
**STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION,
2024**

BEFORE THE



**INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE
THE HAGUE, NETHERLANDS**

IN THE MATTER OF

ARINGUV
(APPLICANT)

Versus

REPLOMUTÉ
(RESPONDENT)

SUBMISSION TO THE INTERNATIONAL COURT OF JUSTICE WITH REGARDS TO
THE QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

WRITTEN SUBMISSION ON BEHALF OF RESPONDENT

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LIST OF ABBREVIATIONS

1	Art.	Article
2	CBD	Convention on Biological Diversity
3	CIL	Customary International Law
4	CMS	Convention on the Conservation of Migratory Species of Wild Animals
5	Doc	Document
6	EIA	Environmental Impact Assessment
7	Esppo Convention	Environmental Impact Assessment in a Transboundary Context
8	Gorilla Agreement	Conservation of Gorillas and Their Habitats
9	Hon'ble	Honorable
10	ICJ	International Court of Justice
11	ICJ Statute	Statute of the International Court of Justice
12	ILC	International Law Commission
13	NDC	Nationally Determined Contribution
14	NGO	Non-governmental organization
15	UN	United Nations
16	UNFCCC	United Nations Framework Convention on Climate Change
17	v./vs.	versus

- 18 VCLT Vienna Convention on the Law of Treaties,
1969
- 19 SR Stetson Record
- 20 ¶ Paragraph

STATEMENT OF JURISDICTION

In accordance with *Article 40, paragraph 1 of the Statute of the International Court of Justice*, Aringuv and Replomuté have jointly presented to the ICJ, through a Special Agreement, questions pertaining to Mountain Gorillas and Impact Assessment as detailed in Annex A, including its Clarifications. This Special Agreement was officially conveyed to the ICJ's Registrar on July 24, 2023.

Following the provisions of *Article 26 of the Rules of the Court*, the Registrar of the Court duly notified the parties of the receipt of the Special Agreement on July 31, 2023.

Both parties have consented to the jurisdiction of the ICJ, and consequently, they seek the Court's determination of the substantive issues at hand in accordance with the principles of general international law and any relevant treaties. Furthermore, the parties request that the Court define the legal consequences, encompassing the rights and obligations of the parties stemming from any rulings on the questions raised in this matter.

It has been mutually agreed that the decision reached by this Court will be binding and respected by both parties as enunciated in *Article IV, paragraph 1 of the Special Agreement*.

STATEMENT OF FACTS

A dispute has arisen between Aringuv and Replomuté, two sovereign states in Africa and Europe respectively, concerning the oil extraction operations of Lenoir Corporation within the territory of the Democratic Republic of Ibirunga (DRI). DRI shares its eastern border with Aringuv (SR¶2).

Lenoir Corporation is wholly owned and operated by Replomuté’s government. DRI and Replomuté entered a concession agreement in 1981 permitting Lenoir Corporation to explore and extract oil in DRI, including the construction of a pipeline to transport the oil to DRI's coast (SR¶17). Although DRI conducted an EIA before signing the agreement, it omitted considering the impacts on Mountain Gorillas and climate change (SR¶17).

The northern population of the Royal Mountain Gorilla frequently crosses the DRI-Aringuv border. However, the southern population resides in DRI with rare sightings in Aringuv. As of 2020, the southern population comprised 295 individuals, and the northern population comprised 640 individuals (SR¶9).

In 2012, DRI, under President General Mina, declared withdrawal from the agreement unless Replomuté established a \$50 million fund to compensate DRI for environmental and societal impacts (SR¶22). This led to arbitration proceedings which concluded in Replomuté’s favour. Consequently, DRI had to permit the resumption of Lenoir’s activities and was subject to more than \$825 million (USD) in penalties. Still, Replomuté established a \$10 million “Friendship Fund” for economic development in DRI (SR¶23).

Aringuv, under President Melanie Waitz of the Green Path Party, raised concerns in 2018 about the environmental impact of Replomuté's planned oil extraction in DRI (SR¶25,26).

Subsequently, Aringuv formally requested Replomuté to conduct an EIA due to the adverse transboundary impact on climate change and the gorilla population (SR¶27). Replomuté declined any transboundary impact, and the request to conduct an EIA as the EIA formerly conducted by DRI was done according to DRI's national laws and international obligations at that time (SR¶28,30).

