TEAM 2400R

THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE 28TH STETSON INTERNATIONAL ENVIRONMENTAL

MOOT COURT COMPETITION

THE CASE CONCERNING MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

ARINGUV

(APPLICANT)

v.

REPLOMUTÉ

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

2023-2024

TABLE OF CONTENTS

INDEX OF AUTHORITIES

QUESTIONS PRESENTED

I.

Whether Replomuté has complied with International Law with respect to the conduction of an Environmental Impact Assessment.

II.

Whether Replomuté's actions concerning the proposed oil extraction activities in the Democratic Republic of Ibirunga ["DRI"] are deferential to its International Obligations.

STATEMENT OF JURISDICTION

By means of Article 40(1) of the Statute of the International Court of Justice ["ICJ"], the Applicant ["Aringuv"] and the Respondent ["Replomuté"], henceforth "the parties", have submitted to the Court, per the Special Agreement, the *Case concerning Questions relating to Mountain Gorillas and Impact Assessment*.

Moreover, the parties have requested the Court to adjudge the merits of the case, determining the legal consequences, including their rights and obligations, of the parties, based on the Statement of Agreed Facts as envisaged on Annex A, including the Clarifications.

The Special Agreement between the parties was concluded on Kampala, Uganda, the sixteenth (16th) day of June of the year two thousand and twenty-three (2023), transmitted to the Registrar of the Court via joint notification, dated to the twenty-fourth day (24th) of July of the year two thousand and twenty-three (2023). 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 the thirty-first (31) day of July of the year two thousand and twenty-three (2023).

Pursuant Article 36(1) of the Court Statute, the parties have consented for the Court to have jurisdiction, hence, the parties have consented for the Court to seize the matter and adjudicate on application of the rules and principles of general international law, as well as any applicable treaties.

Both parties accept the Court's decision as final and binding and shall execute it in good faith and commit to comply with it in its entirety.

STATEMENT OF FACTS

Aringuv and the Democratic Republic of Ibirunga ["DRI"] are neighboring countries on Central Africa. The Royal Mountain Gorilla ["RMG"] is a unique species, native to the DRI and Aringuv regions and classified as critically endangered by the IUCN Red List of Threatened Species.

In 1981, the DRI and Replomuté, a European World leading country on the mining and ore industry, entered into a concession agreement which granted Lenoir Corporation, a public Replomuté's corporation, the right to explore and exploit oil at the area inhabited by the southern population of the RMG: a national park within the DRI. This agreement allowed Lenoir to construct a pipeline for the crude oil to be transferred into tankers for its exportation; moreover, it included a mandatory optional clause for arbitration.

During the negotiations, the DRI conducted an Environmental Impact Assessment, based on its domestic legislation, on the impacts on nearby human populations for the use of water and waste production of the project.

Whilst the Lenoir Corporation conducted explorations from 1983 to 1986, the project was suspended from 1987 to 2002 due to civil war on the DRI's territory, and from 2006 to 2008, due to Ebola outbreaks.

In 2012, a military coup in the DRI declared their will to withdraw from the oil exploitation agreement excepting that Replomuté established a 50 million fund for environmental and societal impacts. Nevertheless, the DRI's withdrawal was debated under the mandatory arbitration clause of the initial agreement. Eventually, in 2015 Replomuté prevailed on the arbitration, compelling

the DRI to allow oil exploration and extraction activities or accost penalties exceeding 825 million dollars.

The DRI acquiesced to the Lenoir Corporation's oil-related activities in the DRI, and, as a conciliatory gesture, Replomuté established a 10 million dollars "Friendship Fund" for joint economic development in the DRI. Anyhow, regardless of the arbitration, the extraction activities have not been yet executed, as the infrastructure needed for such purpose is at 98% of completion.

Following the election of Melanie Waitz as president of Aringuv, in November of 2017, periodical informal discussions and negotiations were conducted between the Ministers of Foreign Affairs from Aringuv and Replomuté regarding the purposed activities on oil exploration and exploitation of the Lenoir Corporation on the DRI, in 2018.

Between 11 December 2018 and 27 December 2019 Aringuv raised a dispute, conveyed via official communiqués, regarding, among others, to: whether the purposed activity entails a transboundary harm risk; whether there is an obligation or, at least, a necessity, for the re-conduction of an Environmental Impact Assessment with respect to the concession agreement of 1981; whether the penalty proposed by the arbitral panel constituted an act of coercion; whether coercion is recognized as customary international law; and regarding the applicability of certain instruments of international law.

Whilst, due to the COVID-19 Pandemic, the project had to be, once again, halted, on 22 April 2022, Replomuté sent a diplomatic note to Aringuv notifying the resuming of extractive activities by Lenoir Corporation. A month later, on 22 May 2022, Aringuv's Minister of Environment called for the DRI to revoke the permits required for the construction and operation of the pipeline on the basis to stop the threat to the RMG and the climate crisis.

