

TEAM CODE:2297

26th STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT
COMPETITION, 2022

BEFORE
THE INTERNATIONAL COURT OF JUSTICE
LA COUR INTERNATIONALE DE JUSTICE
AT THE PEACE PALACE,



THE HAGUE, NETHERLANDS

GENERAL LIST NO.

303 of 2021

CASE CONCERNING QUESTIONS RELATING TO PROTECTED AREAS AND ARMED
CONFLICTS

FEDERAL STATES OF ANHUR..... APPLICANT

REPUBLIC OF RONGORESPONDENT

-WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT-

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INTERNATIONAL TREATIES AND CONVENTIONS

Charter of the United Nations, art 2(4), Oct. 24, 1945 1 U.N.T.S. 16..... 20, 27, 37

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Convention on Wetlands of International Importance especially as Waterfowl Habitat, February 2, 1971, 996 UNTS 245 36, 39, 40

Inter-American Convention for the Protection and Conservation of Sea Turtles, entered into force May 2, 2001.78 MARINETURTLENEWSLETTER13 (1997) 47

Additional Protocol I to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977, 1125 UNTS 3.....28, 30, 31, 32

Vienna Convention on Succession of States in Respect of Treaties, art 2, August 23, 1978, 1946 UNTS 3 38

Vienna Convention on the Law of Treaties, art 34 May23, 1969, 1151 UNTS 331.....22, 29, 34, 35, 41

JUDICIAL AND ARBITRAL DECISIONS

Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons 1996, ICJ report 1999..... 27, 33, 39.

PRELIMINARY PAGES

Armed Activities on the Territory of the Congo (Democratic Republic of Congo v Uganda) , 2005
ICJ 168,..... 21, 40

Bercelona Traction, Light and Power Company Ltd Case (Belgium v. Spain), 1970 ICJ..... 39

Case Concerning Pulp Mills on The River Uruguay,(Argentina v Uruguay) Judgment, I.C.J. Rep.
14,..... 46

Corfu Channel (UK v. Alb.), 1949 ICJ Rep. 4, 35

North Continental Shelf Case (Germany v Netherlands; Germany v Denmark), judgment
February 20, 1969, ICJ Reports 1969. 29

Gabcikovo-Nagymaros (Hungary. v. Slovakia.), 1997 ICJ, 52 24

Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria; Equitorial
Guineei intervenong, Judgment, ICJ Reports 2002 38

Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory
Opinion of July 9, 2004, ICJ Rep (2004), at ¶136. 24

Loggerhead Turtle (Caretta Caretta) Green Turtle (Chelonia mydas) et al. v The County Council
of Volusia County 47 ERC 1014, 41 Fed. R. Serv 3d 563. 42

Military and Paramilitary Activities in and against Nicaragua (Nicaragua. v. the United States)
1986 ICJ 14 20, 21

Prosecutor v Jean Paul Akayesu, Trial Judgement, International Criminal Tribunal for Rwanda
(ICTR),Case No. ICTR-96-4-T, 2 September 1998. 22

PRELIMINARY PAGES

Prosecutor v Tadic, App. Chamber, Int'l Crim. Trib. For former Yugoslavia, 1992 Case No. IT-94-1-AR72, 35 I.L.M. 32 (1996). 22

Rainbow Warrior (New Zealand v. France) UNRIAA, Vol. XX (Sales No. E/F.93.V.3), p. 215 (1990). 34

Responsibilities and Obligations of States Sponsoring Persons and Entities With Respect To Activities In The Area, Advisory Opinion, ITLOS (2011)..... 48

The Islamic Republic of Iran v. the United States of America, Judgment, I. C. J. Reports 2003..... 21

Trail Smelter Arbitration (U.S. v. Can.), 3 RIAA 1905, 1965 (1938/1941)..... 47

UN DOCUMENTS AND OTHER INTERNATIONAL DOCUMENTS

An Integrated Framework and guidelines for avoiding, mitigating and compensating for wetland losses (COP11 Resolution XI.9 2012) 41

Articles on Succession of States in respect of Treaties with commentaries, Report of the ILC 26th sess., GAOF, 29^o Sess., Supp. No. 10 (A/29/10) 265 38

ILC Commentary on the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 49, U.N. Doc. A/RES/56/83, (Dec. 12, 2001), 20

PRELIMINARY PAGES

ILC, Draft Principles on the Protection of the Environment in Relation to Armed Conflict, General Assembly Official Records, Sixty-sixth Session, Supplement No. 10 (A/66/10) 30

International Law Association Use of Force Committee, 2018, Final Report on Aggression and the Use of Force, ILA Report (2018)..... 21

Pilloud and Pictet, "Article 35: Basic rules", ICRC Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949..... 33

Ramsar Convention; General guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and considering compensation under Article 4.2 (COP8, Resolution VIII.20). 37

Stockholm Declaration of the United Nations Conference on the Human Environment, U.N. Doc.A/CONF.48/ 14/Rev.1 (1972)..... 44

The Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character (COP9 Resolution IX.1 Annex A 2005) 41

The enhanced conservation of coastal marine turtle habitats and the designation of critical areas as Ramsar Sites (COP13 Resolution XIII.24 2018)..... 43

The Joint Service Manual of the Law of Armed Conflict, JSP 383, UK; Ministry of Defense (2004)..... 29

UNGA, Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations G.A. Res. 2625 (XXV), Oct. 24, 1970, U.N. Doc. A/RES/2625(XXV). 20

PRELIMINARY PAGES

UNGA, Permanent Sovereignty over Natural Resources, G.A.,Res. 1803 (XVII) December 14,
1962 U.N. Doc. A/RES/1803(XVII)..... 40

UNSC Resolution 502 (1982) of April 4, 1982, (S/14947/Rev.1)..... 37

ESSAYS, ARTICLES AND JOURNALS

Camhi, *The role of nest-site selection in Loggerhead Sea Turtle (Caretta caretta) nest success and sex ratio control*. Ph.D. Dissertation, Rutgers University, New Brunswick, New Jersey, USA. 255 p (1993)..... 42

Diederich, *Law of War and Ecology, A Proposal for a Workable Approach to Protecting the Environment through the Law of War*, Vol. 136, *Mil Law Rev*, p.137 (1992). 27

Hulme Karen, *War-Torn Environment: Interpreting the Legal Threshold*, Leiden: Martinus Nijhoff Publishers, p. 93, (2004) 33