Uganda facilitated the negotiations between Aringuv and Replomuté which led to the agreement to submit the matter before the ICJ (SR¶35). Replomuté agreed that Lenoir Corporation would halt the project until ICJ issues its judgment (SR¶35).

DRI, Aringuv, and Replomuté are parties to the CBD, the Statute of the International Court of Justice, and the CMS of which the latter two are Range States (SR¶7,8,4). They are also parties to the Paris Agreement and UNFCCC for which only Replomuté is an Annex I state (SR¶13). Replomuté is not a Party to the Gorilla Agreement (SR¶10), and Aringuv has not ratified the Espoo Convention (SR¶12); but in each case, the remaining two states are Parties to the conventions.

IDENTIFICATION OF ISSUES

Replomuté respectfully asks this Hon'ble Court:

- I. Whether Replomuté has violated any international law with respect to Lenoir Corporation's activity in the DRI region?

- II. Whether Replomuté has violated international law since it did not conduct a second EIA for the issue of climate change and conservation of the Royal Mountain Gorilla?

SUMMARY OF ARGUMENTS

I. Whether Replomuté has violated any international law with respect to Lenoir Corporation's activity in the DRI region?

No, Replomue has not violated its obligations under the CMS, the UNFCCC or of “coercion” under international law in the DRI Region either in its own accord or through the Lenoir Corporation

II. Whether Replomuté has violated international law since it did not conduct a second EIA for the issue of climate change and conservation of the Royal Mountain Gorilla?

The Respondent are of the position that no international law is violated with respect to the ESPOO Convention and other obligations in the procedural requirements of an EIA.

ARGUMENTS ADVANCED

I. Whether Replomuté has violated any international law with respect to oil extraction activities in the DRI region?

a. Classification of the southern population as migratory

Firstly, Article 32 of the 1969 Vienna Convention on the Law of Treaties (1969) allows recourse to the preparatory work of the treaty and the circumstances of its conclusion to determine meaning when the interpretation according to Article 31 leaves the meaning obscure or unreasonable. Since the preamble to the CMS does not clarify the definition of ‘migratory species’ under Article 1, and no agreement exists between Aringuv and Replomuté regarding the interpretation of the treaty, reliance will be placed on the preparatory work of the CMS. Firstly, the CMS was designed to treat populations of a particular species that do not mix at any stage of their migration cycles as virtually separate species¹. Further, the legal status of species that migrates entirely within the territorial limits of one state will be the same as non-migratory species, given that at least one national jurisdiction boundary must be crossed during migration². Consequently, the southern population of the Royal Mountain Gorilla is not a migratory species since it does not cross any jurisdictional boundaries. Neither can it be subsumed under the northern population since both populations have no contact with each other.

¹ Explanatory Notes on Draft P.4 (August 1974) of Proposed Convention on the Conservation of Migratory Species of Wild Fauna, INTERNATIONAL UNION FOR CONSERVATION OF NATURE AND NATURAL RESOURCES (1974).

² REVISED DRAFT CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS (1977). EXPLANATORY MEMORANDUM (June 1974).

Additionally, Article 1 requires ‘cyclical and predictable movement’ of the species for it to be categorized as migratory. Rare sightings of the southern population in Aringuv³ do not meet the criteria set out in Article 1.

b. Breach of non-Range State obligations under the CMS

Article 31(2) of the Vienna Convention on the Law of Treaties states that the ‘context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble’. The preamble to the CMS states that the conservation of migratory species requires actions of ‘States within the national jurisdictional boundaries of which such species spend any part of their life cycle’. Similarly, it allocates States as protectors for migratory species ‘that live within or pass through their national jurisdictional boundaries’.

Furthermore, CMS Guidelines reiterate that conservation and management measures to protect migratory species is ‘primarily with the Range States⁴.’ Since Royal Mountain Gorillas do not live in or cross Replomuté⁵, it has no legal responsibility to take action to conserve it. Further, Article 2(1) of CMS clearly distinguishes between the responsibilities of Range and non-Range States. The former must simply ‘acknowledge the importance of migratory species being conserved’, and the latter must ‘take action to this end’. This, along with Article 3, clearly highlights that it is DRI’s, rather than Replomuté’s, responsibility to take measures for the protection of the Royal Mountain Gorilla. Regardless, the following arguments will demonstrate that Replomuté has enabled, rather than hindered, DRI in fulfilling its responsibilities under the CMS.

³ SR¶9.