Negotiations ensued, facilitated by Uganda, where Aringuv and Replomuté consented to presenting specific questions to the International Court of Justice by a Special Agreement.

SUMMARY OF PLEADINGS

I.

Firstly, inasmuch the jurisdiction of the Court is undisputed, the Court must declare that Aringuv lacks *Locus Standi* to demand the fulfillment of Replomuté's obligations derived from the Convention on Environmental Impact Assessment in a Transboundary Context as its invocation is reserved to another State Party.

Secondly, the Court shall abstain from adjudging this contention, following the Monetary Gold principle, insomuch as the DRI is an indispensable third party to the proceeding whose interests constitute the subject of the decision. As the DRI is considered the State of Origin, and the Lenoir Corporation is a private actor under the concession agreement, the DRI is the State obliged to conduct an Environmental Impact Assessment.

Subsidiarily, the Court must declare that Replomuté has complied with its consuetudinary due diligence obligations regarding Environmental Impact Assessments, as the threshold of a foreseeable risk has not been met as the presumption of adverse risk to persons, property or the environment was disproven by the 1981 DRI's Assessment. Moreover, that it does not have the obligation to take farther considerations as global climate or migratory roads.

II.

On one hand, the Court must declare that the CMS is not invocable against Replomuté, as the southern population of the Royal Mountain Gorilla does not migrate, and, in any case, Replomuté is not a Range State to the Convention, therefore it is not obliged to compel with the protection and taking obligations, thus, is not enforceable. Moreover, even if the Court determines

that the CMS is demandable and Replomuté is a Range State, it has complied with the mandate prohibiting harassment and endangering, as the construction of the pipeline does not have adverse effects on biological connectivity.

On the other hand, the Court must declare that the provision regarding coercion of the Articles on Responsibility of States for International Wrongful Acts does not reflect the international customary law on regard of the attribution of indirect responsibility of States. Further, anyhow, the penalties proposed by the arbitral panel does not constitute an act of coercion since they are neither attributable to a conduct of Replomuté, nor an irresistible act under international law.

Finally, as a substantive matter, the Court must declare that Replomuté has complied with its climate change correlative obligations by determining and executing their National Determined Contributions to reduce their emissions. And, in any case, the eventual emissions are attributable to the DRI in exercise of their right to development.

PLEADINGS

I. REPLOMUTÉ HAS COMPLIED WITH INTERNATIONAL LAW WITH RESPECT TO THE CONDUCTION OF AN ENVIRONMENTAL IMPACT ASSESSMENT

Knowingly, Aringuv claims that Replomuté has not complied with its international obligations in not re-conducting an Environmental Impact Assessment ["EIA"] on the Democratic Republic of Ibirunga ["DRI"].[1] However, acknowledging the Parties have accorded to refrain on referring, as a subject of the litigation, the jurisdiction of the International Court of Justice ["the Court"],[2] the Respondent disputes its competence to adjudge the procedural contention as envisaged on the Special Agreement, in accordance with the Rules of the Court.,[3] as the admissibility of the claim raised is affected by (A) Aringuv's lack of *Locus Standi,* moreover, by (B) the lack of an essential third party to these proceedings, the DRI. Subsidiarily, if the Court finds it is competent to adjudge this contention, (C) Replomuté has fulfilled its obligations regarding an EIA.

Replomuté highlights how the Court has assorted that any agreement between the Parties that provides a jurisdictional basis for the Court to seize the matter does not undoubtedly enable it

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[1] Appendix I to the Special Agreement. ["SAF"].36.

[2] Special Agreement. Art. 1; Clarifications to the Record.A3.

[3] Rules of the Court, 1978 I.C.J. amended 24 October 2023. Art.79.

to entertain any claim,[4] moreover, that there may be circumstances on why the Court should not proceed to an examination of the merits.[5] Whereas the question of jurisdiction refers to the power of the Court to seize a dispute and provide a binding determination,[6] as here provided by the Special Agreement, the question of admissibility, raised by the Respondent, concerns the material defects of the claim[7] as the requisites demanded by customary and treaty law[8] have not been met.

A. ARINGUV LACKS LOCUS STANDI TO RAISE THIS CLAIM

In awareness that Replomuté is a party to the Convention on Environmental Impact Assessment in a Transboundary Context,[9] and noting that, teleologically,[10] the *raison d'être* of the Espoo Convention is the enhancing of co-operation mechanisms to ensure environmentally sound

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[4] Military and paramilitary activities in and against Nicaragua (Nicaragua v. U.S.) ["Military Activities"], 1986 I.C.J. 14. Par.272.

[5] Oil Platforms (Iran v. U.S.), 2003 I.C.J. 4. Par.29.

[6] Corfu Channel (U.K. and Northern Ireland v. Albania), 1948 (Prelim. Objection) I.C.J. Pars. 39-40.

[7] Robert Kolb, The International Court of Justice (Hart Publishing 2014). Pg.202.

[8] John P Grand and J Craig Barker, Encyclopedic Dictionary of International Law (Oxford 2014). Pg.8.