Kuosmanem, *Importance of climate, forest fires and human population size in the Holocene boreal forest composition change in northern Europe* BOREAS JOURNALS Volume 45 issue 4 p 574 (2016)..... 34

Lutcavage, Plotkin, Witherington, and Lutz, *Human Impacts on Sea Turtle Survival in The Biology of Sea Turtles* CRC MARINE SCIENCE SERIES. p. 395-396 (1997) 42

Maj. Wade Perdue, *M119 Howitzer Still Plays Critical Role for Army*, US Army Military (2015)..... 26

PRELIMINARY PAGES

O'Brien, *The Meaning of 'Military Necessity in International Law*, 1 WORLD POLITY 109, 142-4..... 25

Rayfuse, “*Rethinking international law and the protection of the environment in relation to armed conflict*” in *War and the Environment: New Approaches to Protecting the Environment in Relation to Armed Conflict*, Leiden, Brill Nijhoff, p. 6 (2015). 31

Tuxbury, Salmon, *Competitive interactions between artificial lighting and natural cues during sea finding by hatchling marine turtles*, BIOLOGICAL CONSERVATION, 121, 311-316 (2005)..... 42

Witherington, *Behavioral responses of nesting sea turtles to artificial lighting* HERPETOLOGICA 48(1):31–39 (1992)..... 43

Yoram, *The Conduct of Hostilities Under the Law of International Armed Conflict*, Cambridge University Press, p. 185 (2004) 29

BOOKS, TREATISES AND RESTATEMENTS

CRAWFORD, INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT, AND COMMENTARIES 183(2002)..... 25

DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW, AND POLICY 3rd edition 525 (2007)..... 46

MAURIZIO RAGAZZI, THE CONCEPT OF INTERNATIONAL OBLIGATIONS ERGA OMNES 203 (1997)..... 39

TABLE OF ABBREVIATION

1	¶: Paragraph
2	ANP-FF: Anhur National Party Freedom Fighters
3	AP: Additional Protocol
4	CBD: Convention on Biological Diversity
5	CIL: Customary International Law
6	COP: Conference of the Parties
7	EIA: Environmental Impact Assessment
8	GC: Geneva Convention
9	IAC: Inter-American Convention for the Protection and Conservation of Sea Turtles
10	ICJ: International Court of Justice
11	ICRC: International Committee of the Red Cross
12	IEL: International Environmental Law
13	IHL: International Humanitarian Law
14	IL: International Law
15	ILA: International Law Association
16	ILC: International Law Commission
17	MWC: Menhit Wetland Complex
18	P: Page

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19	R: Stetson Record
20	Ramsar Convention: Convention on Wetlands of International Importance especially as Waterfowl Habitat
21	Ramsar Site: Wetland of International Importance
22	Rio Declaration: United Nations Conference on Environment and Development at Rio de Janeiro, 1992
23	SCW: Scute Coastal Wetlands
24	Stockholm Declaration: United Nations Conference on the Human Environment at Stockholm, 1972
25	UCS: Union of Caretta States
26	U.N. Charter: Charter of the United Nations
27	U.N.: United Nations
28	UNSC: United Nations Security Council
29	VCLT: Vienna Convention on Succession of States in Respect to Treaties
30	VCSST: Vienna Convention on the Law of Treaties
31	Vol: Volume
32	World Heritage Convention: Convention Concerning the Protection of the World Cultural and Natural Heritage World Heritage Convention

QUESTIONS PRESENTED

I.

WHETHER THE ACTIONS OF ANHUR WITH RESPECT TO THE MENHIT WETLAND
COMPLEX VIOLATED INTERNATIONAL LAW,

II.

WHETHER THE ACTIONS OF RONGO CONCERNING THE PROPOSED HOTEL
DEVELOPMENT IN THE SCUTE COASTAL WETLAND VIOLATES
INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

In accordance with *Article 40 of the Statute of the ICJ*, the Federal States of Anhur [“Anhur”] and the Republic of Rongo [“Rongo”] have submitted to the ICJ by Special Agreement, questions concerning their differences relating to protected areas and armed conflict as contained in Annex A, including the Clarifications. The parties transmitted a copy of the Special Agreement to the Registrar of the ICJ on July 23, 2021.

The Registrar of the Court, in accordance with *Article 26 of the Rules of Court*, addressed a notification of receipt of the Special Agreement to the parties on July 30, 2021,

The parties have accepted the jurisdiction of the ICJ. Consequently, they request the Court to adjudge the merits of this matter based on the rules and principles of general international law, as well as any applicable treaties. The parties further request this Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgment on the questions presented in this matter.

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

STATEMENT OF FACT

Background

Anhur and Rongo are neighboring sovereign states located on Caretta. (R¶1). Caretta achieved independence in 1898 and became a federal union, the UCS (R¶4). The UCS peacefully dissolved in 1985 (R¶4). Anhur and Rongo retained the borders established during the colonial period, including Anhur's sovereignty over Kemp Key. (R¶4).

The Menhit Wetland.

When Rongo designated the Menhit Wetland as a Ramsar Site, it declared the area a national park and relocated the people who lived within the site's boundaries. (R¶15). Rongo listed the Menhit Wetland on its WHC Tentative List in 2015 but the Site was not nominated for inclusion on the World Heritage List (R¶15).

The ANP-FF, a paramilitary group in Anhur, crossed over and settled within the Menhit Wetland (R¶19). In early November 2019, the ANP-FF launched attacks with armed drones on Anhur's territory from the Menhit Wetland that killed several Anhuri citizens and damaged two residential buildings and one government building (R¶20). In response, on November 6, 2019, Anhur employed unarmed drones to locate the ANP-FF's camp and fired approximately 200 explosive artillery rounds at the camp (R¶20). Most of the ANP-FF's members at the camp were killed or injured (R¶20). Unfortunately, due to drought exasperated by climate change, the artillery sparked a fire within the Menhit Wetland (R¶21).

On February 2, 2020, Rongo delivered a démarche to Anhur stating that the artillery attack was a violation of its national sovereignty and a breach of International Law (R¶23). On February 10, 2020, Anhur responded to Rongo by denying Rongo's assertions. (R¶25).

The Scute Coastal Wetland.

Anhur designated the Scute Coastal Wetland, located in Kemp Key, as a Ramsar Site (R¶17). The Scute Coastal Wetland hosts the world's largest nesting site for the Royal Ridley. It is estimated that annually approximately 35% of the nests from the global Royal Ridley population are found in its beach area (R¶17). The Royal Ridelies that hatch in Kemp Key also spend part of their life cycle in Anhur's territorial waters. (R¶18).

