

³ Armed Activities on the Territory of the Congo (Democratic Republic of Congo v. Uganda), Merits, Judgment, 2005 ICJ Rep. 168, 222; UNSC Res. 1304 Concerning the situation in the Democratic Republic of the Congo (June 16, 2000) 2; Malcolm Shaw, *International Law*, (8th ed., 2017) 167.

⁴UNGA Res. 2131(XX) Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty (Dec. 21, 1965); UNGA Res. 2625(XXV) Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States (Oct. 24, 1970).

⁵ R¶14.

to its role in climate change mitigation and adaptation strategies,⁶ but the environment is also recognised as a civilian object under international law.⁷ Therefore, Anhur must have due regard for the environment during armed conflict regardless of the treaties it has ratified.

In *Nuclear Weapons*, this Honourable Court held that the environment must be considered when pursuing military targets.⁸ Other international organisations had similar findings.⁹ Several treaties¹⁰ also prohibit attacks that would cause severe damage to the environment, demonstrating the existence of legal obligations towards the environment when conducting hostilities. Accordingly, these examples dispel any doubt as to the customary nature of the environment as a civilian object as sufficient State practice and *opinio juris* exist.

Anhur's actions were a gross violation of its international obligation to protect the environment, a civilian object, when conducting a targeted attack.

⁶ Joseph Fargione et al., *Natural Climate Solutions for the United States*, Sci. Adv. (14 Nov 2018), <https://www.science.org/doi/10.1126/sciadv.aat1869>; Williams Moomaw et al., *Wetlands In a Changing Climate: Science, Policy and Management* (05 Apr 2018), <https://doi.org/10.1007/s13157-018-1023-8>.

⁷ UNEP, *Protecting the Environment During Armed Conflict: An Inventory and Analysis of International Law*, (2009) 13-21; ICRC, *Customary IHL Database*, Cambridge University Press (2005) Rule 43, 44, 45.

⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226.

⁹ Chris Hedges, *Serbian Town Bombed by NATO Fears Effects of Toxic Chemicals*, N.Y Times (14 July 1999) <https://www.nytimes.com/1999/07/14/world/serbian-town-bombed-by-nato-fears-effects-of-toxic-chemicals.html>; UNSC Res. 687 (Apr. 3, 1991).

¹⁰ Rome Statute, 17 July 1998, 2187 U.N.T.S. 3, Article (2)(b)(iv); Convention on the Prohibition of Military or any Other Hostile Use of Environmental Modification Techniques, 10 Dec 1977, 1108 U.N.T.S 151, Article I and II; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S 3, Articles 35(3) and 55 [hereinafter AP I].

2. Anhur's attack was excessive for the military advantage sought

Anhur destroyed 80,000 hectares of an abundant wetland for the purpose of targeting one military base containing a mere 50 insurgents.¹¹ As the environment is a civilian object, it cannot be attacked unless it is considered a military target.¹² However, even if the camp that the ANP-FF set up in the MWC was considered a legitimate military target, if the collateral damage to the environment is 'excessive' compared to the military advantage anticipated, the attack is prohibited.¹³ 'Excessive damage' is measured using the criteria of "widespread, long-term and severe."¹⁴

Damage is 'widespread' if it affects at least several hundred square kilometres.¹⁵ As the damage to the MWC affects 800 square kilometres¹⁶ it is clearly of sufficient scale as to be considered 'widespread'.

¹¹ R¶19.

¹² AP I *supra* note 10, Article 52(1) AP I; ICRC, Case Study, *supra* note 7, Rules 7, 10, 43(A).

¹³ ICRC, Case Study, *supra* note 7, Rule 43; ICTY, *Final Report to the Prosecutor by the Committee Established to Review the NATO Bombing Campaign Against the Federal Republic of Yugoslavia*, (13 June 2000) para. 18; Legality of the Threat or Use of Nuclear Weapons, Dissenting Opinion of Judge Higgins, 1996 I.C.J. 226, p.365 para. 20.

¹⁴ ICRC, Case Study, *supra* note 7, Rule 45.

¹⁵ Philippe Antoine, *International Humanitarian Law and the Protection of the Environment in Time of Armed Conflict* (1992) 32 *International Review of the Red Cross* 517, 526; Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd ed., 2004) 191; ICRC, *Guidelines for Military Manuals and Instructions on the Protection of the Environment in Times of Armed Conflict* (2020) 43; UNEP Inventory, *supra* note 7, 52; Stephan Witteler, *Die Regelungen der neuen Verträge des humanitären Völkerrechts und des Rechts der Rüstungsbegrenzung mit direktem Umweltbezug. Waffenwirkung und Umwelt II* (1993) 383-7.

¹⁶ R¶21.

The duration needed for damage to be ‘long-term’ is measured in decades - twenty to thirty years being the minimum.¹⁷ Damage caused to the Iraqi marshlands was still evident after 18 years,¹⁸ demonstrating the extensive-time period required for such a landscape to be restored. As the damage to the MWC could take decades, if not centuries to restore,¹⁹ it fulfils this qualitative measure.