[9] SAF.12.

[10] Vienna Convention on the Law of Treaties ["VCLT"]. Art.31(1).

and substantive development between the Parties, as precisely drafted on its Article 15,[11] the right to raise a plead to define the extent of a contracting Party's obligations, relating to a dispute on regard of the interpretation and application of this instrument's provisions, is limited to another contracting Party.

In other words, the admissibility of a claim, regarding the non-compliance of the Espoo Convention, is reserved to States with *Erga Omnes Partes* Standing.[12] This conditioning on the Standing derives from the nature and object of this convention, as, in view of their shared values,[13] the parties to this agreement have a common interest, rather than individual interests, in ensuring other State Parties perform their treaty obligations.[14]

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[11] Convention on Environmental Impact Assessment in a transboundary context, 1991 UNTS-309. ["Espoo Convention"]. Article 15.

[12] Articles on responsibility of states for internationally wrongful acts ["ARSIWA"], 2001 A/RES/56/83. Article 41(1)(a); South West Africa (Liberia v. South Africa), 1966 I.C.J. Par.44; Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain), 1970 I.C.J. Par. 35; Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal) 2012 I.C.J. Pars.64,68&69; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar), 2020 I.C.J. Par.41.

[13] Ibid.

[14] Ibid.; Reservations to Convention on Prevention and Punishment of Genocide, Advisory Opinion, 1951 I.C.J. Pag.23.

Thence, bearing in mind Aringuv's claim for the re-conduction of an EIA regards the compliance of Replomuté's obligation under the Espoo Convention, as Aringuv is not a Party to this instrument,[15] the Applicant lacks *Locus Standi* to raise this claim.[16]

B. THE DEMOCRATIC REPUBLIC OF IBIRUNGA IS AN INDISPENSABLE THIRD PARTY TO THE PROCEEDINGS

This Court has assorted, on identifying the *Monetary Gold* principle, that any dispute relating to the rights and obligations of a third party may not be adjudge as the legal interest of the third party constitutes the very subject matter of the decision.[17] Hence, as the Lenoir Corporation ["LC"] is acting as a private actor under the concession agreement, whose acts are not attributable to Replomuté, and the DRI is the State of Origin, in accordance with customary law, the legal interest of the DRI constitutes the subject matter of Aringuv's contention.

Notwithstanding the LC is a corporation wholly owned and operated by the government of Replomuté,[18] reiterative international practice has recognized that the customary international law

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[15] SAF.28.

[16] South West Africa (Liberia v. South Africa), 1966 I.C.J. Par.44.

[17] Monetary Gold Removed from Rome in 1943 (Italy v. France, U.K. and U.S.) ["Monetary Gold"], 1954 I.C.J. Pars.19&32; East Timor (Portugal v. Australia), 1995 I.C.J. Pars.24&28.

[18] SAF.17.

regarding attribution[19] does not consider, as a decisive criteria, the public classification of a Corporation, the State ownership of holdings and assets or the participation of the State on the corporation's capital, but the empowerment, by means of domestic law, for the corporation to exercise governmental authority in the execution of public functions.[20] Therefore, as the LC does not possess any governmental authority, does not exercise *de iure* nor *de facto* jurisdiction over the territory of the DRI, and, solely has for-profit purposes on the exploration and exploitation of oil in their territory,[21] by acting under the scope of the 1981 concession agreement, and the domestic law of the DRI, the LC shall be understood as a private actor.

On this consideration, Replomuté has only intervened on the celebration of the 1981 concession agreement, and, consequently, has complied with the well-established principles of international law[22] prohibiting international intervention in any State's domestic affairs[23] and

[19] Amoco Int' Corp. v. Iran, 15 Iran-U.S. cl. Trib. Rep. 189 (1987). Pg. 79, para. 89, footnote 22; Prosecutor v. Tadic (IT-94-1) Judgement, 1999 I.C.T.Y. 15 July. Par. 109.

[20] ARSIWA. Art.5. Par.3.

[21] ARSIWA. Art.8. Par.6.

[22] Military Activities. Par.206

[23] U.N. Charter. Art.2(7).

proclaiming sovereignty over natural resources:[24] equal rights[25] and sovereign equality.[26] Thence, the procedural obligation to conduct an EIA is a burden on the DRI, forasmuch as it is the State of Origin ["SO"].[27]

Noting[28] the inapplicability of the Espoo convention, under customary international law, the SO is the State of the territory, or otherwise under its jurisdiction or control, where the proposed activities are planned to be performed, as recognized by the International Law Commission ["ILC"].[29]

Preceding the celebration of the 1981 concession agreement with the LC, the DRI conducted an EIA in accordance with its national law,[30] as the proposed activities would be

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[24] Convention on Biological Diversity ["CBD"], 1992 1760 U.N.T.S. 6. Preamble and Art. 9; Permanent sovereignty over natural resources, 1962 A/RES/1803(XVII). Art.1; Rio Declaration on Environment and Development ["Rio Declaration"], 1992 A/CONF.151/26. Principle 2.