⁴ UNEP, 13th mtg. of COP, UNEP/CMS/COP13/Inf.18 (Oct. 28, 2019), at 29.

⁵ SR¶9.

Article 3(2)(b) of the CMS states: 'Parties shall *endeavour* to provide immediate protection for migratory species included in Appendix I' (emphasis added). The Cambridge Advanced Learner's Dictionary defines 'endeavour' as 'an attempt to do something'⁶. Replomuté has already willingly set up a \$10 million (USD) "Friendship Fund" for economic development activities in the DRI⁷. Reliance can be placed on Article 3(5) of the UNFCCC to understand the nature of economic development that Replomuté is promoting in DRI: '*The Parties should cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of climate change.*' In line with its duties under UNFCCC and CMS, Replomuté empowered DRI to jointly administer the Fund with Replomuté to sustainably develop its economy, which may include protecting migratory species. Therefore, by offering financial resources to a Range State under the CMS and a Non-Annex I party⁸ under the UNFCCC, Replomuté has not only fulfilled its obligations under the CMS, by endeavouring to provide immediate protection to the Royal Mountain Gorilla, and UNFCCC, by supporting sustainable economic growth in DRI, but has also assisted DRI in fulfilling its existing obligations under international law. Such assistance also assumes the nature of common but differentiated responsibilities identified under Article 3(1) of the UNFCCC. The opening of Article 3 states that the 'Parties shall be *guided*, inter alia, by the following' (emphasis added). Such language indicates that CBDR is not a binding rule or an actionable cause yet but a guide in interpreting the treaty. Neither is CBDR a norm of customary international law given that there is no consensus on

⁶ *endeavour*, Cambridge Advanced Learner's Dictionary (4th ed.).

⁷ SR¶23.

⁸ SR¶13.

the nature of obligations envisioned by the principle. Yet despite the non-binding status of CBDR, Replomuté established the Friendship Fund in good faith, in recognition of its status as an Annex I country⁹. Therefore, Replomuté has not breached any obligation, but rather empowered DRI in fulfilling its own obligations of preserving the Royal Mountain Gorilla and developing economically.

c. Attribution of Lenoir Corporation’s Conduct to Replomuté

The ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts do not codify customary international law¹⁰, and thus are not binding. Article 1(1) of Statute of the International Law Commission, 1947 states that ILC’s object is to promote the progressive development of international law and its codification. To this end, the commentary of the ILC Draft Articles explicitly states that the articles ‘seek to *formulate*, by way of codification *and* progressive development, the basic rules of international law concerning the responsibility of States for their internationally wrongful acts¹¹’ (emphasis added). The International Law Association’s record indicates that a very low number of states submitted comments on the draft articles to the ILC, and even fewer did so regularly, raising the concern of whether the codification of ILC Articles had ‘a sufficient political and legal basis’¹². The lack of state involvement in the development of international law on state responsibility clearly indicates that any claim of attributing the ILC Articles to customary

⁹ SR¶13.

¹⁰ SR¶30.

¹¹ DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, WITH COMMENTARIES, 31.

¹² International Law Association Study Group on the Law of State Responsibility, “First Report”, International Law Association (1 June 2000), at 5.

international law would be devoid of state consent. Without the ‘custom’ of states, a particular practice cannot be raised to a customary norm.

In the alternative, the commentary to Article 8 of the ILC Draft Articles clearly states that since corporate entities are separate, the conduct of State-owned enterprises is not attributable to the State¹³. The meaning of ‘governmental’ is dependent on the particular society, its history and traditions¹⁴. The tribunal in the *Maffezini* laid down a functional test of ‘*whether specific acts or omissions are essentially commercial rather than governmental in nature or, conversely, whether their nature is essentially governmental rather than commercial*’¹⁵. The tribunal clarified that commercial activities cannot be attributed to the state¹⁶. As reference, the *Jan de Nul N.V.* tribunal identified issuing decrees, and imposing and collecting charges as examples of exercising elements of governmental authority¹⁷. In contrast, oil exploration activities are fundamentally commercial in nature. Consequently, Lenoir Corporation was not exercising governmental authority. Thus, attributing Lenoir’s conduct to Replomuté simply because of the latter’s ownership of the former is insufficient to accord attribution¹⁸. Therefore, any potential detrimental consequence attributed to Lenoir Corporation’s activities cannot be equated to a state's violations of its responsibilities under international law.