The severity of the damage refers to harm that jeopardizes or destroys the viability of whole ecosystems.²⁰ In Iraq, the damage to marshlands resulted in the extinction of a native species and placed an additional 66 species at risk.²¹ Not only was there a loss of wildlife on the MWC,²² the viability of any remaining creatures are now at risk.²³ In addition, fires in a peat forest can significantly contribute to greenhouse emissions.²⁴ In 2015, fires in Indonesian peat swamp forests emitted nearly 16 million tonnes of CO₂ a day.²⁵ This grave destruction of

¹⁷Official Records of the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law Applicable in Armed Conflicts, CDDH/215/Rev.1 (1974-1997) 27, *travaux préparatoires*, i.e.the record of negotiations, indicate the intention of the drafters.

¹⁸ Peter Schwartzstein, *National Geographic, Iraq's Famed Marshes Are Disappearing—Again*, Nat. Geo. (9 July 2015) <https://www.nationalgeographic.com/science/article/150709-iraq-marsh-arabs-middle-east-water-environment-world>.

¹⁹ R¶24.

²⁰ Witteler, *supra* note 15, 397; ICRC Guidelines *supra* note 15; Karen Hulme, *War Torn Environment: Interpreting the Legal Threshold* (2004) 96-98; Dinstein, *supra* note 15, 39.

²¹ UNEP, *UNEP in Iraq- Post-Conflict Environmental Assessment, Clean Up and Reconstruction* (2007) 18.

²² R¶21.

²³ WWT, *Why Wetlands*, <https://www.wwt.org.uk/our-work/why-wetlands/#> (accessed Oct. 19, 2021).

²⁴ Andrey Sirin et al., *Assessing Wood and Soil Carbon Losses from a Forest-Peat Fire in the Boreo-Nemoral Zone* (2021) 12(7) *Forests* 880.

²⁵ IUCN, *Peatlands and climate change*, <https://www.iucn.org/resources/issues-briefs/peatlands-and-climate-change> (accessed Oct. 28, 2021).

the ecosystem combined with the negative climate effects indicate that the damage is undoubtedly 'severe'.

A further consideration that may be taken is whether the damage to the environment was foreseeable.²⁶ If it is, a commander must alter their method or means of attack to minimise any damage to a civilian object.²⁷ Anhur should have foreseen that by firing 200 high explosive rounds into an area suffering from drought conditions²⁸ it was highly probable that a fire would ensue.

As widespread, long-lasting and severe damage was caused to the MWC, this vast destruction was in excess of the military advantage sought.

C. Anhur violated international environmental law.

1. Anhur breached its obligations under the Ramsar Convention and the World Heritage Convention and the Convention on Biological Diversity

²⁶ Karen Hulme, *Taking Care to Protect the Environment against Damage: A Meaningless Obligation?* (2010) 92 (879) I.R.R.C 681-682.

²⁷ US Department of Defence, *Law of War Manual* (2015) 342, note 158; Ministry of Defence of Spain, *Orientaciones: El derecho de los conflictos armados*, OR7-004, Vol. 1 (18 March 1996), para. 2.5; ICRC, Case Study, *supra* note 7, Rule 14; ICRC, *Explosive Weapons in Populated Areas: Humanitarian, Legal, Technical and Military Aspects. Expert Meeting*, Chavannes-de-Bogis (24-25 Feb 2015) 8, 21-22.

²⁸ R¶20&16.

Anhur's total disregard for the MWC, an internationally important wetland²⁹ of "outstanding universal value"³⁰ is inexcusable, especially due to the heightened protection that such a site invokes under international law.

As a Contracting Party to Ramsar, Anhur is obliged to 'promote the conservation of wetlands'.³¹ Firing on the MWC³² was in complete contravention of this obligation. These actions resulted in the loss of flora and fauna on 80,000 hectares of a Ramsar Site³³ and undoubtedly breached Article 3(1) of Ramsar.

Additionally, under Article 6(3) of the Convention concerning the Protection of the World Cultural and Natural Heritage (World Heritage), Anhur must not "take any deliberate measures" that could damage the 'natural heritage' on the territory of other States Parties.³⁴ Anhur's actions had the direct impact of destroying the MWC, a natural heritage site.³⁵

Similarly, Anhur failed in its obligation under the Convention on Biological Diversity (CBD) to cooperate with other States to conserve and help promote international

²⁹ R¶14.

³⁰ Convention concerning the Protection of the World Cultural and Natural Heritage, 16 November 1972, 1037 U.N.T.S. 151, Article 2 & 12 [hereinafter WHC].

³¹ Convention on Wetlands of International importance especially as Waterfowl Habitat, 2 February 1971, 996 U.N.T.S. 245, Article 3(1) [hereinafter Ramsar].

³² R¶21.

³³ R¶21.

³⁴ WHC, *supra* note 30, Article 6(2).

