TEAM NUMBER: 2408

28TH ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT

COMPETITION 2023-2024

BEFORE

THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS.

THE CASE CONCERNING

QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

(ARINGUV V. REPLOMUTÉ)

ARINGUV – APPLICANT

&

REPLOMUTE - RESPONDENT

MEMORIAL FOR THE APPLICANT

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Declaration of the United Nations Conference on the Human Environment, June 16, 1972,

International Law Commission, ‘‘Commentaries to the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities,” in Report of the International Law Commission, Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001) 377.

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Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Advisory Opinion of Apr. 2, 2015, ITLOS Rep. 4, ¶ 140;

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K. Hanna, 'A Brief Introduction to Environmental Impact Assessment' in K. Hanna (ed.), Environmental Impact Assessment: Practice and Participation (Oxford University Press, 2015)

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STATEMENT OF JURISDICTION

In accordance with Article 40 of the Statute of the International Court of Justice, the Federal Republic of Aringuv {Aringuv}, and the Federal Republic of Replomuté (Replomuté) have submitted to the International Court of Justice by Special Agreement, questions concerning their differences relating to Mountain Gorillas and Impact Assessment as contained in Annex A.

The parties transmitted a copy of the Special Agreement to the Registrar of the International Court of Justice on July 24, 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 July 31, 2023. The Parties have accepted the jurisdiction of the International Court of Justice. 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 and execute same in good faith.

STATEMENT OF FACTS

The Democratic Republic of Ibirunga (DRI) is a coastal sovereign state in central Africa and is a low-income country. Its economy is primarily agrarian-based, although it is rich in natural resources, Proven oil resources (oil in place) exceed 9.5 billion barrels, of which 4.4 billion are recoverable using current technology. It also has a history of colonialism by European states.

Aringuv is a sovereign state in central Africa that shares its eastern border with the DRI. Aringuv has a strong and growing hospitality and wildlife tourism industry, including mountain gorilla tourism.

Replomuté is a sovereign state in Europe and is among the world's leaders in gross value of industrial output through its mining and ore industry. Replomuté is also one of the world's largest importers of crude oil, which supports its economic activity.

In 1981, the DRI and Replomuté entered into a concession agreement that granted the Lenoir Corporation, a corporation wholly owned and operated by the government of Replomuté, the right to explore and extract oil from the area inhabited by the southern population of the Royal Mountain Gorilla. The agreement also permitted the Lenoir Corporation to construct a pipeline to transport any oil extracted from the DRI to a coastal city in the DRI, where the oil would then be transferred to tankers to be shipped to Replomuté. Prior to signing the agreement, DRI conducted an environmental impact assessment (EIA) in accordance with its national laws. The EIA, which complied with the DRI's national laws, did not take potential impacts to gorillas, gorilla habitat, or climate change into account.

Aringuv, Replomute and DRI became parties to several conventions including Convention on Biological Diversity (CBD), Convention on the Conservation of Migratory Species of Wild

Animals (CMS), Conservation of Gorillas and Their Habitats (Gorilla Agreement), Espoo Convention and Climate Change conventions (UNFCCC and Paris Agreement).

Later on, Local and international nongovernmental organizations (NGOs) expressed serious concern to the DRI, Replomuté, and the CMS Secretariat about the negative impacts to the Royal Mountain Gorillas that would likely occur as a result of oil extraction activities. The NGOs called on the Lenoir Corporation to abandon the project, emphasizing that the project's footprint would encompass the primary habitat of the southern population of the Royal Mountain Gorilla.

In May 2018, the Aringuv Ministry of Foreign Affairs contacted the Replomuté Ministry of Foreign Affairs to express concerns about Replomuté's planned oil extraction activities in the DRI with respect to the activities' impact on the Royal Mountain Gorilla and the activities' implications for contributing to climate change. Periodic informal discussions and negotiations were conducted for several months, with no country conceding to the other.