On May 8, 2020, Rongo dispatched military units to Kemp Key and obtained operational control of the island (R¶29).

On September 27, 2020, the Rongoan Ministry of Environment and Sustainable Development announced that it was granting a permit to build a twelve-story hotel complex within the Scute Coastal Wetland (R¶35). Rongo conducted an Environmental Impact Assessment (EIA) which noted that the lighting within the proposed hotel complex would interfere with the Royal Ridley's nesting habitat (R¶36). The permit regulated the interior lighting within the hotel complex but allowed the use of artificial lighting in the hotel complex's balconies, stairways, parking lots, restaurants, and marina (R¶36).

On October 4, 2020, Anhur forwarded a diplomatic note to Rongo protesting the proposed desecration of the Scute Coastal Wetland and asserted that the planned project would violate

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International Law (R¶37). On November 6, 2020, Rongo responded to Anhur by denying Anhur's claims. (R¶39).

After not resolving the dispute through diplomatic negotiations, the parties submitted the matters to the ICJ for adjudication (R¶40).

SUMMARY OF ARGUMENTS

I

Anhur exercised its right to self-defense as there was a non-international armed conflict between Anhur and the ANP-FF. The attack was necessary as the security of Anhuri's citizens and properties was in grave danger. Furthermore, there were no other alternative measures Anhur could have used to protect itself as the ANP-FF used sophisticated weaponry and the Menhit Wetlands was inundated. Hence the use of the explosive artillery was proportionate.

The provisions of Additional Protocol I to the Geneva Convention concerning the protection of the environment do not bind Anhur as it is not a state party to that convention. Alternatively, although the provisions of Additional Protocol I to the Geneva Convention are a codification of Customary International law, the prohibition on environmental destruction in armed conflict is not absolute and the Menhit Wetland was a legitimate military target. In any case, the damage on the Menhit Wetland was not severe. Moreover, International Environmental Law (IEL) treaties cease to apply to state parties in armed conflicts. Consequently, Anhur relies on the principle of force majeure to preclude it from its International Environmental Law treaty obligations.

II

The Scute Coastal Wetland is a Ramsar Site as Anhur designated it as a Ramsar site within the Ramsar Convention. Alternatively, under the law of state succession of treaties, Rongo succeeded Anhur's agreements within the Ramsar Convention. In any case, the protection of the environment

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is an *erga omnes obligation*. Hence, under International Law Rongo is still obligated to protect the Scute Coastal Wetland.

Rongo's action with respect to the hotel development violates the 'wise use' principle under the Ramsar Convention as the development contravenes the sustainable development principle and will predictably cause a change in the ecological character of the Scute Coastal Wetland. Rongo's actions further violate its CBD obligations to ensure the protection of its ecosystems and to notify, consult and cooperate with other states on matters of mutual interest. Finally, Rongo's actions violate its obligations under the IAC to ensure the protection of sea turtles' habitat from soil erosion, noise pollution and light pollution. The location, design and artificial lighting of the hotel development will likely cause soil erosion, noise pollution and light pollution within the Royal Ridleys' nesting habitat.

Furthermore, Rongo actions violate Customary International Law including the precautionary principle as the project has a substantial risk of potential harm to the natural habitat of the Royal Ridley based on the scientific uncertainty on the impact of the design, location and light pollution of the hotel development to the Royal Ridleys' nesting habitat. Rongo cannot rely on the CBDR principle for preferential treatment as it is contrary to the objectives of the protection of endangered species

ARGUMENTS ADVANCED

I. THE ACTIONS OF ANHUR WITH RESPECT TO THE MENHIT WETLAND
DID NOT VIOLATE INTERNATIONAL LAW

A. THE ATTACK ON THE ANP-FF CAMP WITHIN THE MENHIT WETLAND WAS AN ACT OF
SELF-DEFENSE.

The right to territorial sovereignty is provided under *Article 2(4) of the U.N. Charter*.¹ However, the ICJ in the case of *Nicaragua v USA*, stated that this right is not absolute but is limited in instances of self-defense as provided under *Article 51 of the U.N Charter*.² Anhur relies on its inherent right to self-defense to justify its attack on the Menhit Wetland.³

¹ Charter of the United Nations, art 2(4), Oct. 24, 1945 1 U.N.T.S. 16 [Hereinafter U.N. Charter]; G.A. Res. 2625 (XXV), Oct. 24, 1970, U.N. Doc. A/RES/2625(XXV).

² U.N. Charter; Military and Paramilitary Activities (Nicar. v. the U.S.) 1986 ICJ 14 (June 27) ["Nicaragua"] ¶ 209.

³ ILC Commentary on the Draft Articles on the Responsibility of States for Internationally Wrongful Acts, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 49, U.N. Doc. A/RES/56/83, (Dec. 12, 2001), art 21. [Hereinafter ARSIWA].

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Rongo might argue that the provisions of the U.N. Charter only bind its member states.⁴ However, a growing consensus recognizes that the right to self-defense may be invoked against non-state actors.⁵ Not only the ICJ in *DRC V Uganda* but also the International Law Association (ILA) noted that there is growing recognition that there are certain circumstances in which a State may have the right to self-defense against non-state actors acting extraterritorially and whose attacks cannot be attributed to the host State.⁶

Neither Anhur nor Rongo provided any support to the ANP-FF at any time.⁷ Therefore, Anhur can rely on its inherent right to self-defense against the ANP-FF.

The ICJ in the *Oil Platform Case* considered three cumulative elements to be fulfilled for a state to exercise its inherent right to self-defense.⁸ These include (i) the existence of an armed conflict,⁹

⁴Vienna Convention on the Law of Treaties, art 34 May23, 1969, 1151 UNTS 331. [HereinAfter VCLT].

⁵ Monica Hakimi, *Defensive Force Against Non-State Actors: The State of Play*, 91 INT'L L. STUD. 1 (2015).

⁶ Armed Activities on the Territory of the Congo, 2005 ICJ 168, ¶ 276-305 (December 19) [Hereinafter *DRC V Uganda*]; International Law Association Use of Force Committee, 2018, Final Report on Aggression and the Use of Force, ILA Report (2018), p. 15.

⁷ Record¶19.

⁸ The Islamic Republic of Iran v. the United States of America, Judgment, I. C. J. Reports 2003, p. 161.

⁹ Nicaragua ¶190.