[25] U.N. Charter. Art. 1(2).

[26] U.N. Charter. Art. 2(1).

[27] SAF.17.

[28] See "Issue I(A)".

[29] Draft Articles of Transboundary Harm from Hazardous Activities, 2001 UN/Doc/A/56/10. Art.2.

[30] SAF.17.

executed on its territory, fulfilling this general requirement of International Law.[31] Recognizably, the territorial jurisdiction link is the dominant criterion to determine the responsible State to carry out an EIA,[32] as a mean to guarantee the substantial obligation that activities within their jurisdiction do not cause transboundary harm.[33]

In a nutshell, the Court shall determine that, effectively the DRI is the SO and, thus, the subject of the obligation to conduct an EIA; moreover, that is obliged to execute due diligence obligations, which entails conducts of constant monitoring and consideration of new

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[31] Pulp Mills on the River Uruguay (Argentina v. Uruguay) ["Pulp Mills"], 2010 I.C.J. Par.204; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) ["Border Activities"], 2015 I.C.J. Pars.104&153.

[32] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art.1. Commentaries; Convention on Biological Diversity. Arts.3,4&14.

[33] United Nations Conference on the Human Environment ["Stockholm Declaration"], 1972 A/RES/2994. Principle 21; Rio Declaration. Principle 2; Trail Smelter Case (U.S. v. Canada), 1941 3 UNRIAA. Pg. 102 Corfu Channel (U.K. and Northern Ireland v. Albania), 1948 (Prelim. Objection) I.C.J. Pg.4; Marte Jervan, The Prohibition of Transboundary Environmental Harm. An Analysis of the Contribution of the International Court of Justice to the Development of the No-Harm Rule (PluriCourts Research Paper No. 14-17, 2014); Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art. 4.

environmental norms and standards applicable to the purposed activities of the LC.[34] Hence, as the DRI does not form part of the proceedings, following the *Monetary Gold* principle, the Court shall abstain from considering its legal interest as they conform the subject-matter of the dispute raised by the Applicant.[35]

C. SUBSIDIARILY, REPLOMUTÉ HAS COMPLIED WITH ITS DUE DILIGENCE OBLIGATION REGARDING EIA

As aforementioned, the DRI is the SO and, hence, the State obliged to conduct an EIA. In any case, Replomuté has wielded its utmost efforts to minimize the risk of transboundary harm,[36] attaining its international obligations,[37] considering the customary due diligence requirements relating to the conduction of an EIA are characterized by the completion of all practical efforts, based on factual and legal components regarding environmental harm, and to take appropriate measures, in a timely fashion, to address them.[38]

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[34] Gabčíkovo-Nagymaros Project Case (Hungary v. Slovakia) ["Gabčíkovo-Nagymaros"], 1997 I.C.J. Par.140.

[35] Monetary Gold. Pars. 19-32.

[36] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art.3.

[37] CBD. Art.14; Pulp Mills. Par.101; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Par.29.

[38] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art.3. Par.10.

Customary obligations do not demand for the re-conduction of an EIA based on the lack of consideration of new environmental norms and standards on the *ex-ante* assessment, as such considerations shall be undertaken on the regarding other due diligence obligations, entailing conducts[39] of vigilance,[40] consideration[41] and anticipation[42] for the minimization of transnational environmental risk.

Nevertheless, despite the State practice may suggest the Court should presume the necessity of a new EIA with regard the operation of large-scale industrial activities,[43] including large diameter oil pipelines,[44] the Court has ascertained that, when a State has verified there is not a risk of significant transboundary harm prior to undertaking the potentially adverse activity, the State concerned is not obliged to conduct a new EIA.[45] Hence, the Respondent stresses on how the *ex-*

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[39] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion, 2011 I.T.L.O.S. Par.110.

[40] Pulp Mills. Par. 185.

[41] Border Activities. Pars.104-105&153-155.

[42] Gabčíkovo-Nagymaros. Par.187.

[43] Alan Boyle and Catherine Redgwell, International Law and the environment (Oxford 2021). Pg. 191.

[44] Espoo Convention. Appendix I. Par. 8.

[45] Border Activities. Pars.104-105&153-155.

ante EIA conducted by the DRI, prior to the authorization of the project, as aforementioned, established a basis of certainty regarding the transboundary impacts of the activity.[46]

International customary law determines that the scope of an EIA is for the host State to determine, yet containing, necessarily, an evaluation of the possible transboundary harmful impact of the proposed specific activities, highlighting the effects of the activities in the environment of other States, persons, and property.[47] Hence, an EIA is not generally required to consider environmental impacts, outside national jurisdictions of the potential affected States, that a proposed activity may cause; as for this case, climate change considerations or migratory species impacts that does not manifest on Aringuv.