On 22 May 2022, the Aringuv Minister of the Environment called for the DRI to revoke the permits required for construction and operation of the pipeline. She explained that this action was needed out of concern for both the Royal Mountain Gorilla and the "climate crisis." Negotiations between Aringuv and Replomuté continued and were facilitated by the Government of Uganda, to which Aringuv and Replomuté express their deep appreciation. As a result of the negotiations, Aringuv and Replomuté agreed to submit certain questions to the International Court of Justice (ICJ). Replomuté agreed that the Lenoir Corporation would not proceed with the project until the ICJ issues its judgment.

The DRI takes no position regarding the claims raised in paragraphs 36 and 37.

QUESTIONS PRESENTED

I. WHETHER REPLOMUTÉ HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PREPARATION OF AN EIA

II. WHETHER THE ACTIONS OF REPLOMUTÉ WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI COMPLY WITH INTERNATIONAL LAW.

SUMMARY OF ARGUMENTS

ISSUE 1

We contend that the provisions of the international laws are applicable and non-adherence to them constitute a violation of those provisions. An EIA is required and the EIA conducted by DRI before the commencement of the project does not meet the international standards required.

ISSUE 2

Replomuté breached its due diligence obligation under the CBD, Espoo Convention and Customary international law by not conducting an EIA that fits the requirements set out in the treaties, a breach of the obligation for States to ensure that their activities do not cause harm to the environment; Replomute is not in compliance with the CMS as its activities could be detrimental to the survival of the critically endangered Royal Mountain Gorilla; The acts of Replomuté violate customary international law as to the exploitation of natural resources to balance it with environmental protection obligations; The Respondent is in Breach of its obligations under the UNFCCC and the Paris Agreement as regards the potentiality that the activities will have dangerous human interference with the climate system.

These breaches are attributable directly to Replomuté through the ‘operation’ of Lenoir Corporation and indirectly through the coercion of DRI.

LEGAL ARGUMENTS

I. THAT AS A PROCEDURAL MATTER, REPLOMUTÉ HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PREPARATION OF AN EIA.

The applicant states that the laws that are relevant to the dispute between Replomute and Aringuv include; The ESPOO Convention, the United Nations Convention on Climate Change, the Paris Agreement, the Gorilla Agreement, the Convention on Biodiversity, the DRI-Replomute Agreement, the revised African Convention on conservation of Natural resources, Customary international law, the Vienna convention on the laws of treaties.

A. That these laws are applicable within the context of the situation between Replomute and Aringuv.

i. The Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention) is applicable in the dispute between Replomute and Aringuv

The applicant states that the dispute between Replomute and Aringuv bothers on questions relating to the subject matter covered by the **ESPOO Convention**. **The ESPOO Convention** (Article 2) establishes the obligation of states to either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities. The applicant argues that Replomute having ratified the **ESPOO Convention**, has an obligation under it to carry out continuous assessment to analyse the impact of the proposed oil extraction on the environment. The applicant argues further that the fact that Aringuv has only signed (Paragraph of the Moot problem) and not ratified the **ESPOO convention** does not displace nor, does it relief Replomute from this obligation. The applicant argues further that relieving Replomute from its obligation under international law will defeat the purpose of the ESPOO convention. **Article 31 Paragraph 1 of the Vienna Convention of the Laws of Treaties 1969** provides that;

> *... A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.*

The applicant concedes that Aringuv has not ratified the **ESPOO convention** but argues that it is nonetheless bound by it and has an obligation and a right under the convention and as such, the **ESPOO Convention** applies to the dispute between Aringuv and Replomute. **Article 11 of the VCLT provides;**

The consent of a State to be bound by a treaty may be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession, or by any other means if so agreed.

The obligation of Aringuv as a signatory to the **ESPOO** Convention is established under Article 18 of the VCLT. And it provides that;

A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when it has signed the treaty

The applicant further affirms that the ESPOO Convention anticipates a situation where a state who has only signed it would be able to submit questions of interpretation and application of the Convention to the International Court of Justice. **Article 15 of the ESPOO Convention** provides in essence that;

when signing….the convention or at any time thereafter, a party may declare in writing that a dispute concerning interpretation and application of the convention (ESPOO) be submitted to the International Criminal court.

It is argued that the convention having recognized the rights of a signatory to interrogate its interpretation has made the convention a relevant and applicable law in the dispute between Aringuv and Replomute.