(ii) that the response to an attack is imminent and necessary¹⁰ and (iii) that the response to an attack is proportionate to the harm caused.¹¹

i. The conflict between Anhur and the ANP-FF was a non-international armed conflict

The ICTY in the *Prosecutor v Tadic* case set up a two-pronged test to determine a non-international armed conflict.¹² These included; the intensity of the conflict and the degree of hierarchical organization of the parties involved in the conflict.¹³ With respect to intensity, the ICTR in the *Prosecutor v Akayesu* case considered continuous military attacks between belligerents to meet the threshold required for a non-international armed conflict.¹⁴ It further recognized that the organizational structure of a non-state armed group need not to be like that of a state's military but rather that which can merely show some form of structure and command.¹⁵

¹⁰ Green, *Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense*, 14 CARDOZO J. INT'L & COMP. L. 429 (2006).

¹¹ *Ibid.*

¹² App. Chamber, Int'l Crim. Trib. For former Yugoslavia, 1992 Case No. IT-94-1-AR72, 35 I.L.M. 32 (1996).

¹³ *Ibid.*

¹⁴ Trial Judgement, International Criminal Tribunal for Rwanda (ICTR), Case No. ICTR-96-4-T, 2 September 1998.

¹⁵ *Ibid.*

The ANP-FF is a paramilitary arm (an organized armed group) of the Anhuri New Party and has a loose hierarchical structure.¹⁶ Intelligence reports suggest that there have been military confrontations between the members of the ANP-FF and the Anhuri military.¹⁷ This includes the attack in early November 2019, in which the ANP-FF launched attacks with armed drones on the territory of Anhur from the Menhit Wetland within Rongo, and killed several Anhuri citizens and damaged two residential buildings and one government building.¹⁸ Consequently, the organizational structure of the ANP-FF and the frequency of its confrontations with the Anhuri military satisfy the threshold of a non-international armed conflict.

ii. The attack on the Menhit Wetland was necessary.

In the *Gabcikovo-Nagymaros Project case*, the ICJ held that a state may plead necessity when engaging in an act meant to protect its vital interests from imminent danger.¹⁹ *Article 25 of the Articles on State Responsibility (ARSIWA)* provides the elements to consider while invoking the principle of necessity.²⁰ They include; (a) the act must have been occasioned by the need to protect

¹⁶ Record¶19; Clarification A13.

¹⁷ Clarification A14.

¹⁸ Record¶20.

¹⁹ Hungary. v. Slovakia., 1997 ICJ, 52, p. 40–41, ¶51–52.

²⁰ ARSIWA.

an ‘essential interest’ of the acting state; (b) that the essential interest must have been threatened by a ‘grave and imminent peril,’ and (c) that the actions undertaken “must have been the ‘only means’ available to safeguard that interest.”

a. The attack on the Menhit Wetland was to protect the security of Anhuri citizens

The ICJ stated in the *Construction of the Wall case* that the security of a state is among a state’s vital interests, and states should not be prevented from protecting themselves in cases where the safety of their citizens or properties is at stake.²¹

Anhur consents that to rely on the doctrine of necessity, the essential interest being safeguarded must be of greater importance than the interests of the foreign state being sacrificed.²² Essentially, the issue is one of proportion between the two interests rather than that of absolute interest.²³ Respectfully, Anhur submits that the right to life of its citizens outweighs its obligation to protect the environment.

²¹ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of July 9, 2004, ICJ Rep (2004), at ¶136.

²² CRAWFORD, INTERNATIONAL LAW COMMISSION’S ARTICLES ON STATE RESPONSIBILITY: INTRODUCTION, TEXT, AND COMMENTARIES 183(2002),

²³ *Ibid.*

b. The security of Anhuri citizens was in grave peril

Whatever the interest may be, it is only when threatened by a grave and imminent danger that the second condition is satisfied.²⁴ The imminent peril must be objectively established and not merely apprehended as possible.²⁵

The security of the Anhuri citizens was in grave danger. In early November 2019, the ANP-FF launched attacks with armed drones on the territory of Anhur from the Menhit Wetland. The drone attacks killed several Anhuri citizens and damaged two residential buildings and one government building.²⁶ This is in addition to the other numerous civil disturbances within Anhur, orchestrated by the ANP-FF, which had compelled the Anhuri Prime Minister to deploy the Anhuri military to quell the disturbances.²⁷

²⁴ Dinstein, *Military Necessity*, in 3 ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW 274, 274 (1982).

²⁵ O'Brien, *The Meaning of 'Military Necessity in International Law*, 1 WORLD POLITY 109, 142-4.

²⁶ Record¶20.

²⁷ Record¶19, Clarification A14.

c. The use of explosive artillery was the only available means to safeguard the security of Anhuri citizens.

The forests within the Menhit Wetland are inundated for most of the year, making it hard to access the ANP-FF camps using ground armed troops.²⁸ Consequently, Anhur was compelled to use the towed M119 Howitzers, as they could be precisely fired from Anhur directly into the ANP-FF camp with the Menhit Wetland.²⁹ In any case, Anhur was not aware that the ecological character of the Menhit Wetland had been affected by drought exasperated by climate change because Rongo had not submitted an Article 3.2 report to inform the Ramsar Secretariat about this change in ecological character.³⁰

iii. The attack on the Menhit Wetland was proportionate

The proportionality principle places limits on belligerents in choosing methods and tactics of war fare.³¹ It requires that before destroying a natural resource site by military activity, the military

²⁸ Record¶ 14.

²⁹ Record¶ 20; Clarification A12; Maj. Wade Perdue, *M119 Howitzer Still Plays Critical Role for Army*, US Army Military (2015).

³⁰ Record¶ 16.

³¹ Diederich, *Law of War and Ecology, A Proposal for a Workable Approach to Protecting the Environment through the Law of War*, Vol. 136, *Mil Law Rev*, p.137 (1992).

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authority should weigh the expected environmental harm against the military anticipated benefits to be gained.³²

The use of the explosive artillery provided Anhur with a military advantage over the ANP-FF and ensured that its military operation was successful. The members of ANP-FF use sophisticated technological artillery to conduct armed attacks, which includes using armed drones.³³ Consequently, Anhur submits that the attack on the Menhit Wetland would have been unsuccessful if they had used a lesser form of weaponry.

iv. The failure to submit a report to the UNSC does not preclude Anhur’s inherent right to self-defense.

Article 51 of the U.N Charter provides that the measures taken by members in the exercise of the right of self-defense shall be reported to the Security Council.³⁴ However, this is a procedural

³² Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons 1996, ICJ report 1996, ¶ 30. [Hereinafter Nuclear Weapons Case].