³⁵ WHC, *supra* note 30, Article 2.

conservation.³⁶ Specifically under CBD, Anhur must cooperate in relation to “conservation and sustainable use of biodiversity”.³⁷ Anhur’s attack on the MWC clearly breached this duty.

Anhur’s duty to protect the environment is not suspended during times of armed conflict.³⁸ UNEP observes that obligations in Ramsar and World Heritage treaties are sufficiently clear for them to be applied during armed conflict.³⁹ Anhur’s breach of these treaties can therefore not be excused by the fact that there was an armed conflict occurring.

2. Anhur failed in its duty to prevent transboundary harm to the environment

Anhur has a responsibility not to damage the environment of Rongo.⁴⁰ Article 3 of the CBD explicitly references this duty to prevent transboundary harm. By firing upon the MWC, Anhur directly breached this responsibility as its actions resulted in the burning of the peat swamp.

³⁶ Convention on Biological Diversity, 5 June 1992, 1760 U.N.T.S. 79, Article 1 & 5 [hereinafter CBD].

³⁷ *Id.* Article 5.

³⁸ UNEP Inventory, *supra* note 7.

³⁹ *Id.* 38.

⁴⁰ Declaration of the United Nations Conference on the Human Environment, June 16, 1972, Principle 21, [hereinafter Stockholm]; Nuclear Weapons, *supra* note 8; Gut Dam arbitration, 8 ILM 118 (1969); Case Concerning The Gabčíkovo-Nagymaros Project (Hungary v. Slovakia), Judgment, 1997 ICJ Rep. 7.

To entail liability, damage must be relatively significant.⁴¹ The destruction of 80,000 hectares of peat swamp which supports hundreds a unique biota⁴² is undoubtedly actual damage of great significance.

Anhur has destroyed an important resource for absorbing carbon dioxide in the middle of a climate crisis.⁴³ There can be no doubt that this damage is extremely serious and therefore in breach of Anhur's international environmental responsibility not to cause damage to the environment of another State.

D. Anhur cannot rely on Article 51 of the UN Charter to justify the attack on the MWC

1. The acts of ANP-FF do not amount to an armed attack

Anhur's attack on the 50 members of the ANP-FF⁴⁴ which destroyed much of the MWC, cannot be justified by Article 51 of the UN Charter. Self-defence is only permissible "if an armed attack occurs".⁴⁵ The ANP-FF is only a small non-State group⁴⁶ and its conduct

⁴¹ ILC, Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries, Yearbook of the ILC (2006), A/61/10; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 17 March 1992, 1936 U.N.T.S 269, Article 1(2).

⁴² R¶14&21.

⁴³ National Trust, *What's so special about peat?* <https://www.nationaltrust.org.uk/features/whats-so-special-about-peat> (accessed Nov. 2, 2021).

⁴⁴ R¶20.

⁴⁵ Tom Ruys, *Armed Attack and Article 51 of the UN Charter: Evolutions in Customary Law and Practice*, 74 Cambridge University Press (2010) 60; Malcolm D. Evans, *International Law*, (5th Ed., 2018) 612.

⁴⁶ R¶19.

prior to Anhur's attack was minor, it therefore does not reach the required threshold for a justifiable 'armed attack'.

This Honourable Court held in *Nicaragua* that an 'armed attack' occurs when an armed group is sent by or on behalf of a State to carry out an attack of sufficient gravity against another State.⁴⁷ Similar findings can be seen in *Palestinian Wall*⁴⁸ and *DRC v Uganda*.⁴⁹ Accordingly, the lack support from Rongo to the ANP-FF⁵⁰ means Anhur does not have the right to self-defence.

The "scale and effect" of the action taken by the ANP-FF is also insufficient to justify Anhur's response.⁵¹ The Eritrea - Ethiopia Commission held that localised border encounters between small infantry units, even those involving loss of life, do not constitute an armed attack for purposes of the Charter.⁵² The ANP-FF is made up of a mere 50 individuals whose attacks were described as "civil disturbances". This would not reach the threshold of an armed conflict, notwithstanding that the most recent drone attack killed several Anhuri citizens and damaged three buildings.⁵³

⁴⁷ Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v. United States of America*), Merits, Judgment, 1986 ICJ Rep. 14.

⁴⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 ICJ Rep. 136, para. 139.

⁴⁹ *DRC v. Uganda*, *supra* note 3, para. 146.

⁵⁰ R¶19.

⁵¹ *Nicaragua*, *supra* note 47 para. 195.

⁵² Eritrea-Ethiopia Claims Commission, Partial Award, Jus Ad Bellum Ethiopia's Claims 1-8 (19 Dec 2005), para. 11.

⁵³ R¶19&20.

Anhur does not have the right to self-defence as the acts of ANP-FF do not amount to an armed attack.

2. Self-defence cannot be invoked as Anhur's actions were not necessary

As Anhur's actions were not necessary, the right of self-defence cannot be invoked.⁵⁴

In *Palestine Wall*, despite accepting that Israel has to face numerous indiscriminate and deadly acts of violence against its civilian population, this Honourable Court held that construction of a wall would constitute a breach of Israel's international obligation as this measure was not justified by military necessity.⁵⁵

There is no evidence to indicate alternative solutions were sought and it cannot be said that it would have been unreasonably to explore other options.⁵⁶ As such, Anhur's attack is not justified on the basis of necessity.