The applicant concludes on this claim that the Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO Convention) is applicable in the dispute between Replomute and Aringuv.

ii. That the Paris Agreement, the United Nations Framework Convention on climate change and the International Law Commission Articles on Prevention of Transboundary Harm from Hazardous Activities are applicable in the dispute between Replomute and Aringuv

The applicant notes that Replomute and Aringuv are both parties to the **UN Framework Convention on Climate Change and the Paris Agreement.** And as such, they both have an obligation under international law not to indulge in any actions that may directly or indirectly be incompatible with their obligation under the UNFCCC alongside the international principle of ***pacta sunt servanda*** which provides that treaties ratified and does enter into force imposes the obligation on the parties to carry out the agreement in good faith[1]. This is also in conformity with **Article 26 of the Vienna Convention on the Law of Treaties**;

Every treaty in force is binding upon the parties to it and must be performed by them in good faith.

The provision of **Article 4 Paragraph 1(F) is of the UNCFCC** states;

States shall take climate change considerations into account, to the extent feasible, in their relevant social, economic and environmental policies and actions, and employ appropriate methods, for example impact assessments, formulated and determined nationally, with a view to minimizing adverse effects on the economy, on public health and on the quality of the environment, of projects or measures undertaken by them to mitigate or adapt to climate change

The applicant argues that the proposed oil exploration activities of Replomute have significant effect on climate change and as such, an impact assessment must be conducted to determine the level of climatic incursion in a bid to develop effective prevention, or at the barest minimum, mitigation strategies. The applicant relies on the authorities of **Masnadi and Brandt (2017),** to buttress the argument that oil exploration activities have an effect on climate change.[2]

The applicant also argues that the International Law Commission Articles on Prevention of Transboundary Harm from Hazardous Activities applies in the case as both parties are members of the United Nations and state parties to the Statute of the International Court of Justice. **Article 7** provides that;

[1] Kunz, The Meaning and the Range of the Norm Pacts Sunt Servanda, 39 A. J. ler'L L. 180 (1945). Article 26 of the Vienna Convention on the Law of Treaties provides: "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Vienna Convention, supra note 10.

[2] Masnadi, M.S. and Brandt, A.R., 2017. Climate impacts of oil extraction increase significantly with oilfield age. *Nature Climate Change*, *7*(8), pp.551-556.

Any decision in respect of the authorization of an activity within the scope of the present articles shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment.

The applicant concludes that the United Nations Convention Framework on climate change, Paris Agreement and the International Law Commission Articles on Prevention of Transboundary Harm from Hazardous Activities are applicable in the dispute between Replomute and Aringuv.

B. THAT THE FAILURE OF REPLOMUTE TO FULFIL THE OBLIGATIONS IMPOSED BY THESE LAWS ARE IN VIOLATION OF INTERNATIONAL LAW.

i. That Replomute has an obligation under international treaties and customary international law to conduct and environmental impact assessment on its proposed oil exploration activities

Environmental Impact Assessment (EIA) is the process whereby states evaluate projects which are under consideration in order to determine their impact on the environment[3]. The obligation to perform EIA forms part of customary international law and also treaty-based obligation[4],[5]. In the **Argentina v. Uruguay[6],** the International Court of Justice maintained the position that states are under a customary international law obligation to undertake transboundary Environmental Impact Assessments prior to carrying out projects that pose the risk of causing significant adverse transboundary impacts. In the words of the court;

a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed industrial activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.

[3] K. Hanna, 'A Brief Introduction to Environmental Impact Assessment' in K. Hanna (ed.), Environmental Impact Assessment: Practice and Participation (Oxford University Press, 2015)
[4] See Nicaragua v. Costa Rica Judgment of 16 Decembre 2015,
[5]K. Bastmeijer and T. Koivurova, 'Transboundary Environmental Impact Assessment: An Introduction' in K. Bastmeijer and T. Koivurova (eds.), Theory and Practice of Transboundary Environmental Impact Assessment (Brill/Martinus Nijhoff Publishers, 2008);
[6] Argentina v. Uruguay (Pulp Mills on the River Uruguay) Judgment, 20 April 2010, para. 204.