³³ Record ¶ 20.

³⁴ U.N Charter.

measure, and a failure to submit the report cannot preclude a state from exercising its inherent right to self-defense.³⁵

B. ANHUR’S ACTIONS TO THE MENHIT WETLAND DID NOT VIOLATE INTERNATIONAL HUMANITARIAN LAW (IHL).

i. Anhur is not a state party to the Additional Protocol (AP) I and II to the Geneva Convention

The protection of the environment in armed conflict is provided under *Article 35(3) and 55 of the AP I to the Geneva Conventions* where it prohibits belligerents from employing means of warfare that may cause widespread, long-term, and severe damage to the natural environment.³⁶ However, neither Anhur nor Rongo are parties to either the AP I or AP II to the Geneva Conventions.³⁷ *Article 34 of the VCLT* states that a treaty does not create obligations for a third State without its

³⁵ B. SIMMA et al. (EDS), *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY, VOLUME II*, 1410 (2012).

³⁶ *Protocol Additions to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts*, June 8, 1977, 1125 UNTS 3 [Hereinafter AP to the Geneva Conventions]

³⁷ Record¶11.

consent.³⁸ Consequently, the provisions of AP I and II to the Geneva Conventions do not bind Anhur.

Rongo might argue that the AP I and II to the Geneva Conventions codify Customary International Law. However, as the ICJ stated in *the North Sea Continental Shelf case*, to imply Customary International Law, one must show state practice and *opinio juris*.³⁹ Recent international armed conflicts, which have caused massive destruction to the environment, have been waged by non-State Parties to the AP I and II to the Geneva Conventions. Notably, the United States, Iraq and even those states that have ratified it (*e.g.*, the UK) have made declarations and reservations intended to limit their liabilities under the AP I and II to the Geneva Conventions.⁴⁰

i. Alternatively, the Menhit Wetland was a legitimate military target under IHL.

Should this court recognize that the provisions of the AP I and II to the Geneva Conventions are a codification of Customary International Law, Anhur then submits, that the Menhit Wetland was a

³⁸ VCLT.

³⁹ Germany v Netherlands; Germany v Denmark, judgment February 20, 1969, ICJ Reports 1969.

⁴⁰The Joint Service Manual of the Law of Armed Conflict, JSP 383 (2004), UK; Ministry of Defense; Yoram *The Conduct of Hostilities Under the Law of International Armed Conflict*, Cambridge University Press, p. 185 (2004)

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legitimate military target under *Article 52 of the AP I to the Geneva Conventions*.⁴¹ Armed conflict attacks may be directed against military objectives, not civilian objects.⁴² A "military objective" includes objects which by their nature, location, purpose, or use make an effective contribution to military action and whose total or partial destruction, capture, or neutralization, in the circumstances ruling at the time, offers a definite military advantage.⁴³ A "civilian object" entails "all objects which are not military objectives."⁴⁴ The natural environment is not intrinsically a military object and should be treated as a civilian object.⁴⁵ However, there are certain circumstances in which part of the environment may become a military objective, in which case

⁴¹ AP to the Geneva Conventions.

⁴² *Ibid*, art 48.

⁴³ *Ibid*, art 52(2).

⁴⁴ *Ibid*.

⁴⁵ ILC, Draft Principles on the Protection of the Environment in Relation to Armed Conflict, General Assembly Official Records, Sixty-sixth Session, Supplement No. 10 (A/66/10), p. 347-364, Principle 13.

such locations may be lawfully targeted; for example when belligerents use the environment (*ie forests*) as hideouts .⁴⁶

The Menhit Wetland became a military objective and hence a lawful military target when the ANP-FF used it as a hideout to target Anhuri citizens and properties.⁴⁷ In any case, there were no civilians residing within the Menhit Wetland during the attack.⁴⁸

ii. Moreover, the prohibition of environmental destruction in an armed conflict is not absolute.

Article 51(5)(b) of the AP I to the Geneva Conventions provides that incidental destruction of civilian objects, including the environment, is indiscriminate and such destruction is considered as collateral damage.⁴⁹ This is especially permissible if the commander has taken prior feasible

⁴⁶ Rayfuse, “*Rethinking international law and the protection of the environment in relation to armed conflict*” in *War and the Environment: New Approaches to Protecting the Environment in Relation to Armed Conflict*, Leiden, Brill Nijhoff, p. 6 (2015).

⁴⁷ Record¶19.

⁴⁸ Record¶15.

⁴⁹ AP I to the Geneva Conventions.

precautionary measures under *Article 57 of AP I to the Geneva Conventions* to minimize incidental loss to civilian objects during an attack.⁵⁰

Prior to the attack, Anhur employed unarmed drones to locate the ANP-FF's camp.⁵¹ Thereafter, the commander of the Anhuri military conducted a proportionality analysis and determined that expected incidental damage to the civilian objects was not excessive to the military advantage anticipated.⁵² Therefore, the fire was collateral damage which is permissible under IHL

iii. Besides, the damage to the Menhit Wetland was neither widespread, long-term, nor severe.

Article 35(3) of the AP I to the Geneva Convention states that care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage.⁵³ There is no

⁵⁰ *Ibid.*

⁵¹ Record¶20.

⁵² Clarification A11.

⁵³ *Ibid.*

clear threshold to what is considered widespread, long-term, and severe and this is determined on a case-to-case basis.⁵⁴

Article 32 of the VCLT espouses that recourse may be had to supplementary means of interpretation, including the preparatory work of a treaty and the circumstances of its conclusion, to confirm the treaty's object and purpose.⁵⁵ The preparatory work of *Article 35 of the AP I to the Geneva Convention* shows that the plenipotentiaries considered the use of unconventional weapons as the ones that would cause widespread, long-term, and severe damage.⁵⁶ These unconventional weapons include the use of nuclear weapons, chemical weapons, biological weapons, and weapons prohibited under the Convention on Certain Conventional Weapons which when used severely destroy the genetic makeup of an ecosystem with no recovery.⁵⁷ However, forest fires are a regular

⁵⁴Hulme Karen, *War-Torn Environment: Interpreting the Legal Threshold*, Leiden: Martinus Nijhoff Publishers, p. 93, (2004).

⁵⁵ *Ibid.*

⁵⁶ Nuclear Weapons Case; Pilloud and Pictet, "Article 35: Basic rules", ICRC Commentary on the Additional Protocols of June 8, 1977, to the Geneva Conventions of August 12, 1949.