¹³ DRAFT ARTICLES ON RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS, WITH COMMENTARIES, 43.

¹⁴ *Id* at 43.

¹⁵ *Maffezini v Spain*, Award, ICSID Case No ARB/97/7, (2001) 16 ICSID Rev-FILJ 248, at 17.

¹⁶ *Ibid*.

¹⁷ *Jan de Nul N.V. Dredging International N.V vs. Arab Republic of Egypt*, ICSID Case No ARB/04/13, IIC 356 (2008), at 53-54.

¹⁸ *Ibid*.

d. The DRI-Replomuté agreement was signed under no duress

A treaty is “a compact made between two or more independent nations with a view to the public welfare.”¹⁹ Therefore, the DRI-Replomuté agreement can be regarded as a bilateral treaty. It is a general rule that all agreements must be observed and is embodied in the principle of *pecta sunt servanda*. Replomuté contends that Aringuv’s allegations of coercion are made with *mala fide* intent as they lack both factual and legal basis.

i. No coercion as per Article 18 of ILC Draft Articles

Coercion is conduct that forces the will of the coerced State, giving it no effective choice but to comply with the wishes of the coercing State.²⁰ Article 18 of the 2001 ILC Draft Articles states:

A State which coerces another State to commit an act is internationally responsible for that act if: (a) the act would, but for the coercion, be an internationally wrongful act of the coerced State; and (b) the coercing State does so with knowledge of the circumstances of the act.

The commentary to the ILC Articles clearly states that ‘coercion for the purpose of article 18 has the same essential character as *force majeure*,’²¹ implying that the coerced State had no control over its conduct which makes it materially impossible in the circumstances to perform the obligation.²² In the instant case, DRI signed the concession agreement voluntarily and under no duress, as stated in the diplomatic note of 24 September 2019.²³ DRI, being a sovereign State, has the complete autonomy to make decisions that

¹⁹ Black’s Law Dictionary, definition of “treaty.”

²⁰ James Crawford, *The International Law Commission's Articles On State Responsibility* 156 (2002).

²¹ Commentary on ILC Draft Articles 2001, Art. 18 on Coercion of another State.

²² *Ibid.*

²³ SR¶30.

bring economic development to the country and enter into agreement to attain that end.²⁴ Further, as established earlier, the Friendship Fund established by Replomuté, and jointly administered by DRI and Replomuté, placed financial resources at DRI's disposal to enable it to better perform its obligations, rather than make it impossible to do so. This indicates that Replomuté did not coerce DRI to enter into the agreement, and thus, did not coerce it to commit an internationally wrongful act.

ii. Adherence to the principle of “pacta sunt servanda”

As stated in the preamble of the VCLT, *principles of free consent, good faith, and the pacta sunt servanda rule are universally recognized* and, thus, are to be regarded as principles of CIL. The same principle has been reiterated under Article 26. “Pacta sunt servanda” of VCLT, which states:

*Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*²⁵

Both the States, DRI and Replomuté, need to act in good faith and fulfill their obligations as per this agreement. Replomuté's counsel is of the opinion that Replomuté never acted in bad faith or coerced DRI to sign this agreement. Rather, in March 2015, Replomuté established a \$10 million (USD) “Friendship Fund” for economic development activities in the DRI.²⁶ This act of setting up a “Friendship Fund” negates the allegation of coercion as “coercion is often seen as legitimate when the coerced state remains a net

²⁴ SR¶16.

²⁵ VCLT Art. 26.

²⁶ SR¶23.

beneficiary, thus making the outcome relatively easy to achieve for the coercing state.”²⁷ Here, the agreement provides mutual benefit to both states, and the Friendship Fun exclusively benefits DRI through its economic development.

iii. DRI “freely consented” to the agreement

Now that it has been established that Replomuté did not coerce DRI into coming into an agreement with them, one must prove the existence of free consent. Article 20 of ILC Draft Articles 2001, is reproduced below:

Article 20. Consent - Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent.

The above Article represents the basic international law principle of consent. Replomuté’s act precludes the wrongfulness if the “consent is valid and to the extent that the conduct remains within the limits of the consent given.”²⁸ DRI’s free consent to the agreement that granted exploration and extraction rights to Lenoir Corporation can be inferred by its conduct throughout the construction of the pipeline.²⁹ The mere act of conducting an EIA portrays clearly that DRI was under no duress.³⁰

²⁷ James D. Fry, Coercion, Causation, and the Fictional Elements of Indirect State Responsibility, 40 Vand. J. Transnat’l L. 611 (2007), <https://scholarship.law.vanderbilt.edu/vjtl/vol40/iss3/1>.