The court held further in **Pulp Mills case** that the obligation to conduct EIA is in furtherance of the obligation to exert due diligence as required by a state in its territory. This obligation generally mandates states not to knowingly allow its territory to be used for acts contrary to the rights of other states. The applicant notes that the obligation to perform EIA has been a subject of various disputes before the International Court of Justice and other international tribunals e.g **Ecuador v. Colombia[7], Gabčikovo-Nagymaros's case[8] and Ireland v. United Kingdom[9].** In all of these cases, the ICJ have reiterated the necessity of EIA on project that have transboundary in conjunction the obligation of the state to protect the environment.

ii. Whether EIA is required in this case

In Pulp Mills case, the ICJ determined that EIA is absolutely required where there is a *'…risk that the proposed industrial activity may have a significant adverse impact in a transboundary context'*. This position was reechoed in the case of **Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)[10]** where the ICJ maintained that;

State's obligation to exercise due diligence in preventing significant transboundary harm requires that State to ascertain whether there is a risk of significant transboundary harm prior to undertaking an activity having the potentially adversely to affect the environment of another State. If that is the case, the State concerned must conduct an environmental impact assessment.

iii. What amounts to "risk of significant transboundary harm"?

The applicant argues that a "risk of significant transboundary harm" is to be taken objectively based on the peculiar circumstances of each case. The **ILC commentary Draft Article on Article 1 states** that the threshold for "significant harm" is an ambiguity the determination of which should be on a case to case based as it involves more factual considerations than legal determination. The harm must lead to a real detrimental effect on matters such as, for example, human health, industry,

[7] Aerial herbicide spraying (Ecuador v. Columbia), Order of 13 September, 2013, I.C.J Reports 2013 p. 278
[8] (Hungary/Slovakia), Judgment, ICJ Reports 1997, p. 7
[9] The MOX Plant Case (Ireland v. United Kingdom), ITLOS, Request for Provisional Measures, Order of 3 December 2001, para. 64.
[10] Judgment of 16 Decembre 2015,

property, environment or agriculture in other States. Such detrimental effects must be susceptible of being measured by factual and objective standards[11].

The applicant argues that in the circumstances of this case, the proposed oil exploration activities of Replomute presents a risk of a devastating impact on the southern population of the critically endangered Royal Mountain Gorilla. The applicant asks the court to into account the fact that the scale of the Replomute project is substantial like it did in the case of **Costa Rica v. Nicaragua**. The present project involves the exploration and extraction of oil from the area inhabited by the southern population of the Royal Mountain Gorilla. The applicant further asks the court to take note of the fact that Royal Mountain Gorilla are a critically endangered species under the IUCN Red List of Threatened Species. The agreement also permitted the Lenoir Corporation to construct a pipeline to transport any oil extracted from the DRI to a coastal city in the DRI, where the oil would then be transferred to tankers to be shipped to Replomuté. This, satisfies the condition of "risk of significant transboundary harm".

iv. That the EIA conducted by DRI before the commencement of the project does not meet the international standards required.

While the applicant concede that there is no explicit guideline an EIA must take, the applicant nonetheless acknowledge that international law requires at a minimum that an EIA assess possible effects on people, property and the environment of other states likely to be affected.

Additionally, Replomute attested to DRI having conducted an EIA before the commencement of the project in 1981. However, the applicant notes that internationally approved standard for EIA requires a continuous rather than an isolated assessment[12]. The court noted in Pulp Mill's case that the obligation to conduct EIA is a continuous one and it does not stop with the presentation of a report and the making of a decision on the project. The court noted in **Costa Rica v. Nicaragua** that "…the obligation to carry out an environmental impact assessment is a continuous one, and that monitoring of the project's effects on the environment shall be undertaken, where necessary, throughout the life of the project…"

[11] International Law Commission, ''Commentaries to the Draft Articles on Prevention of Transboundary Harm from Hazardous Activities," in Report of the International Law Commission, Fifty-Third Session, UN GAOR, 56th Sess., Supp. No. 10, UN Doc. A/56/10 (2001) 377.
[12] ILC Report (2001) GAOR A/56/10, commentary to Article 7, at pp. 402-5

That applicant concludes that the EIA conducted by DRI before the commencement of the project does not meet the international standards required.