⁵⁷ *Ibid.*

occurrence within an ecosystem, and forests tend to recover from them.⁵⁸ Consequently, the damage on the Menhit Wetland cannot be termed as severe, long-term, or widespread.

C. ANHUR WAS NOT BOUND TO ITS INTERNATIONAL ENVIRONMENTAL LAW (IEL) TREATY OBLIGATIONS UNDER THE PRINCIPLE OF FORCE MAJEURE

Article 61 of the VCLT provides that a party may invoke the impossibility of performing a treaty as a ground for suspending the performance of its obligations arising from the treaty; principle of force Majeure.⁵⁹

The court in the *Rainbow Warrior* case stated that a situation of force majeure only arises where three elements are met; (a) the act in question must be brought about by an irresistible force or an unforeseen event (b) which is beyond the control of the State concerned and (c) which makes it materially impossible in the circumstances to perform the obligation.⁶⁰

The armed attack on Anhur was unforeseen. Anhur did not expect such an attack from the ANP-FF. The attack on the Menhit Wetland was beyond the control of Anhur as the ANP-FF used the Menhit Wetland as a den to attack Anhuri citizens. Finally, Anhur had no other alternative measure

⁵⁸ Kuosmanem, *Importance of climate, forest fires and human population size in the Holocene boreal forest composition change in northern Europe* BOREAS JOURNALS Volume 45 issue 4 p 574 (2016).

⁵⁹ VCLT; Fisheries Jurisdiction Case (UK. v Iceland) 1974 ICJ, 36.

⁶⁰ New Zealand v. France UNRIAA, Vol. XX (Sales No. E/F.93.V.3), p. 215 (1990).

to take that could ensure the possibility of performing its obligations under its IEL treaty obligations such as the Ramsar Convention, the CBD, and the WHC.

D. CONSEQUENTLY, ANHUR IS NOT UNDER AN OBLIGATION TO PROVIDE ANY COMPENSATION TO RONGO.

Article 31 of the ARSIWA codifies a general principle of law, obligating the State responsible for an internationally wrongful act to make reparation on the injury caused.⁶¹

However, the actions of Anhur concerning the Menhit Wetland all fall under the ambits of International Law. Consequently, Anhur has not committed an internationally wrongful act and is thus not obligated to compensate Rongo for the harm it suffered.

⁶¹ CorfuChannel (UK v. Alb.), 1949 ICJ Rep. 4, ¶ 22.

**II. THE ACTIONS OF RONGO WITHIN THE SCUTE COASTAL WETLAND
VIOLATE INTERNATIONAL LAW**

Rongo has an international obligation to protect Ramsar sites, including (A) the Scute Coastal Wetland, which Anhur considers a Ramsar Site. However, the actions of Rongo concerning the proposed hotel development (B) violate its International Environmental Law (IEL) treaty obligations (C) and Customary International Law.

A. THE SCUTE COASTAL WETLAND IS A RAMSAR SITE

i. Anhur designated the Scute Coastal Wetland as a Ramsar Site.

Article 2(1) of the Ramsar Convention calls on state parties to designate suitable wetlands within their territories in a Wetlands of International Importance list.⁶² Consequently, when acceding to the Ramsar Convention in 1987, Anhur designated the Scute Coastal Wetland as a Ramsar site.⁶³ The site has never been delisted as per the required procedural process under *Article 2(5) and 4(2)*

⁶² Convention on Wetlands of International Importance especially as Waterfowl Habitat, February 2, 1971, 996 UNTS 245 [Hereinafter Ramsar Convention].

⁶³ Record¶17.

of the Ramsar Convention and COP Resolution VIII.20.⁶⁴ Therefore, it is still a Ramsar site to date.

ii. The Scute Coastal Wetland is within Anhur Territory

The acquisition of territory through force is outlawed by the U.N. Charter, which obliges its member States to refrain from the use of force against the territorial integrity or political independence of any State.⁶⁵ When the Argentinian military invaded the Falkland Islands, a legal territory of the United Kingdom, the UNSC passed *Resolution 502*, which condemned Argentina's acts as a violation of its obligation against the use of force on the territorial integrity of another state.⁶⁶

Kemp Key has been the territory of Anhur from the early 1500s.⁶⁷ However, on May 8, 2020, the Government of Rongo dispatched military units to Kemp Key on a military conquest, which led to the illegal acquisition of Kemp Key.⁶⁸ This court should condemn the acts of Rongo as it did in

⁶⁴ Ramsar Convention; General guidance for interpreting “urgent national interests” under Article 2.5 of the Convention and considering compensation under Article 4.2 (COP8, Resolution VIII.20).

⁶⁵ UN Charter.

⁶⁶ UNSC Resolution 502 (1982) of April 4, 1982, (S/14947/Rev.1).

⁶⁷ Record¶ 2, ¶ 3.

⁶⁸ Record¶ 29.

Cameroon v Nigeria and adjudge this matter under the basis of the Scute Coastal Wetland being under Anhur's sovereignty.⁶⁹

iii. Alternatively, the Scute Coastal Wetland is a Ramsar site per the principles of state succession of treaties.

Even if the court finds the acquisition of Kemp Key legal, Anhur suggests that the principles of state succession of treaties will thus apply. Succession of treaties means replacing one State with another in the responsibility of the international obligations of a particular territory.⁷⁰ In this case, the international responsibilities of Kemp Key succeeded from Anhur to Rongo. *Article 15(b) of the VCSST*, which is a codification of Customary International Law, espouses that succession occurs where the absence of succession would be incompatible with the object and purpose of the

⁶⁹Land and Maritime Boundary between Cameroon and Nigeria case, Judgment, ICJ Reports 2002, p. 303. When Cameroon asked the ICJ to decide whether Nigeria had, by invading and occupying its territory, violated Article 2(4) of the U.N. Charter, it observed that both Cameroon and Nigeria were under an obligation to withdraw their administrative, military, and police forces from the territories that fell under the sovereignty of each other state expeditiously and without condition.