²⁸ Commentary on ILC Draft Articles 2001, Art. 20 on Consent.

²⁹ SR¶17.

³⁰ *Ibid.*

However, the only time DRI asked to withdraw from the agreement was when General Mina became the President after a successful military coup in May 2012.³¹ This withdrawal from the agreement by revoking the consent brings up the issue of whether the agent or person who revoked the consent was authorized to do so on behalf of the State or not.³² Succinctly, the “legitimacy” is in question. Here, General Mina’s accession by a military coup, rather than by democratic and participatory elections, indicates a lack of legitimacy, and the subsequent demand from Replomuté to establish a \$50 million (USD) fund, subject to his personal control, shows his *mala fide* intention.³³ The same was found by the arbitral panel that ordered DRI to either permit the Lenoir Corporation to proceed with its oil exploration and extraction activities or be subject to more than \$825 million (USD) in penalties.³⁴ Therefore, the conduct of the unelected General Mina is not representative of the people of the Democratic Republic of Ibirunga. Thus, rather than being an indication of the absence of free consent, General Mina’s is a deviation from it.

³¹ SR¶22.

³² Commentary on ILC Draft Articles 2001, Art. 20 on Consent.

³³ SR¶22.

³⁴ SR¶23.

II. Whether Replomuté has violated international law since it did not conduct a second EIA for the issue of climate change and conservation of the Royal Mountain Gorilla?

a. There is no transboundary harm to Aringuv’s climate as a result of the activity

Transboundary harm has no single codified definition. This is because the ILC specifically determined not to include financial and economic factors in its draft on international liability for injurious circumstances arising out of acts not prohibited by international law³⁵. Nevertheless, through an overlook of precedent and treaty language it is discernible that the widest framework for transboundary harm is 1) physical relationship between the activity and the harm b) human causation c) threshold of severity and d) transboundary movement³⁶.

The third factor has been found in almost all treaties and precedents under international law. The threshold has been defined in the ILC Draft Articles on State Responsibility and the UN Convention on the Law of Non-Navigational Uses of Watercourses as “severe” or “significant”³⁷. This refers to the fact that , transboundary harm itself is not barred under international law but only one in which there is significant harm to the second state.

This has two consequences. Firstly, there needs to be scientific evidence³⁸ in place that rates the threat posted to the climate in DRI as a result of the Lenoir Project as significant. Secondly, this scientific requirement³⁹ needs to be viewed as a whole with other factors including the human causation⁴⁰, which entails that human activities of oil extraction are directly causing the increased

³⁵ Daniel Barstow Magraw, *Transboundary harm: The International Law Commission’s Study of “International Liability,”* 80 AMERICAN JOURNAL OF INTERNATIONAL LAW 305–330 (1986).

³⁶ Trail Smelter Arbitration (U.S. v. Can.) 1938/1941, 3 R.I.A.A. 1905.

³⁷ ILC Draft Articles of Transboundary Harm Page 52.

³⁸ Daniel Barstow Magraw, *Transboundary harm: The International Law Commission’s Study of “International Liability,”* 80 AMERICAN JOURNAL OF INTERNATIONAL LAW 305–330 (1986).

³⁹ *Ibid.*

⁴⁰ ILC Draft Articles on Transboundary Harm Page 148.

climate change effects as well as proving that these risks are transferring across the physical boundary⁴¹ to Aringuv. Based on this high threshold, and no evidence provided for such threats by Aringuv, it is insufficient grounds to halt an economically feasible project which is nearing completion.

Furthermore, this supposed obligation for transboundary impact does not obligate a State to oversee activities for which it could not have reasonably anticipated detrimental effects⁴². Environmental agreements require states to act once there is a “likelihood of” or a “reasonable concern for” harm⁴³, which is why the initial EIA conducted under DRI national laws is of significance.

The DRI conducted a detailed EIA which focused on the impacts on nearby human populations, water usage and waste management and pointed towards no significant harm to warrant a halt or suspension in the Lenoir Project⁴⁴. It must be noted that water usage and management on nearby populations strongly indicates that if local communities are not being harmed as a result of the Lenoir Project, it is scientifically imprudent to assume that such a harm could potentially arise across the border to become one of a ‘transboundary nature’⁴⁵ especially because research of oil extraction shows that resources like water are not impacted beyond the local immunity, especially to the lower riparian⁴⁶.