Firstly, the contention regarding the insufficiency of the *ex-ante* EIA, as it does not contemplate the effects of the project on climate change is moot,[48] as international practice has identified[49] Climate Change, caused by Green House Gases ["GHG"], is a common concern of

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[46] Pulp Mills Par.205.

[47] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art. 7. Par.6.

[48] Certain German Interests in Polish Upper Silesia (Germany v. Poland), 1926 P.C.I.J. Par.35; Territorial and Maritime Dispute (Nicaragua v Colombia), 2007 I.C.J. Preliminary Objections. Dissenting opinion of Judge Bennouna [2007] Pg.932.

[49] See "Protection of global climate for present and future generations of Mankind, 1988 A/RES/43/53".

mankind and distinct from traditionally[50] understood transboundary harm.[51] Regardless, Replomuté is complying with its Climate Change related obligations.[52]

Secondly, the *ex-ante* EIA, although focused on the affectations to adjacent human settlements, had a consideration on the conservation of faunal resources and their environment within the framework of land-use planning and economic development,[53] noting the area to be exploited was inhabited by the southern population of Royal Mountain Gorillas ["RMG"], both by estimating the use of water and the waste to be produced.[54] Likewise, as the southern population of the RMG is not a migratory species,[55] it is not subject of special consideration under the provisions of the Convention on the Conservation of Migratory Species of Wild Animals ["CMS"]; and, in any event, the EIA on this regard should be directed towards the migratory corridors rather than the species itself.[56]

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[50] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art.2(c).

[51] Alan Boyle and Catherine Redgwell, International Law and the environment (Oxford 2021). Pg. 365.

[52] See "Issue II(C)"; United Nations Framework Convention on Climate Change ["UNFCCC"], 1992, S/Treaty/Doc/No.102-38 Art.4.6.

[53] African Convention on the Conservation of Nature and Natural Resources, 1968 CAB/LEG/24.1. Article VII.

[54] SAF.17.

[55] See "Issue II(a)"

[56] Impact Assessment and Migratory Species, 2002 UNEP/CMS/Resolution07.02 Par2.

Moreover, the scope and contents of the EIA conducted by the DRI complied with the general requirements provided by posterior codification of the ILC:[57] it was abided by the DRI National Laws, conducted in good faith, took in consideration the use and waste of water.[58] Even when the DRI's EIA was conducted 42 years ago, it is compatible with contemporary consuetudinary obligation and license Replomuté to waive the necessity to re-conduct an EIA; thence, the customary,[59] and treaty-based,[60] obligation of notification and cooperation has not been triggered.[61]

II. REPLOMUTÉ'S ACTIONS CONCERNING THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI ARE DEFERENTIAL TO ITS INTERNATIONAL OBLIGATIONS

Aringuv has raised a dispute by alleging that Replomuté has not complied with its international obligations on relation to its proposed activities on the DRI;[62] further, arguing the existence of indirect responsibility derived from the exercise of coercion over the DRI.[63] Thence,

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[57] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art. 7. Pars.7-8.

[58] Stefano Saluzzo, Weapons and the Protection of the Environment during Armed Conflicts, in International Law (CBRN Events, 2022). Pg. 381.

[59] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Arts.9-13.

[60] CBD. Art.14(1)(d); Espoo Convention. Arts.3,5&6.

[61] Espoo Convention. Arts.3,5&6.

[62] SAF.36.

[63] SAF.39.

the Respondent contains that (A) Replomuté has honored, with unyielding regard, its obligations derived from the CMS; moreover, that, (B), in any scenario, it is not subjected to indirect responsibility. Additionally, that (C) Replomuté has been assertive on regard to its Climate Change commitments.

A. REPLOMUTÉ COMPLIED WITH ITS OBLIGATIONS DERIVED FROM THE CONVENTION ON MIGRATORY SPECIES

1. *THE CONVENTION OF MIGRATORY SPECIES IS NOT APPLICABLE*

Inasmuch as Article 1 of the CMS provides a clear definition of migratory species, it prescribes unquestionable guidelines for the determination of such status, as its special considerations are predicable to species, whose conservation requires concerted action by Range States,[64] that cyclically and predictably cross jurisdictional borders.[65] Thence, Replomuté highlights how the scope of application of the CMS provisions is limited to species whose

[64] Cfr. Behring Sea Fur Seals Arbitration (U.S. v. U.K.), 1898.

[65] Convention on the Conservation of Migratory Species of Wild Animals ["CMS"], 1979 1651 UNTS 333, 19 ILM 15 (1980). Art.1.

migration relates to a cycle of any nature and frequency,[66] that implies, presupposing certain factors, the phenomenon could be expected to occur even if not regularly in time.[67]

Bearing in mind the existence of two known RMG populations, the northern population that inhabits a transboundary national park, and the southern population that occupies a national park on the DRI;[68] further, noting the RMG is a listed species on Appendix I of the CMS,[69] it is imperative to assort the distinction betwixt the RMG as a migratory species *per se* and the specific behavior of the southern population of the RMG that resides within the DRI, which displays patterns that significantly deviate from the conventional migratory movements typically observed in the northern RMG population.[70]

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[66] Migratory Animals connect the Planet: the Importance of Connectivity as a Key of Migration Systems and a Biological Basis for Coordinated International Conservation Policies, 2017 UNEP/CMS/COP12/Inf.20; Report of the Third Meeting of the Parties to the Gorilla Agreement, 2019 UNEP/GA/MOP3/REPORT.