⁷⁰ Vienna Convention on Succession of States in Respect of Treaties, art 2, August 23, 1978, 1946 UNTS 3 [Hereinafter VCSST]; Articles on Succession of States in respect of Treaties with commentaries, Report of the ILC 26th sess., GAOF, 29^o Sess., Supp. No. 10 (A/29/10) 265.

agreement or would radically change the conditions for its operation.⁷¹ The purpose of the Ramsar Convention is to ensure the protection of wetlands and endangered waterfowl species.⁷² Should the agreement to list the Scute Coastal Wetland as a Ramsar Site within the Ramsar Convention not succeed, the protection of the critically endangered Royal Ridley ceases, which is incompatible with the objectives of the Ramsar Convention.

iv. In any case, the protection of the environment is an *erga omnes* obligation

The obligations *erga omnes* have been recognized in the *Barcelona Traction case* as the obligations of a State toward the international community as a whole.⁷³ The obligation to protect the environment has become a common concern for humanity, giving rise to an *erga omnes* obligation to all states.⁷⁴ Therefore, Rongo is still obligated to protect the ecosystem within the Scute Coastal Wetland even if it does not recognize it as a Ramsar site.

⁷¹ VCSST.

⁷² Ramsar Convention, Preamble; Record¶17.

⁷³ Belgium v. Spain, 1970 ICJ para. 33-34.

⁷⁴ Nuclear Weapons Case, ¶ 502-504; MAURIZIO RAGAZZI, THE CONCEPT OF INTERNATIONAL OBLIGATIONS ERGA OMNES 203 (1997).

B. THE ACTIONS OF RONGO VIOLATE ITS INTERNATIONAL ENVIRONMENTAL LAW TREATY OBLIGATIONS.

A state must comply with its treaty obligations in good faith, under the principle of *pacta sunt servanda*.⁷⁵ However, the actions of Rongo with respect to the Scute Coastal Wetland violate the (i) Ramsar Convention, (ii) the CBD (iii) and the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC).

i. Rongo's Actions Violate the Ramsar Convention.

a. Rongo violated Article 3 of the Ramsar Convention.

Anhur notes that as per *Article 2(3) of the Ramsar Convention*, Rongo has exclusive sovereign rights to utilize the natural resources within its territory.⁷⁶ However, this right is not absolute and is subject to a state's international legal obligations and the rights and duties of other States. Accordingly, *Article 3(1) of the Ramsar Convention* calls on state parties to promote the conservation of wetlands and ensure the "wise use" of wetlands within their territories.⁷⁷ The "wise use" of wetlands involves (1) the maintenance of a wetland's ecological character, through the

⁷⁵ VCLT, Article 27.

⁷⁶ Ramsar Convention; G.A., Res. 1803 (XVII) December 14, 1962 U.N. Doc. A/RES/1803(XVII); DRC v Uganda, ¶ 244.

⁷⁷ Ramsar Convention.

implementation of ecosystem approaches, (2) within the context of sustainable development.”⁷⁸ COP Resolution XI.9 calls on states to avoid any activities that might cause a change in the ecological character of wetlands⁷⁹

1. *The proposed hotel project is “likely to change” the ecological character of the Scute Coastal Wetland.*

A change in the ecological character of a wetland is a human-induced unfavorable alteration of any ecosystem component, process, benefit or service.⁸⁰ The Scute Coastal Wetland is an important nesting site for the critically endangered Royal Ridley.⁸¹ It is the world’s largest nesting site for the Royal Ridley, and it is estimated that annually approximately 35% of the nests from the global Royal Ridley population are located within the Scute Coastal Wetland.⁸² However, as stated in *Loggerhead v Volusia County*, the main impedance to the egg-laying and hatching

⁷⁸ The Conceptual Framework for the wise use of wetlands and the maintenance of their ecological character (COP9 Resolution IX.1 Annex A 2005).

⁷⁹ An Integrated Framework and guidelines for avoiding, mitigating and compensating for wetland losses (COP11 Resolution XI.9 2012).

⁸⁰ *Ibid.*

⁸¹ Record¶17.

⁸² *Ibid.*

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success of sea turtles is beachfront light pollution.⁸³ Hatchlings use the moonlight on the waves to find the ocean. However, urban light pollution confuses the hatchlings, causing them to crawl inland rather than toward the sea, leading to disorientation. and misorientation.⁸⁴ Hatchlings affected by disorientation and misorientation are less likely to locate the ocean and most of them die from predation, dehydration, and/or heat exposure after sunrise.⁸⁵

Additionally, buildings and structures on the beach or in adjacent zones significantly exacerbate soil erosion and directly affect the condition of the beaches, which is an essential habitat for sea turtles' nests.⁸⁶ Likewise, the temperature of the sand determines the sex of the hatchlings (in general, higher temperatures produce females, while cooler temperatures produce males).⁸⁷

⁸³ *Loggerhead Turtle (Caretta Caretta) Green Turtle (Chelonia mydas) et al. v The County Council of Volusia County* 47 ERC 1014, 41 Fed. R. Serv 3d 563.

⁸⁴ Tuxbury, Salmon, *Competitive interactions between artificial lighting and natural cues during sea finding by hatchling marine turtles*, *BIOLOGICAL CONSERVATION*, 121, 311-316 (2005).

⁸⁵ *Ibid.*

⁸⁶ Lutcavage, Plotkin, Witherington, and Lutz, *Human Impacts on Sea Turtle Survival in The Biology of Sea Turtles* CRC MARINE SCIENCE SERIES. p. 395-396 (1997).

⁸⁷ Camhi, *The role of nest-site selection in Loggerhead Sea Turtle (Caretta caretta) nest success and sex ratio control*. Ph.D. Dissertation, Rutgers University, New Brunswick, New Jersey, USA. 255 p (1993).

Constructing tall buildings next to a nesting area causes sunlight blockage, altering sand temperature thus triggering a skewed hatchling sex ratio.⁸⁸

COP Resolution XIII.24 calls on state parties to take measures to reduce threats to nesting areas, such as noise pollution, light pollution and beach erosion.⁸⁹ However, the permit enacted by Rongo does not address the light pollution caused by the spotlights within the hotel complex and the noise pollution caused by docking boats within the Marina. Additionally, the permit does not address concerns on the height of the hotel complex, which is twelve stories high, and its effects to the Royal Ridley. The external lighting and noise pollution within the hotel complex and the Marina and the height of the hotel development will likely affect the nesting and hatching process of the Royal Ridley. This will cause a depopulation of the endangered Royal Ridley Sea turtles and change the ecological character of the Scute Coastal Wetland.⁹⁰

⁸⁸ *Ibid.*

⁸⁹ The enhanced conservation of coastal marine turtle habitats and the designation of critical areas as Ramsar Sites (COP13 Resolution XIII.24 2018).

⁹⁰ Witherington, *Behavioral responses of nesting sea turtles to artificial lighting* HERPETOLOGICA 48(1):31–39 (1992).