⁴¹ *Ibid.*

⁴² Alan Boyle & Catherine Redgwell, *1. international law and the environment*, BIRNIE, BOYLE, AND REDGWELL’S INTERNATIONAL LAW AND THE ENVIRONMENT 1–44 (2021).

⁴³ UNFCCC Art 3(3).

⁴⁴ SR¶17.

⁴⁵ Jill E. Johnston, Esther Lim & Hannah Roh, *Impact of upstream oil extraction and Environmental Public Health: A review of the evidence*, 657 SCIENCE OF THE TOTAL ENVIRONMENT 187–199 (2019).

⁴⁶ *Ibid.*

The EIA, made according to the DRI's national laws therefore concluded the project does not result in transboundary harm. In other words, Article 3(3) of the UNFCCC allows the state a certain foresight discretion i.e. "reasonable concern for"⁴⁷ the impact on transboundary climate, which it has used to determine no transboundary impact on Aringuv.

b. There is no transboundary harm to the southern part of the Royal Mountain Gorilla in pursuance of the activities of Lenoir Corporation

In the Lac Lanoux Arbitration Case, it was conclusively determined that only projects harboring the potential for a "significant adverse effect" are mandated to undergo an Environmental Impact Assessment (EIA) concerning transboundary harm⁴⁸. Similarly, in accordance with treaty law, states are obligated to take remedial action when there is a "likelihood of" or a "reasonable concern for" harm⁴⁹. The Espoo Convention unambiguously dictates that an EIA procedure is obligatory for listed activities that are "likely to cause significant adverse transboundary impact." . . Therefore, there is a subjective element that allows the state the operant decision making with regards to an EIA subject to a reasonable harm that is predicted or not.

Subsequent jurisprudence has consistently reiterated that the obligation to conduct an EIA in a transboundary context is contingent upon the project being likely to cause significant adverse transboundary harm. Shifting our focus to the scenario of the migration of the southern population of the Royal Mountain Gorilla, it becomes apparent that the requirement to conduct an EIA is not triggered. The precautionary principle, a salient feature of international environmental law

⁴⁷ UNFCCC Art.3(3).

⁴⁸ Lake Lanoux Arbitration (France/Spain), Award, 12 R.I.A.A. 281; 24 I.L.R. 101 (1957).

⁴⁹ Alan Boyle & Catherine Redgwell, *I. international law and the environment*, BIRNIE, BOYLE, AND REDGWELL'S INTERNATIONAL LAW AND THE ENVIRONMENT 1–44 (2021).

framework, is what guides the EIA process⁵⁰. The idea is that in cases where there is doubt over the veracity of the outcome, the states are expected to favor the solution that works best for sustainable environmental protection⁵¹. Nevertheless, this does not mean every project is halted because of potential environmental harms but instead, it places the onus on host states to act based on scientific findings or methods, or "in the light of knowledge available at the time."⁵² States are expected to deploy their best scientific capacity to ensure that they do not, through their actions, cause transboundary pollution in areas beyond their jurisdiction. The necessity to act arises when there is scientific evidence of significant environmental damage, which simply does not exist for the southern population of the Royal Mountain Gorilla. While occasional sightings of Gorillas traversing into Aringuv's territory have been documented⁵³, it is important to recognize that this cannot be construed as a standard for the entire population. Since there is no consistent spillover threat of transboundary harm due to the stationary nature of the overwhelming southern Royal Mountain Gorilla Population, the precautionary principle is not attracted and consequently, an EIA for a project in DRI is not mandated.

⁵⁰ Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), Judgment, I.C.J. Reports 2009, p. 213.

⁵¹ Marie-Louise Larsson, *Xue Hanqin, transboundary damage in international law* (Cambridge: Cambridge University Press, 2003), 331 pages, 14 YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 840–844 (2003).

⁵² *Ibid.*

⁵³ SR19.

c. There is no obligation under treaty and customary international law on Replomuté to conduct a subsequent EIA after DRI's national EIA

i. No EIA obligation under the Espoo Convention and ancillary customary international law

Aringuv has not ratified the Espoo convention, and hence no international reciprocity exists between Replomuté and Aringuv with respect to the Espoo Convention. This preclusion is a widely accepted feature in customary international law and was used as a limitation for example in state bringing claims under the International Criminal Court as they were not state parties under the Rome Statute⁵⁴. Nevertheless, under the Espoo Convention two particular requirements are hereunder discussed to illustrate either the inapplicability on Replomuté or previous fulfilment of said provisions.