[67] Directives relatives à l'application de certains termes utilisés dans la convention, 1988 UNEP/CMS.Conf.2.16; Directrices para la preparación y evaluación de propuestas de enmienda de los apéndices de la convención, 2020 UNEP/CMS/COP13/Doc.27.2. Par.3.

[68] SAF.9.

[69] Ibid.; Clarifications to the Record.A8.

[70] Ibid.; Royal Belgian Institute of Natural Sciences, Report on the Conservation Status of Gorillas. Concerted Action and CMS Gorilla-Agreement, 2008

Hence, as the *sine qua non* requisites for the concession of the "migratory species" classification are nonexistent, the Respondent's contention gravitates towards the understanding of the southern population as a non-migratory population and, therefore, the lack of applicability of the CMS.

2. *SUBSIDIARLY, REPLOMUTÉ IS A NON-RANGE STATE*

Anyhow, if the Court determines that the CMS is applicable, the Court must consider that, particularly, Replomuté does not constitutes, geographically,[71] the essential migratory habitat or corridors that facilitate the regular cross-border movements of the RMG.[72]

Likewise, as the LC is a private actor[73] pursuing its for-profit purposes, acting under the scope of the 1981 concession agreement, and as it does not exercise *de iure* nor *de facto* jurisdiction over the territory, unequivocally, and in conformity with the CMS, Replomuté must be considered as a Non-Range State. Consequently, the Respondent's status underscores its compliance with international law in its engagement with the RMG southern population.

UNEP/CMSSecretariat/Techical_Series_17; Report of the Status and Conservation of the Mountain Gorilla, 2004 UNEP/CMS/ScC12/Doc.5Attach 4.

[71] SAF.3.

[72] CMS. Art. I(1)(h).

[73] See "Issue I(B)".

Moreover, the Respondent, once again, challenges the competence of the Court to adjudge this contention, in accordance with the Rules of the Court.,[74] as the admissibility of the claim raised is affected by the application of the *Monetary Gold Principle*;[75] considering that, the DRI is, in any case, the Range State whose legal interest conforms the subject-matter of the dispute.[76]

3. *IN ANY CASE, REPLOMUTÉ FULLFILED ITS OBLIGATIONS AS A RANGE STATE*

In case the Court considers Replomuté is a Range State in accordance with the aforementioned provisions of the CMS, it is the contention of the Respondent that it has fulfilled the obligation of protection and safeguard of vulnerable migratory species and their habitat; farther, emphasizing on the obligation to ensure the well-being of migratory species as they migrate across borders, under the mandate of prohibition against executing any taking activity, specifically, harassment.[77]

Inasmuch as harassment refers to actions undertaken with a specific intention to harm or disturb,[78] the purposed activities to be executed by the LC does not conform to any other specific

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[74] Rules of the Court, 1978 I.C.J. amended 24 October 2023. Art.79.

[75] See "Issue I(B)".

[76] Monetary Gold. Pars.19-32.

[77] CMS. Art. III(4)(c); CMS. Art. III(5).

[78] Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), 2014 I.C.J. Par.222-227.

intention rather than a for-profit purpose;[79] thus, not constitutive of harassment. Likewise, the construction of a pipeline does not constitute a factor that endanger or is likely to further endanger the southern population of the RMG. Forasmuch as the behavioral patterns of the population locates them exclusively on a national park within the DRI,[80] it derives on the construction not having any affectation with respect to the fictitious biological connectivity[81] of the population, especially regarding a non-existent migratory corridor.[82]

B. REPLOMUTÉ IS NOT SUBJECTED TO INDIRECT RESPONSIBILITY

Acknowledging the applicant has stated that Replomuté incurred in coercion on regard of the proposed activities to be held on the DRI, the Court shall undertake this claim adjudging Replomuté is not subject to indirect responsibility on the grounds of article 18 of the ARSIWA (1) as it does not reflect international custom. In any case, (2) the proposal penalties by the arbitral tribunal, amounting to 825 million USD,[83] are neither a Replomuté's conduct nor are irresistible to the DRI.

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[79] See "Issue II(A)(2)"

[80] SAF.9.

[81] Cfr. Migratory Animals connect the Planet: the Importance of Connectivity as a Key of Migration Systems and a Biological Basis for Coordinated International Conservation Policies, 2017 UNEP/CMS/COP12/Inf.20.

[82] Ecological Connectivity – Technical Aspects, 2023 UNEP/CMS/COP14/Doc.30.2.1.2.

[83] SAF.23.