3. Anhur failed to satisfy the proportionality requirement for self-defence

The right to self-defence is also subject to the conditions of proportionality.⁵⁷ The act of self-defence is disproportionate if the resulting harm outweighs the legitimate end

⁵⁴ James. Green, *The International Court of Justice and Self-Defence in International Law* (2009) 76–86; Nicaragua, *supra* note 47 para. 237; Case Concerning Oil Platforms (Islamic Republic Of Iran v. United States Of America), Judgment, 2003 ICJ Rep. 161 2003 p.198 para. 76; UNSC, S/PV.2282 (8 June 1981) para. 95.

⁵⁵ Palestine Wall, *supra* note 48 para. 122, 137.

⁵⁶ ILA, Final Report on Aggression and the Use of Force (2018) 12 https://www.ila-hq.org/images/ILA/DraftReports/DraftReport_UseOfForce.pdf.

⁵⁷ Nicaragua, *supra* note 47 para. 176; Nuclear Weapons, *supra* note 8, p.226, 245.

sought.⁵⁸ Anhur fired artillery rounds⁵⁹ which killed or injured the majority of the ANP-FF camp as well as destroying protected wetland. Even if this Honourable Court were to conclude that Anhur's actions were necessary, self-defence still cannot be relied upon as this response and the resulting harm, was disproportionate to the military objective.

This Honourable Court in *DRC v Uganda*, observed that the occupation by the DRC of airports and towns many hundreds of kilometres away from Uganda's borders would not have been a proportionate nor necessary response to a series of transborder attacks.⁶⁰ Similarly, the UN Security Council stated that Israel violated the boundaries of Lebanon when attacks intended for a paramilitary group caused greater damage to the territory of Lebanon.⁶¹ Anhur's response to ANP-FF transborder attacks was disproportionate as the artillery firing destroyed hundreds of kilometres of an extremely important natural resource.⁶²

A further example of disproportionality is Anhur's indiscriminate use of weapons in carrying out the attack.⁶³ A weapon is indiscriminate if it cannot distinguish between a military target and a civilian object.⁶⁴ The high explosive weapons⁶⁵ used by Anhur are indiscriminate in nature as they were unable to limit their effects to a military target.

⁵⁸ ILA Use of Force Report, *supra* note 56.

⁵⁹ R¶20.

⁶⁰ *DRC v. Uganda*, *supra* note 3, para. 147.

⁶¹ UNSC, S/PV.5489 (July 14, 2006); UNSC S/PV.5493 (July 21, 2006).

⁶² See Section B (2) for further examples that Anhur's attack was excessive.

⁶³ ICRC, Case Study, *supra* note , Rule 71 .

⁶⁴ US Department of Defense, *Report to Congress: Conduct of the Persian Gulf War* (Apr 1992) 698; ICTY, Martić case, Review of the Indictment para. 397; Nuclear Weapons, *supra* note 8, para. 389.

⁶⁵ R¶20.

Accordingly, Anhur cannot rely on the right to self-defence as the significant harm caused to a large area targeting one military base holding a mere 50 insurgents⁶⁶ was entirely disproportionate.

E. Anhur must compensate Rongo for its illegal and unjustified attack on the MWC

Anhur's abhorrent attack on the MWC was a completely unjustified breach of both customary international law and its treaty obligations. As per Ramsar Article 4(2);⁶⁷ and the liability arising from the breach of customary international law,⁶⁸ Rongo is due compensation by Anhur for the damage caused. As no further details of appropriate compensatory measures are detailed in the convention, Ramsar Resolutions to the convention provide guidance for Contracting Parties and it is clear that priority should be given to restoration of the wetland.⁶⁹

Thus, we respectfully ask this Honourable Court to consider the restoration of the MWC in its compensatory measures.

⁶⁶ R¶19

⁶⁷ Ramsar, *supra* note 31.

⁶⁸ ILC, *Responsibility of States for Internationally Wrongful Acts*, Yearbook of the ILC (2001) A/56/49(Vol. I)/Corr.4; Ian Brownlie, Q.C, *Basic Documents in International Law* (6th ed., 2008) 300.

⁶⁹ Resolution XI.9 *An Integrated Framework and guidelines for avoiding, mitigating and compensating for wetland losses*; Resolution VIII.20, *General guidance for interpreting "urgent national interests"*, Annex 4.3; Resolution VIII.24 "*People and Wetlands: The Vital Link*", 12.