Firstly, the requirement of consultation and notice is provided Article 3(1) of Espoo Convention⁵⁵ but it does not give a unilateral power to an affected state to invoke an EIA regarding an activity planned by a state of origin. In Lac Lanoux, the tribunal concluded that France had the duty to notify and to consult with Spain regarding projects planned on Lake Lanoux but such consultations did not give Spain the right to veto France's decisions⁵⁶. This has bearing on Replomuté's complete absence of liability at two levels. Firstly, according to Article 3(1), the party of origin has the discretion to itself consider which party is potentially "affected", in the following language: "notify any Party which it considers may be an affected Party"⁵⁷. This discretion was within the jurisdiction of DRI

⁵⁴ Salla Huikuri, *Explaining late ratification of the rome statute*, THE INSTITUTIONALIZATION OF THE INTERNATIONAL CRIMINAL COURT 171–194 (2018).

⁵⁵ Espoo Convention Art.3(1).

⁵⁶ Lake Lanoux Arbitration (France/Spain), Award, 12 R.I.A.A. 281; 24 I.L.R. 101 (1957).

⁵⁷ Espoo Convention Art.3(1).

while it conducted its initial EIA as the party of origin. Secondly, the party of origin is “under whose jurisdiction a proposed activity is envisaged to take place”⁵⁸, which is DRI in this instance. Therefore, the responsibility to conduct a potential EIA never lied with Replomuté to begin with and was rightly a duty discharged by DRI in the initial EIA.

Another reason why Replomuté does not have the responsibility to conduct a subsequent EIA is because Article 3(7) of the Espoo Convention provides an avenue to an affected Party when it was not considered as “affected” by the party of origin to consult, and in the absence of any progress, seek recourse with the inquiry commission⁵⁹. There is no indication that such efforts were made by Aringuv, and even if they were, Aringuv is restricted from using this remedy because the term “affected Party” itself is restricted to either “Contracting Parties” or “Parties to the Convention”⁶⁰.

Nevertheless, if one were to accept Aringuv’s claim regarding duties to consultation, Replomuté has still ably acted in pursuit of any such responsibilities. Upon the receipt of a diplomatic note from the Embassy of Aringuv, the state of Replomuté treated the concerns raised seriously and responded in detail promptly, and provided assurance that Aringuv’s environmental rights as a state would not be affected through its own diplomatic note⁶¹. Further objections and concerns were also considered and Replomuté out of good will halted the Lenoir Project⁶², even though it is almost complete, and kept channels of communication open throughout the duration of the consultations. When contentions reached a stalemate, Replomuté participated in negotiations hosted by the government of

⁵⁸ Espoo Convention Article 1(ii).

⁵⁹ Espoo Convention Article 3(7).

⁶⁰ Espoo Convention Article 3(7).

⁶¹ SR¶28.

⁶² SR¶30.

Uganda, and then further agreed for this matter to be brought to the International Court of Justice. Therefore, despite no treaty obligation on Replomuté to respond with such reciprocity, it has followed the salient features of consultation and notification.

Furthermore, according to Article 2(6) of the Espoo Convention, there is a duty to invoke public participation⁶³ to render the process of the EIA as transparent as possible. However, again this is a responsibility on the state of origin and would not fall onto Replomuté because it is legally and geographically detached from the concerned area. Moreover, the right to invoke public participation is not an absolute right as determined in the Pulp Mills on the Uruguay River Case where the court held that no right for public participation was mandated⁶⁴. This is important on two levels: firstly, because this case concerned riparian rights which have decades of rights and obligations attached to them in jurisprudence⁶⁵ and secondly because even at Aringuv's primary claim, the Gorilla Population is being impacted and not the public of Aringuv directly.

Under Article 6(3) of the Espoo Convention, a limited recourse to a second EIA exists if new and unforeseen consequential evidence is unearthed⁶⁶. However, there are three important limitations to this. Firstly, as discussed, no such evidence that would "materially affect"⁶⁷ the outcome of the EIA was revealed, because there was no transboundary impact on Aringuv's climate or southern Royal Mountain Gorilla population. Secondly, the Article is restricted to Concerned Parties defined in the Espoo Convention as either "Parties of

⁶³ Espoo Convention Art.2(6).