1. *ARTICLE 18 OF THE ARSIWA DOES NOT REFLECT INTERNATIONAL CUSTOM*

As a subsidiary organ of the UN General Assembly, ILC's mandate is constituted by the codification of customary international law, in addition, to the encouragement of its progressive development.[84] Furthermore, the constitutional instrument of the Commission has determined these two functions are independent.[85]

The progressive development of international law is the preparation of draft instruments to further be developed by international law and has neither been recognized as categories of international obligations not supported by State practice; farther, as the Respondent stated on its diplomatic note from 24th September 2019, the ILC has surpassed its mandate[86] by codifying coercion as a mechanism to attribute responsibility to States for the wrongful act of another State.

For the codification of the existence of previous customary international law, the ILC should have recognized a generalized sense of legal obligation supported by a consistent practice

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[84] U.N. Charter. Art.13(1); Establishment of an international law commission, 1947 UNGA/A/Res/174.

[85] Statute of the international law commission, 1981 A/Res./36/39. Art.15.

[86] SAF.30.

of States towards the fulfilment of said obligation.[87] As the commission could only provide one example of a contention regarding a State practice in relation with "coercion", there is not sufficient evidence providing for the existence of customary law.[88] Thus, Aringuv is precluded to submit a claim to the Court, based on a figure not recognized by international law, to call for the alleged responsibility of Replomuté.

2. *IN ANY CASE, THE PROPOSED PENALTIES DO NOT CONSTITUTE AN ACT OF COERCION*

Article 18 of the ARSIWA envisages coercion as a scenario for the derivation of responsibility based on acts with sufficient entity and an irresistible character to force the coerced State to fulfill the coercing State will as per not complying with an international obligation.[89]

On March 2015 the arbitral tribunal considered that the LC was entitled to execute its oiling activities in the DRI, and thence considered two possible outcomes for the peaceful settlement of the dispute:[90] for the DRI to give a solution of continuance to the activities described on the

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[87] North Sea Continental Shelf (Federal Republic of Germany v. Netherlands), 1969 I.C.J. Pars.42-46; Delimitation of the maritime boundary in the Gulf of Maine Area (Canada v. U.S.), 1984 I.C.J. Pgs. 264,298&299.

[88] Cfr. James D. Fry, Coercion, Causation, and the Fictional Elements of Indirect State Responsibility (Vanderbilt Journal of transnational law, 2021).

[89] ARSIWA. Art.18. Par.2.

[90] SAF.23.

concession agreement of 1981,[91] or to be subjected to a hefty penalty. Inasmuch as the DRI opted for the former solution of continuance,[92] no serious economic pressure was laid on threatening the further compliance on its international obligations.

Moreover, such ruling was determined by an arbitral panel and the intervention of Replomuté was limited to the invocation of the optional clause, providing for a mandatory commercial arbitration.[93] Hence, the factual assumption envisaged on article 18 of the ARSIWA was not materialized accounting for the privation of the implementation of such provision, as the essential character, for the purposes amounting for coercion to be understood as a mean to attribute responsibility to Replomuté by any act of the DRI, requires, unequivocally, the irresistibility for the compliance of Replomuté's mandate.[94] Consequently, as the compliance of the obligations arising from the CMS and the Gorilla Agreement was not jeopardized, this Court is not able to adjudge the configuration of an act of coercion, and, hence, there are not legal grounds for the invocation of the international responsibility of Replomuté.

C. CLIMATE CHANGE COMMITMENTS

The applicant alleges that the oil exploitation made by the LC in the DRI violates Replomuté's Climate Change related international obligations. Nevertheless, Replomuté (1) has

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[91] SAF.17.

[92] SAF.23.

[93] SAF.22.

[94] ARSIWA. Art.18.Par.2.

fulfilled its international obligations by due regarding its NDCs, and (2) anyhow, the eventual lawful emissions are made on exercise of the DRI's right to development.

1. *REPLOMUTÉ HAS ABIDED ITS CLIMATE CHANGE OBLIGATIONS*

Mindful on the non-necessity of regarding Climate Change considerations on an EIA, the UNFCCC seek to tackle the climate change crisis[95] by reducing the concentration of GHG in the atmosphere.[96] Additionally, the Paris Agreement ["PA"] establishes international binding obligations to determine and implement NDCs to limit the increase in the global average temperature.[97] Such international obligations, established in both the UNFCCC and the PA, are obligations of means that must be satisfied in consideration on the "different national circumstances"[98] of every contracting State.

Moreover, Developed States are obliged to take the lead "by undertaking economy-wide absolute emission reduction targets",[99] notwithstanding they are allowed to execute their obligations with a *certain degree of flexibility*[100] on adopting national policies on mitigation and adaptation.

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[95] Cfr. International Panel on Climate Change, AR6 Synthesis Report: Climate Change 2023.

[96] UNFCCC. Arts.2&3.

[97] Paris Agreement to the UNFCCC, 2015 T.I.A.S.No.16-1104. Art.2(a).