2. *The proposed hotel complex fails the sustainable development test*

Sustainable development is the management of a natural resource in a manner that may yield the greatest benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations⁹¹The development of the hotel complex will degrade the nesting habitat of the endangered Royal Ridley. In turn, this would cause depopulation of the Royal Ridley, which is contrary to the objective of sustainable development.

ii. **Rongo's actions violate the CBD**

a. *Rongo violated its obligation to protect ecosystems and the natural habitat of Species*

Article 8(d) of the CBD calls on state parties to protect ecosystems, natural habitats and ensure the maintenance of viable populations of species in their natural surroundings.⁹² The hotel complex development will destroy the natural nesting habitat of the Royal Ridley and inevitably cause their depopulation, thus eliminating the viable population of the endangered Royal Ridley.

⁹¹Rio Declaration on Environment and Development, June 14, 1992, U.N. Doc. A/CONF.151/126 Principle 4; Declaration of the United Nations Conference on the Human Environment, U.N. Doc.A/CONF.48/ 14/Rev.1 (1972) Principle 5.

⁹² Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79. [Hereinafter CBD].

In instances where a state must utilize its biodiversity, *Article 10 of the CBD* maintains that the state must ensure the sustainable use of its biological resources and avoid or minimize harmful impacts on biodiversity.⁹³ As earlier argued, the development of the hotel complex within the Scute Coastal Wetlands is not a sustainable use of natural resources and thus violates the CBD.

b. Rongo violated its obligation to notify, consult and cooperate

Article 14.1(c) of the CBD states that Parties shall consult with other States on activities that are likely to have harmful effects on the other states' biodiversity.⁹⁴ Moreover, *Article 5 of the CBD* asserts that States must cooperate with other Contracting Parties, on matters of mutual interest, for the conservation and sustainable use of biodiversity.⁹⁵

In the case of *Argentina v. Uruguay*, the Court held that states are obliged to sufficiently disclose all necessary information about such activities to potentially affected States in advance. Thus, before the Environmental Impact Assessment (EIA) results, potentially affected states must be

⁹³ CBD.

⁹⁴ CBD.

⁹⁵ CBD.

provided with an opportunity to review, discuss and conduct a preliminary assessment of the planned activity.⁹⁶

The Royal Ridley that hatch in Kemp Key also spend part of their life cycle in Anhur's territorial waters off the coast of Caretta.⁹⁷ An action taken by Rongo regarding the Royal Ridley will affect the marine industry of Anhur. Therefore, Rongo had an obligation to notify and consult with Anhur before beginning the hotel development project.

iii. Rongo's actions violate the IAC.

a. Rongo violated Article IV(2)(c) of the IAC.

Article IV(2)(c) of the IAC read together with *annex ii(2) of the IAC* calls on parties to restrict human activities that could seriously affect sea turtles, especially during the periods of reproduction, nesting, and migration, by creating measures that regulate the use of beaches with respect to the location, design, and use of artificial lighting of buildings.⁹⁸

⁹⁶Case Concerning Pulp Mills on The River Uruguay, Judgment, I.C.J. Rep. 14, ¶105; DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW, AND POLICY 3rd edition 525 (2007).

⁹⁷ R¶ 18.

⁹⁸ Inter-American Convention for the Protection and Conservation of Sea Turtles, entered into force May 2, 2001.78 MARINETURTLENEWSLETTER13 (1997).

The location of the hotel complex and the marina violates the IAC as it sits adjacent and above the Scute Coastal Wetland making it prone to soil erosion and noise pollution from docking boats. The design of the hotel complex with respect to its height (twelve stories high) and the artificial lighting will likely cause misorientation and disorientation of the Royal Ridley and is thus a violation of the IAC.

C. THE ACTIONS OF RONGO VIOLATE CUSTOMARY INTERNATIONAL LAW.

i. Rongo did not adhere to the precautionary principle

The precautionary principle prevents States from proceeding with activities which have a high risk of potentially causing significant harm to the environment.⁹⁹The precautionary principle requires that there is a threat of environmental damage, which is of a severe or irreversible character and based on a state of scientific uncertainty.¹⁰⁰

There is a threat of damage to the nesting area of the critically endangered Royal Ridley. The danger is of serious irreversible character as it might cause the degradation of endangered species. Finally, there exists a state of scientific uncertainty on how the permit on the construction of the

⁹⁹ Trouwborst, *Evolution and Status of the Precautionary Principle in International Law*, 96 KLUWER LAW INTERNATIONAL 1016 (2002).

¹⁰⁰ IUCN Council, *Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management*; *Trail Smelter Arbitration (U.S. v. Can.)*, 3 RIAA 1905, 1965 (1938/1941).

hotel complex will prevent soil erosion within the beach, which is a nesting habitat for the sea turtles, or how the tower height of the hotel will affect the soil temperature within the nesting habitat and whether the allowance of the use of spotlights within the hotel complex will significantly affect the Royal Ridley Sea turtles.

ii. The principle of common but differentiated responsibilities (“CBDR principle”)

The CBDR principle holds that although states have a shared responsibility to protect the environment, this responsibility is differentiated among states due to differing circumstantial factors including social, economic, and ecological situations between states.¹⁰¹

However, *In Deep Seabed*, the ITLOS ruled that developing countries have the same environmental obligations as developed countries.¹⁰² Developing States are not accorded preferential treatment.¹⁰³ Otherwise, differentiated treatment would frustrate environmental protection efforts since enterprises can avoid stricter regulations in developing countries.

¹⁰¹Boyte, Common but Differentiated Responsibilities: Adjusting the Developing/Developed Dichotomy in International Environmental Law, 14 NZ. J. ENVTL. L. 63, 64 (2010).

¹⁰²Responsibilities and Obligations of States Sponsoring Persons and Entities With Respect To Activities In The Area, Advisory Opinion, 2011 ITLOS, ¶ 158.

¹⁰³ *Ibid.*

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Consequently, Rongo cannot rely on the need to economically develop its impoverished communities as a justification for violating its obligation to protect and conserve the Royal Ridley.

CONCLUSION AND PRAYER FOR RELIEF

Applicant, the Federal States of Anhur, respectfully requests the Court to adjudge and declare that:

(1) The actions of The Federal States of Anhur with respect to the Menhit Wetland Complex did not violate international law, and

(2) The actions of The Republic of Rongo with respect to the proposed hotel development in the Scute Coastal Wetland violate international law.

RESPECTFULLY SUBMITTED,

AGENTS OF APPLICANT