⁶⁴ Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p. 14.

⁶⁵ Heather Cooley et al., *Climate change and transboundary waters*, THE WORLD'S WATER 1–22 (2012).

⁶⁶ Espoo Convention Art.6(3).

⁶⁷ Heather Cooley et al., *Climate change and transboundary waters*, THE WORLD'S WATER 1–22 (2012).

Origin” and “Affected Parties”⁶⁸. Again, as discussed, this precludes Aringuv as neither are the activities of Lenoir in question happening under its jurisdiction nor is it a Contracting party to the Convention. Lastly, the scope of Article 6(3) is restricted to “before the activity commences”⁶⁹. The Lenoir Project is in direct contrast, having been 98% completed⁷⁰ and directly precluded therefore.

ii. No EIA obligation under the UNFCCC

Similarly, there has been no violation of the commitments outlined in Article 4.1(f) of the UNFCCC, which advocates for the use of Environmental Impact Assessments (EIAs) to mitigate adverse anthropogenic impacts on the global climate⁷¹. Nevertheless, the caveat in Article 4 stipulates that Parties should consider their common but differentiated responsibilities and their specific national and regional development priorities, objectives, and circumstances⁷². The preamble of the UNFCCC acknowledges that standards applied by some countries may be unsuitable and entail unwarranted economic and social costs for developing countries⁷³. The UNFCCC acknowledges the right of developing countries, such as DRI, to implement national policies that align with their aspirations for sustainable development⁷⁴. Under the UNFCCC framework, no party is obligated to adopt a binding top-down commitment to reduce carbon emissions by a specific amount to meet an overall emission-reduction goal. Parties are required to articulate their commitments through their

⁶⁸ Espoo Convention Art.1(iv).

⁶⁹ Espoo Convention 6(3).

⁷⁰ SR¶32.

⁷¹ UNFCCC Art.4.1(f).

⁷² UNFCCC, Art.4.

⁷³ UNFCCC. Preamble.

⁷⁴ Pieter Pauw, Kennedy Mbeva & Harro van Asselt, *Subtle differentiation of countries' responsibilities under the Paris Agreement*, 5 PALGRAVE COMMUNICATIONS (2019).

Nationally Determined Contributions (NDCs)⁷⁵ which DRI, recognizing the imminent threat of climate change, has set an NDC target of a 20% reduction in greenhouse gas emissions, with 18.5% of the reduction expected to come from external sources⁷⁶.

Developed countries, with greater regulatory capacity, help provide financial support, capacity-building, and technology transfer to assist developing countries in qualifying and reaching their nationally determined objectives⁷⁷. In the specific context of DRI, despite being a low-income country with abundant natural resources, DRI has aided its capacity building through the Lenoir Project, which taps into huge employment opportunities due to the wide range of the project as well as export of the oil to Replomuté⁷⁸. Moreover, despite the non-binding nature of the capacity building, \$10 million were offered to DRI which is again evidence to the fact that Replomuté⁷⁹ has consistently taken into account DRI economic feasibilities and has aided DRI in its capacity formation as well as ensured that no treaty or customary international law standards regarding environmental protection and its assessment are being violated.

⁷⁵ Paris Agreement Art.4(2).

⁷⁶ SR¶16.

⁷⁷ Katrina Running, *Towards climate justice: How do the most vulnerable weigh environment–economy trade-offs?*, 50 SOCIAL SCIENCE RESEARCH 217–228 (2015).

⁷⁸ SR¶17.

⁷⁹ SR¶23.

CONCLUSION & PRAYER FOR RELIEF

In the light of the facts used, issues raised, arguments advanced, and authorities cited, it is most humbly and respectfully prayed that this Hon'ble Court may accept the petition and pass a judgment in favor of Replomuté, the Respondent.

The Respondent requests the Hon'ble Court to declare that:

- i) Replomuté's conduct with respect to EIA as in accordance with international Law
- ii) The conduct of Replomuté with respect to Lenoir Corporation's oil extraction activities is in accordance of international law.

AND/OR

The Court may also be pleased to pass any other order which this Hon'ble Court may deem fit in the light of justice, equity and good Conscience.

RESPECTFULLY SUBMITTED

(AGENTS OF RESPONDENT)