The applicant concludes finally that the failure of Replomuté to prepare an Environmental Impact Assessment with respect to the proposed oil extraction activities in the region violates international law.

II. THAT AS A SUBSTANTIVE MATTER, THE ACTIONS OF REPLOMUTÉ WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI VIOLATE INTERNATIONAL LAW

Article 2 of ARSIWA[13] is clear on the conditions precedent to deciding the culpability of a state as to the commission of an internationally wrongful act. The elements are: the action or omission is attributable to the State under international law; and constitutes a breach of an international obligation of the State. We contend that these actions constituting breach of international obligations are attributable to Replomuté.

A. THE ACTIONS/OMISSIONS ARE ATTRIBUTABLE TO REPLOMUTÉ

For the responsibility of the actions/omissions to be either directly or indirectly attributable to Replomute, it must be regarded by ARSIWA:

i. Replomuté shares direct responsibility for the acts of Lenoir Corporation

From the facts of the case, it is very clear that Lenoir Corporation that is in charge of the oil exploration in the territory of DRI is *owned and operated* by Replomuté[14], by such nature confers responsibility on Replomuté as the *operation* of the corporation suffices for "acting on the instructions of, or under the direction or control of, that State in carrying out the conduct."[15]

[13] I.L.C., 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
[14] Paragraph 17 of facts
[15] Article 8 of ARSIWA

While we are not unaware that states owning a corporation does not permit piercing of the corporate veil and the attribution of conduct to a state[16], the conduct will however be attributed to the state in cases where 'the corporate veil' is a mere device[17]. In this instant case, the actions of Lenoir Corporation can be attributed to the state of Replomuté as the company has no effective separate existence, 'the affairs of the entity and the state are so closely intertwined and confused that the entity could not be properly regarded for any significant purpose as distinct from the State'[18], this is evident through the negotiations[19], decision making[20] and so on.

Therefore, the acts of Lenoir Corporation can be attributed to Replomuté.

ii. ***The acts of DRI are attributable to Replomuté***.

We contend that Replomuté shares indirect responsibility for the acts of DRI as DRI was coerced by Replomuté to engage in the action/omission that resulted in the breach of international obligations. The impact of coercion is these situations is that responsibility for the wrongful act is transferred from the coerced state to the coercing state. The rationale behind this is that, "the coercing state is the prime mover in respect of the conduct and the coerced state is merely its instrument."[21]

The First Reading of ARSIWA relied on a definition which saw coercion as a state forcing another state to commit an internationally wrongful act where there is no standing relationship of control or dominance between the two states, but where control is manifest only at the time of the wrongful act in question. Coercion is not limited to the threat or use of armed force, but instead covers all

[16] *La Generale des Carrieres et des Mines v. FG Hemisphere Associates* LLC (2012) UKPC 27
[17] Barcelona Traction, Light & Power Company Limited (Belgium v. Spain) Second Phase, ICJ Rep. 1970 p.3, 39
[18] FG Hemisphere Associates LLC's case
[19] Paragraph 17 of facts
[20] Paragraph 28 of facts
[21] ARSIWA supra note at 65.

actions that seriously limit the freedom of decision of the coerced state by making it extremely difficult to act in a way different from that required by the coercing state.[22]

In this instant case, a careful examination of the facts shows that the DRI wanted to withdraw from the agreement upon the discovery of the environmental impacts it will have on the Royal Mountain Gorilla, however they were coerced into continuance by Replomuté first by the invocation of the arbitration clause when it was almost clear that the action of the DRI was not borne out selfish reasons[23], also by the promise of $10 million USD[24] which is enough to coerce DRI considering its status as a low income country with their gross national income per capital as $820.[25]

In conclusion, the violations of international law by DRI are attributable to Replomuté by the provision of ARSIWA.

B. THERE WERE BREACHES OF INTERNATIONAL OBLIGATIONS

For there to be breaches of these international obligations, it is apposite to affirm the existence of these obligations.

i. Replomuté breached its due diligence obligation under the Convention on Biological Diversity (CBD), Espoo Convention and Customary international law.