II. RONGO COMPLIED WITH ALL RELEVANT OBLIGATIONS WITH RESPECT TO ITS PROPOSED DEVELOPMENT ON KEMP KEY

A. Rongo has a right to develop Kemp Key

1. Rongo, as the proper sovereign of Kemp Key has the right to use its natural resources

Rongo submits that it has proper sovereignty over Kemp Key and therefore has a right to use its natural resources and build the proposed hotel on the Scute Coastal Wetland (SCW).⁷⁰ This right is expressly recognised in the CBD⁷¹ and it allows States, within limitations, to conduct activities within their own territory,⁷² including developmental policies.⁷³

This sovereign right to development has been recognised by the UN,⁷⁴ and in particular has been promoted amongst developing countries.⁷⁵ Rongo is simply exercising this right to develop in building a hotel complex. This right has been affirmed by consensus of the Parties at the United Nations Conference on Environment and Development⁷⁶ to which both Anhur and Rongo sent representatives.⁷⁷ Therefore, although (as demonstrated below) this right to

⁷⁰ Stockholm Declaration, *supra* note 40, Principle 21; Nuclear Weapons *supra* note 8.

⁷¹ CBD, *supra* note 36, Article 3.

⁷² Philippe Sands, *Principles of International Environment Law* (4th Ed., 2018), 202.

⁷³ Rio Declaration on Environment and Development, June 14, 1992 Principle 2, [hereinafter Rio Declaration];

⁷⁴ UNGA Res. 3201 (S-VI). Declaration on the Establishment of a New International Economic Order (May 1, 1974), para 4; UNGA Res. 41/128 Declaration of the Right to Development (Dec. 4 1986); UNGA Conf. 157/23, Vienna Declaration and Programme of Action (July 12, 1993).

⁷⁵ Alexandru Grigorescu & Emily Komp, *The “broadening” of international human rights: the cases of the right to development and right to democracy* (2017) 54(2) International Politics 238, 241.

⁷⁶ Rio Declaration, *supra* note 73, Principle 3.

⁷⁷ R¶12.

develop is subject to compliance with environmental law, Rongo has a right to use its natural resources and develop this complex to help the impoverished people of Kemp Key.

2. The people of Kemp Key have a right to develop due to their right to economic self-determination

Even if it is determined that Rongo does not have sovereignty over Kemp Key, the peoples right to self-determination and specifically economic self-determination, means that there would still be a right to build this hotel.

Anhur and Rongo have recognised the right to self-determination of the people of Kemp Key.⁷⁸ This right is also recognised by the UN,⁷⁹ as a right of people.⁸⁰ The people have a right to economic self-determination which allows them to participate in decisions regarding the use of resources.⁸¹ This is a distinct right⁸² established by the Universal Declaration on Human Rights.⁸³

This right to economic self-determination means that the people of Kemp key have a right to permanent sovereignty over natural wealth and resources.⁸⁴ This includes the right to

⁷⁸ R¶4.

⁷⁹ UN Charter, Article 1(2); UNGA Res. 61/295 Declaration on the Rights of Indigenous People (Sep. 13, 2007), Article 3 and Article 4.

⁸⁰ Alice Farmer, *Towards a Meaningful Rebirth of Economic Self-Determination: Human Rights Realization in Resource-Rich Countries* (2006) 39(2) NYU Journal of International Law and Politics 424.

⁸¹ *Id.* 425.

⁸² *Id.* 424; J. Oloka-Onyango, *Heretical Reflections on the Right to Self-Determination: Prospects and Problems for a Democratic Global Future in the New Millenium* (1999) 15(1) Am. U. Int'l L. Rev. 151, 171.

⁸³ UNGA Res. 217 (III) Universal Declaration of Human Rights (Dec. 10, 1948), Article 21 and 22.

⁸⁴ UNGA Res. 1314 (XIII) Recommendations concerning international respect for the right of peoples and nations to self-determination (Dec. 12, 1958); UNGA Res. 1803(XVII) Permanent sovereignty over natural

development which is an inalienable human right.⁸⁵ The people of Kemp Key have a right and duty to formulate development policies to improve the well-being of the population.⁸⁶ Rongo can pursue this development on behalf of the people of Kemp Key who have a right to use their natural resources and develop this hotel.

As the issue of sovereignty is not to be addressed by this Court, the merits of who can exercise sovereignty will not be focused on in any more detail, instead, Rongo will demonstrate that the hotel development is lawful.⁸⁷

B. The proposed hotel development is in accordance with international law

1. Sustainable development is pursued through the proposed ecotourism development

This hotel complex is a prime example of sustainable development being pursued through sustainable tourism,⁸⁸. It is an ‘eco-tourism’ project with the intent of alleviating poverty⁸⁹ and it will contribute to the sustainable development goals⁹⁰. Investment in such

resources (Dec. 14, 1962), para. 1; UNGA Res. 3281 (XXIX) The Charter of Economic Rights and the Duties of States (Dec. 12, 1974), Article 2; Patricia Birnie et al., *International Law and the Environment* (3rd ed., 2009) 191.

⁸⁵ UNGA Res. 41/128 *supra* note 74, Annex, Article 1.

⁸⁶ *Id.* Article 2(3)

⁸⁷ R¶43

⁸⁸ ILA, *New Delhi Declaration of Principles of International Law Relating to Sustainable Development* (2002) 2(2) International Environmental Agreements: Politics, Law and Economics 211; Sands *supra* note 72, 218; UNWTO Global Code of Ethics (1999), Article 5(1) and 5(2) and Article 3(1)

⁸⁹ R¶39.