[98] PA. Art.2(2).

[99] PA. Art.4(4).

[100] UNFCCC. Art.4.6.

Therefore, the Respondent highlights that Replomuté is a State committed to the protection of the environment and the implementation of Climate Change mitigation and adaptation measures. Accordingly, it has ratified both the UNFCCC and the Paris Agreement as Annex I Party,[101] since it is considered a Developed State.[102]

Thence, Replomuté complies with its reduction of emissions obligation by determining and executing the NDC of the European Union as one of its member State.[103] The current NDC of the European Union complies with the PA obligations for Developed States.[104] This NDC endorses the objective of achieving a climate neutral European Union by 2050.[105] As a result, the European Union, with Replomuté as a Member State, are, nowadays, the most greenhouse gas efficient major economical group.[106]

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[101] SAF.13.

[102] SAF.2.

[103] SAF.15.

[104] Submission by Germany and the European Commission on Behalf the European Union and its member States, 2020 Update of the NDC of the European Union. Par.27.

[105] European Council Conclusions 12 December 2019, EUCO 29/19.

[106] Michel den Elzen et. Al. Are the G20 economies making enough progress to meet their NDC targets (Energy Policy, 2019).

Anyhow, based on the consuetudinary precautionary principle,[107] States must display the measures needed to anticipate and avoid the foreseeable risks of environmental damages.[108] Such measures should be appropriate and proportional to the degree of risk on environmental damages.[109]

Hence, the Court must note that the pipeline construction in the DRI was halted as a consequence of the declaration of the COVID-19 pandemic, remaining, to this day at 98% of completion.[110] As the oil exploitation activities are suspended, and, consequently, there have not been any GHG emissions related to the LC activities on the DRI, the obligations derived from the precautionary principle have been fulfilled.

2. *THE EVENTUAL EMISSIONS ARE LAWFULL*

In any case, international customary law,[111] as crystalized both on Principles 21 and 2 of Stockholm and Rio Declarations, respectively, recognize State's right to development by exploiting the resources within its jurisdiction if it does not cause transboundary harm to third

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[107] Pulp Mills. Par.101; Border Activities. Par.104.

[108] Draft Articles of Transboundary Harm from Hazardous Activities, 2001. Art.3.

[109] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Advisory Opinion, 2011 I.T.L.O.S. Par.117.

[110] SAF.32.

[111] Gabčíkovo-Nagymaros. Pars.140&141.

State's environment and natural resources.[112] Also, both the UNFCCC and the PA recognize the right of Developing States to sustainably exploit their natural resources.[113]

Thus, when the proposed oil extraction activities start, such GHG emissions would be emitted by the DRI in exercise of its right to development, in accordance with the common but differentiated responsibilities principle and the DRI's NDC. The DRI is allowed to commit to only a 20% reduction in their emissions from 2022 to 2031[114] since it is not an Annex I party to the UNFCCC. On such consideration, Replomuté is neither liable nor responsible for the licit emissions made by the oil extraction activities held in the DRI.

Considering the global nature of Climate Change,[115] States are obliged to "pursue voluntary cooperation in the implementation of their nationally determined contributions (…) to promote sustainable development and environmental integrity".[116] Consequently, "developed countries shall provide financial resources to assist developing country parties with respect to both mitigation and adaptation measures"[117] as an application of the right to the sustainable development of States.

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[112] Stockholm Declaration. Principle 21; Rio Declaration. Principle 2.

[113] UNFCCC. Preamble & Pgs.2&6; PA. Art.7(9)(e).

[114] SAF.15.

[115] Cfr. International Panel on Climate Change, AR6 Synthesis Report: Climate Change 2023

[116] PA. Art.6.; UNFCCC. Art.3(5)

[117] PA. Art.9(1)

Inasmuch as Replomuté has fulfilled its financial assistance and cooperation international obligations by the establishment of the LC's "Friendship Fund",[118] in the context of the licit oil operations in the DRI, such measure was established as a mean of international cooperation following the solution of continuance provided by the arbitral tribunal.[119]

Even when the Fund's objective is the establishment of "economic development activities in the DRI",[120] contained in the right to development, such fund must be executed, to promote sustainable development. The fund's nature must be analyzed in good faith,[121] so as it complies with both the right to development and the flexibility on Climate Change obligations. As such, the licit GHG emissions are attributable to the DRI and Replomuté has cooperated on their sustainable development according to its obligations as a Developed State, thus, the Court should dismiss this claim.

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[118] SAF.23.

[119] Ibid.

[120] Ibid.

[121] VCLT Art.31(1)

CONCLUSION & PRAYER FOR RELIEF

Therefore, Replomuté respectfully request the Court to adjudge and declare that:

I. Replomuté has complied with International Law with respect to the conduction of an EIA; and

II. Replomuté's actions concerning the proposed oil extraction activities in the Democratic Republic of Ibirunga are deferential to its International Obligations.

Respectfully submitted,

AGENTS FOR THE RESPONDENT