Article 14(1)(a) of the **Convention on Biological Diversity (CBD)** imposes an obligation on Parties to carry out Environmental Impact Assessments (EIA) for projects that are likely to have significant adverse effects on biological diversity. The Espoo Convention shares a similar

[22] Report of the International Law Commission on the work of its Thirty-first Session, U.N. Doc. A/34/10, Supp. No. 10, 26, 2(2) Y.B. Int'l L. Comm'n 93, 102 (1979) [hereinafter Thirty-first Session Report)
[23] Paragraph 22 of the facts
[24] Paragraph 23 of facts
[25] Paragraph 1 of facts

provision[26]. Replomuté, as a Party to the CBD and Espoo Convention, is bound by these provisions even when the impact transpires outside its territory (transboundary impacts), as elucidated by the ICJ in the **Pulp Mills on the River Uruguay case.** [27] The obligation for States to ensure that their activities do not cause harm to the environment is a due diligence obligation as states are saddled with responsibility not to cause harm to the environment.[28]

Each party to the CBD must introduce procedures for environmental impact assessments (EIAs) for projects likely to significantly affect biological diversity, aimed at avoiding or minimizing such effects[29]. Replomuté, as a Party to the CBD, has a clear and undeniable obligation to conduct an EIA for activities that may affect biodiversity in a transboundary context, which includes the proposed oil extraction activities in the DRI. The significance of this responsibility is magnified when considering the precarious status of the Royal Mountain Gorilla, a critically endangered species whose survival is directly threatened by these proposed activities[30].

The failure of Replomuté to carry out an EIA, which should have evaluated the impact of the proposed oil extraction on the Royal Mountain Gorilla and its habitat where the proposed oil extraction activities present a significant likelihood of transboundary impact on biodiversity, particularly on the critically endangered Royal Mountain Gorilla, is a breach of its duties under the CBD. The Respondent's neglect to consider the transboundary impacts of its actions is an

[26] Article 2(1) of Espoo Convention: "*The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities."*

[27] Argentina v. Uruguay, Order, Provisional Measures, ICJ GL No 135, [2006] ICJ Rep 113, (2006) 45 ILM 1025, ICGJ 2 (ICJ 2006), 13th July 2006, United Nations [UN]; International Court of Justice [ICJ].

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

[29] Article 14a of CBD

[30] Paragraph 17,27 of facts

infringement not only on the letter of the CBD but also on the spirit of international cooperation and environmental stewardship that the Convention embodies.

Furthermore, it is imperative to note that the previously conducted EIA by the DRI, which Replomuté relies upon, is fundamentally flawed and outdated. It predates the entry into force of the Gorilla Agreement and the Climate Change conventions[31], and crucially, it failed to account for impacts on the gorilla population and the global climate. The Respondent's reliance on this assessment is not only in disregard of the CBD's requirements but also of the subsequent developments in international environmental law that call for a precautionary approach to biodiversity conservation. The outdated EIA from the DRI, conducted before these critical dates, does not reflect the heightened environmental concerns and obligations that have since been internationally recognized and codified.

Furthermore, CBD raises an obligation for parties must promote notification and information exchange on activities likely to significantly affect adversely the biological diversity of other states.[32] Replomuté did not coordinate with Aringuv on the potential harms on biodiversity that its proposed oil extraction activities will cause which is a violation of the obligation of States to cooperate with one another which exists under customary international law [33]

Therefore, we respectfully request that the Court find Replomuté in violation of its obligations under the CBD and international law.

ii. That the Respondent, is not in compliance with the Convention on the Conservation of Migratory Species of Wild Animals (CMS)

[31] Paragraphs 7,9 ,12, 13, 17 & 29 of facts

[32] Article 14(1)(c) of CBD

[33] Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Advisory Opinion of Apr. 2, 2015, ITLOS Rep. 4, ¶ 140; Rio Declaration, Principles 7, 27.

The CMS aims to conserve migratory species throughout their range. **Article I** of the **CMS** defines "migratory species" as any species with a significant proportion of its members crossing national boundaries cyclically and predictably. This is relevant because the Royal Mountain Gorilla, although not necessarily crossing the boundary frequently, is recognized under the CMS as a migratory species given that there is a transboundary park and the gorillas do cross between Aringuv and DRI occasionally.