⁹⁰ UNGA Res. 70/1 Transforming Our World: the 2030 Agenda for Sustainable Development (2015).

developments is encouraged by many international documents,⁹¹ including the treaties to which Anhur and Rongo are party.

Sustainable tourism is consistent with the ‘wise use’ principle under Article 3.1 of Ramsar, which requires Contracting Parties to promote the conservation of wetlands listed as Ramsar Sites.⁹² Eco-tourism developments in Ramsar Sites are encouraged⁹³ where there are marine turtle habitats⁹⁴ and specifically to reduce poverty.⁹⁵

Article 8(e) of the CBD also specifically requires that Contracting Parties promote sustainable development in areas “adjacent” to protected areas with a view to furthering protection of these areas. These areas can often be at risk of exploitation and this eco-tourism development will ensure there are sufficient funds and a community incentive to prevent further

⁹¹ UN, *The Future We Want - Outcome document of the Conference on Sustainable Development* (2012) 34; UNGA Res. 73/245 *Promotion of sustainable tourism, including ecotourism, for poverty eradication and environment protection* (Dec. 20, 2018); UNGA Res. 70/193 *International Year of Sustainable Tourism for Development* (Dec. 22, 2015); UNGA Res. 72/214 *Sustainable tourism and sustainable development in Central America* (Dec. 20, 2017).

⁹² Resolution IX.1, Annex A, *A Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character*, 22.

⁹³ Resolution XI.7, *Tourism, Recreation and Wetlands*, 1, 6.

⁹⁴ Resolution XIII.24, *The enhanced conservation of coastal marine turtle habitats and the designation of key areas as Ramsar Sites*, 21; Jonathan Verschuuren, *Ramsar soft law is not soft law at all* (2008) 35(1) *Milieu en Recht* 28-34; David Farrier et al., *Wise Use Of Wetlands Under The Ramsar Convention: A Challenge For Meaningful Implementation Of International Law* (2000) 12(1) *Journal of Environmental Law* 21.

⁹⁵ Resolution X.28, *Wetlands and Poverty Eradication*, 10.

harm.⁹⁶ Locals of Kemp Key earn livelihoods by exploiting the SCW,⁹⁷ their actions contribute to the dangers facing the turtles, such as subsistence hunting and over exploitation of marine resources.⁹⁸ Development is vital in order to provide locals with an avenue to earn money that does not involve this exploitation.⁹⁹

Conservation-based tourism activities next to a Ramsar Site have revived a local economy in Argentina, with 90% of the population now supported through work in the tourism sector.¹⁰⁰ As is notable in Costa Rica¹⁰¹ and Kenya,¹⁰² ecotourism developments can improve conservation¹⁰³ while also providing employment and improving public services.

⁹⁶ Heidi Gjertsen and Eduard Niesten, *Incentive-based Approaches in Marine Conservation: Applications for Sea Turtles*, 8(1) Conservation & Society, (2010) 5-14.

⁹⁷ R¶17.

⁹⁸ Choi, Ga-Young and Karen Eckert, *Manual of Best Practices for Safeguarding Sea Turtle Nesting Beaches*, WIDECASST, Technical Report 9.

⁹⁹ P.C.H. Pritchard and René Márquez M., *Kemp Ridley's Turtle or Atlantic Ridley* (1973) IUCN Monograph No 2 : Marine Turtle Species, 27.

¹⁰⁰ Russi D et al., (2012) *The Economics of Ecosystems and Biodiversity for Water and Wetlands*. Final Consultation Draft.

¹⁰¹ OECD iLibrary, *Tourism Trends and Policies 2020, Costa Rica*. (<https://www.oecd-ilibrary.org/sites/37bb0cf5-en/index.html?itemId=/content/component/37bb0cf5-en>)

¹⁰² Tom Ondicho, *Indigenous Ecotourism as a Poverty Eradication Strategy: A Case Study of the Maasai People in the Amboseli Region of Kenya* (2018) 56 African study monographs. Supplementary issue 87-109.

¹⁰³ Mallika Sardeshpande and Douglas Macmillan, *Sea turtles support sustainable livelihoods at Ostional, Costa Rica* (2019) 53(1) Oryx 81-91.

This development is by no means the end of the turtles' nesting habitat, Rongo's plan is simply a sustainable development which demonstrates that; "with a little effort and to the benefit of both, businesses and sea turtles can share the beach."¹⁰⁴

2. The people of Kemp Key are entitled to differentiated treatment

While the protection of the environment was a key consideration for Rongo in relation to this development,¹⁰⁵ developing States have lower substantive obligations based on their socio-economic situation.¹⁰⁶ As Rongo is a developing country, and the island of Kemp Key is impoverished, Rongo has a differentiated responsibility for protecting the environment.¹⁰⁷

This principle of common but differentiated responsibility is recognised in the CBD and in several international instruments.¹⁰⁸ Article 20(4) of the CBD explicitly recognises that economic and social development and the eradication of poverty are the overriding priorities of developing countries, and notes the special needs of less developed countries and small island States.¹⁰⁹ Obligations on States under the CBD are imposed "as far as possible and as

¹⁰⁴ Choi, Ga-Young, *supra* note 98, at 28.