Even though Replomuté is not a Range State for the Royal Mountain Gorilla and has not signed the Gorilla Agreement, it is still a Party to the CMS and the convention includes the Royal Mountain Gorilla as an endangered species[34]. The CMS provides a global platform for the conservation and sustainable use of migratory animals and their habitats. By supporting oil extraction activities in the DRI, Replomuté may significantly affect the habitat of the Royal Mountain Gorilla, thereby impacting its conservation status, which is a violation of the CMS's objectives and provisions.

The oil extraction and pipeline construction activities could lead to habitat destruction, pollution, and increased human traffic, all of which can be detrimental to the survival of the critically endangered Royal Mountain Gorilla. The Convention's mandate encompasses the duty to preserve the habitats of listed species, prevent, reduce, or control factors endangering them, and mitigate obstacles to migration. x

Replomuté resumed its oil extraction activities without any consideration that its actions may impact the endangered species of Royal Mountain Gorilla as protected by the CMS. We submit that Replomuté's involvement in the oil extraction project can be seen as a failure to comply with

[34] Appendix I, CMS

the objectives and obligations under the CMS, thus constituting a substantive violation of international law.

iii. The acts of Replomuté violate customary international law as to the exploitation of natural resources

Concerning the Respondent's proposed oil extraction activities in DRI, it is pertinent to assert that Replomuté's actions are in violation of customary international law, particularly the principle of Permanent Sovereignty over Natural Resources, as articulated in **UNGA Resolution 1803 (XVII).** The principle recognizes the inalienable right of states to freely exploit their natural wealth and resources. However, this right is qualified by the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or to areas beyond the limits of national jurisdiction.

It is important to note that while DRI has the sovereign right to exploit its natural resources, this right must be balanced against its obligations under international environmental law, which is violated by Replomute proposed oil extraction activities.

Likewise, a state owes an obligation under customary international law not to knowingly allow its territory to be used for acts contrary to the rights of other states[35]. By permitting oil extraction activities that could have detrimental transboundary environmental impacts, DRI is allowing its territory to be used in a way that violates the rights of Aringuv under international environmental law. We therefore submit that the actions of Replomuté with respect to the proposed oil extraction activities in the DRI, thus represent a clear violation of customary international law as to the exploitation of natural resources.

[35] Trail Smelter Arbitration (United States v. Canada) UN Reports of International Arbitral Awards, 16. April 1938 and 11. March 1941, Volume III pp. 1905-1982

iv. The Respondent is in Breach of its obligations under the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement

Oil extraction activities directly lead to increased greenhouse gas emissions, which contravenes the efforts mandated by **UNFCCC** and the **Paris Agreement** to mitigate climate change. As a Party to these agreements, Replomuté has a duty to ensure its activities, directly or indirectly, do not thwart the global climate effort. The UNFCCC aims to stabilize greenhouse gas concentrations in the atmosphere to prevent "dangerous human interference with the climate system"[36]. The Paris Agreement, reaffirms the goal of limiting the global temperature increase to well below 2 degrees Celsius, with efforts to limit it to 1.5 degrees.[37]

Replomuté, as a Party to these agreements, is obliged to undertake climate action that aligns with these objectives. The moot record indicates that Replomuté is a high-income country and a significant importer of crude oil which supports its economic activity. Given this status, it bears a heightened responsibility to ensure its activities do not exacerbate climate change. By supporting and enabling the oil extraction activities in DRI, Replomuté violates the spirit and letter of the UNFCCC and the Paris Agreement. These actions would contribute to the global emission of greenhouse gases, thereby hindering the collective effort to limit global warming to the targets established by the international community.

In conclusion, the actions of Replomuté, as described in the moot record, indicate a disregard for its international obligations under the UNFCCC and the Paris Agreement. These actions, which directly contribute to increased greenhouse gas emissions, are incompatible with the urgent and necessary global response to climate change as codified in these critical environmental treaties.

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CONCLUSION

Aringuv respectfully requests this court to adjudge and declare that:

I. As a procedural matter, Replomuté has violated international law with respect to the preparation of an EIA.

II. As a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI violates and constitute breach of international law.

Respectfully Submitted,

Agents for the Applicant.