¹⁰⁵ See Issue II (C)(2); R¶39.

¹⁰⁶ van der Have, N. *The Right to Development and State Responsibility: Can States be Held to Account?* (2013) Amsterdam Law School Legal Studies Research Paper No 23, 15.

¹⁰⁷ Sands, *supra* note 72, 244 - 246; Ellen Hey *Common but Differentiated Responsibilities* (Feb. 2011) MPEPIL 19 <https://opil-ouplaw-com.proxy.uba.uva.nl/view/10.1093/law:epil/9780199231690/law-9780199231690-e1568>

¹⁰⁸ CBD, *supra* note 36, Article 20(4); UNGA Res. 41/128 *supra* note 74; UNGA Res. 66/288 *The Future We Want* (July 27, 2012); Rio Declaration, *supra* note 73, Principle 6 and 7; 1972 Stockholm Declaration, *supra* note 40 Principle 23.

¹⁰⁹ CBD, *supra* note 36, Preamble, Article 12,17,19,20.

appropriate”¹¹⁰ and depending on a country’s “particular conditions and capabilities”.¹¹¹ This demonstrates a flexible approach is adopted to take into account the economic and social reality of countries.¹¹²

Common but differentiated treatment is furthermore evident in how international standards are applied. Indigenous groups were excluded from the EU ban on seal products¹¹³ due to their need for subsistence.¹¹⁴ In *Shrimp/Turtle*, it was found that local circumstances need to be taken to account.¹¹⁵ It is also clear that developed and developing countries have different roles to play in reducing emissions.¹¹⁶

Rongo’s obligations to comply with environmental law are not the same as a developed country, particularly as the population of Kemp Key is impoverished.¹¹⁷ Therefore, even if the development causes environmental damage to the extent that a developed country would be in breach, Rongo is not.

¹¹⁰ *Id.* Article 8,10,14.

¹¹¹ *Id.* Article 6.

¹¹² Duncan French *Developing States and International Environmental Law: The Importance of Differentiated Responsibilities* (2000) 49(1) *The International and Comparative Law Quarterly* 35, 41.

¹¹³ Regulation (EC) 1007/2009 of the European Parliament and of the Council of 16 September 2009 on Trade in Seal Products, 2009 O.J. (L 286) 36, Article 3.1.

¹¹⁴ European Commission Regulation (EU) 737/2010, Article 3

¹¹⁵ Appellate Body Report, United States-Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R (Oct. 12, 1998) (adopted, with modifications, Nov. 6, 1998) para. 164.

¹¹⁶ *The State of the Netherlands v Urgenda Foundation*, The Supreme Court of the Netherlands (20 December 2019), case 19/00135 para 5.7.3; Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104, Article 4(4).

¹¹⁷ Isabella D Bunn *The right to development and international economic law: legal and moral dimensions*, (1st ed., 2012) 186.

C. Rongo has taken all necessary measures to ensure that the proposed hotel development sufficiently protects the Royal ridley

1. Rongo has conducted an EIA in compliance with its international obligations

Rongo's intended development is for the benefit of an impoverished, developing island, meaning its duty to the environment is less onerous.¹¹⁸ Nonetheless, Rongo has complied with its duty to carry out an Environmental Impact Assessment (EIA) "as far as possible and as appropriate".¹¹⁹

As there is no international standard¹²⁰ for an EIA, it is "subject to the decision of a competent national authority"¹²¹ and must be determined by "domestic legislation."¹²² Rongo has carried out an EIA in accordance with its domestic legislation.¹²³ and is therefore complying with its international obligations.

2. Rongo mitigated any impact of the lighting on the sea turtles, in compliance with its treaty obligations and the precautionary principle

¹¹⁸ See Issue II(B)(2).

¹¹⁹ CBD, *supra* note 36, Article 14(1).

¹²⁰ Pulp Mills on The River Uruguay (Argentina v. Uruguay), Judgment, 2010 I.C.J. 14; Sands, *supra* note X at 658; Mox Plant (Ireland v United Kingdom) Provisional Measures, Order of 3 December 2001; Maki Tanaka *Lessons from the Protracted Mox Plant Dispute: A Proposed Protocol on Marine Environmental Impact Assessment to the United Nations Convention on the Law of the Sea* (2004) 25(2) Mich. J. Int'l L. 337, 370-393.

¹²¹ Rio declaration, *supra* note 73, Principle 17.

¹²² Pulp Mills, *supra* note 120.

¹²³ R¶36.

Subsequent to the EIA, Rongo has taken positive steps to ensure that harm to the sea turtles is mitigated.¹²⁴

As per Article 14 of the CBD, an EIA shall be conducted “with a view to avoiding or minimizing” significant environmental effects.¹²⁵ The EIA conducted by Rongo noted that the lighting would “likely interfere”¹²⁶ with the turtle habitat and therefore, Rongo adjusted its permit to minimise interference.¹²⁷ Reduced and directional lighting¹²⁸ focusing on areas away from the beach,¹²⁹ significantly protects sea turtles. Rongo has acknowledged this by ensuring lighting will be blocked by shades and tinted glass as well as only allowing the use of spotlights for safety purposes.¹³⁰

Rongo has complied with Article 6 and 10 of the CBD as its national planning seeks to minimise adverse impacts on biological diversity. An environmental licensing process in Brazil imposed similar conditions for allowing a 1000 guest beach-front hotel in a sea turtle nesting area. All light sources were designed so that the effect of lighting on the beach was

¹²⁴ Trail Smelter Arbitration (US v. Can.) (1938 & 1941) III RIAA 1905.

¹²⁵ CBD, *supra* note 36, Article 14(1)(a)&(b).

¹²⁶ R¶36.

¹²⁷ UNWTO, *supra* note 88, Article 3(4).

¹²⁸ Choi, Ga-Young, *supra* note 98, at 86.

¹²⁹ Juliette Lee et al, *Ambient light threatens endangered sea turtles in NC*, (April 27 2021)

<https://storymaps.arcgis.com/stories/4310bb7a23f54d92a165259e08e8fb87>.

¹³⁰ R¶36.

minimised.¹³¹ A 304 guest hotel¹³² would therefore have even less lighting impact on the turtles.

Furthermore, Rongo is in compliance with the precautionary principle as there is sufficient scientific research which finds that adjusting lighting can mitigate harm to sea turtles.¹³³ Rongo has clearly considered the likely effects of the proposed development on the turtles and has mitigated this key source of harm.

3. The proposed development meets international standards of proportionality

Proportionality is clearly demonstrated in Rongo's approach to permitting this development. In order to adhere with Ramsar Resolution IX.1, developments should be planned at an "appropriate temporal and spatial scale",¹³⁴ reflecting the widely accepted principle of proportionality.¹³⁵ The development will cover less than 1%¹³⁶ of the SCW and the marina will only be on part of the Royal ridley nesting site.

This proposed development can be contrasted with a project that was cancelled following a Ramsar Mission in Mexico¹³⁷ which proposed over 30,000 hotel rooms, 2 golf

¹³¹ G.G. Lopez et al., *Coastal development at sea turtles nesting ground: Efforts to establish a tool for supporting conservation and coastal management in northeastern Brazil* (2015) 116 *Ocean & Coastal Management* 270 -276.

¹³² R¶35.

¹³³ Gulf Environmental Benefit Fund, *Eliminating Light pollution on Sea Turtle Nesting Beaches*.

¹³⁴ Resolution IX.1 *supra* note 92, 7.

¹³⁵ Christina Voigt, *Rule of Law for Nature: New Dimensions and Ideas in Environmental Law* (2013) 111-129.

¹³⁶ R¶17&35.

¹³⁷ Ramsar Policy Brief 3, *Ramsar Advisory Missions: A mechanism to respond to change in ecological character of Ramsar Sites*.

courses, and a marina to be developed, immediately next to a World Heritage Site.¹³⁸ The Kemp Key development is clearly of appropriate scale, being only 304 guest rooms in comparison.

Rongo has further demonstrated proportionality through its compliance with Article IV of the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC). Rongo is obliged to take “appropriate and necessary measures”¹³⁹ and restrict human activity if it could seriously affect the turtles, only as far as practicable.¹⁴⁰ The qualifying language of this provision clearly indicates that measures must be proportionate. As demonstrated above,¹⁴¹ Rongo has clearly imposed measures that would be appropriate for the local area, considering the need for a certain degree of lighting and a marina on an island. As there have been sufficient limitations placed on this development, it will not ‘seriously affect’ the turtles.

The proposed development complies with the principle of proportionality, particularly when taking into account the limitations Rongo has imposed on the design and given that Rongo is a developing country where economic development is integral to its advancement.

¹³⁸ UNESCO, *Mexican tourism project cancelled to protect Gulf of California World Heritage site*, (30 June 2012).

¹³⁹ Inter-American Convention for the Protection and Conservation of Sea Turtles, Article IV(1) (31 Dec. 1998), [hereinafter IAC].

¹⁴⁰ Id. Article IV (2)(c); Chris Wold, *The status of sea turtles under International environmental law and International environmental agreements* (2002) 5(1-2) *Journal of International Wildlife Law and Policy* 11, 44.

¹⁴¹ See Issue II (C)(2).

CONCLUSION

The Republic of Rongo, respectfully requests this court to adjudge and declare that:

- A. The actions of Anhur with respect to the Menhit Wetland Complex violated international law
- B. The actions of Rongo with respect to the proposed hotel development in the Scute Coastal Wetland do not violate international law.

Respectfully submitted,

Agents for Respondent