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28<sup>TH</sup> ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2024

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

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GENERAL LIST NO. 303

CASE CONCERNING MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

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ARINGUV

APPLICANT

v.

REPLMUTE

RESPONDENT

**-MEMORIAL for the APPLICANT-**

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1.	&	And
2.	¶	Paragraph
3.	Art.	Article
4.	CBD	Convention on Biological Diversity
5.	CIL	Customary International Law
6.	COP	Conference of the Parties
7.	EEC	European Economic Council
8.	Ed.	Edition
9.	EEZ	Exclusive Economic Zone
10.	EIA	Environmental Impact Assessment
11.	EU	European Union
12.	et al.	Et alia
13.	Hon'ble	Honorable

14.	ICJ	International Court of Justice
15.	ILC	International Law Commission
16.	ILM	International Legal Materials
17.	IUCN	The International Union for Conservation of Nature and Natural Resources
18.	IUU	Illegal, Unreported and Unregulated
19.	NDC	Nationally Determined Contribution
20.	PCIJ	Permanent Court of International Justice
21.	p.	Pages
22.	R.	Stetson Record
23.	RMG	Royal Mountain Gorilla
24.	S.A.	Special Agreement
25.	UN	United Nations
26.	UNCLOS	United Nations Convention on the Law of the Sea
27.	UNDP	United Nations Development Programme

28.	UNEP	United Nations Environment Programme
29.	UNFCCC	United Nations Framework Convention on Climate Change
30.	UNGA	United Nations General Assembly
31.	vs.	Versus
32.	VMC	Verte Mining Corporation
33.	VCLT	Vienna Convention on the Law of Treaties
34.	Vol.	Volume

## QUESTIONS PRESENTED

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- I. WHETHER THE FAILURE OF REPLOMUTÉ TO CONDUCT AN EIA WITH RESPECT TO THEIR PROPOSED OIL EXTRACTION ACTIVITIES IN THE REGION VIOLATES INTERNATIONAL LAW?
- II. WHETHER THE ACTIONS OF REPLOMUTE WITH RESPECT TO OIL EXTRACTION ACTIVITIES IN DRI COMPLY WITH INTERNATIONAL LAW?



## STATEMENT OF JURISDICTION

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In accordance with *Article 40(1)* of the Statute of the ICJ, **ARINGUV** and **REPLOMUTE** have submitted the following dispute to the ICJ.

By Special Agreement, both parties have decided to submit their dispute contained in Annex I of the Special Agreement concerning questions relating to *Mountain Gorillas* and *Impact Assessment* to the Registrar of the ICJ on 24<sup>th</sup> June 2023.

The Registrar of the ICJ addressed a notification to the parties on 31<sup>st</sup> August 2023. Therefore, **REPLOMUTE** and **ARINGUV** have accepted the jurisdiction of the ICJ pursuant to *Article 36 (1)* of the Statute and request the Hon'ble Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

The Parties have agreed to respect the decision of this Hon'ble Court.

## STATEMENT OF FACTS

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### **A. BACKGROUND OF PARTIES:**

Aringuv and the DRI are neighbouring countries in Central Africa (R¶2). They are parties to international agreements, including the Algiers Convention signed in 1969 (R¶11). Along with them, Replomuté, a European country, has been a party to the CMS since 1983, the UNFCCC since 1992, and the CBD since 1993, among other various international conventions and agreements (R¶13).

### **B. THE PROPOSED OIL EXTRACTION ACTIVITIES:**

In 1981, DRI and Replomute entered an agreement with Lenoir Corporation for oil extraction and pipeline construction. Lenoir Corporation was permitted to build a pipeline for transporting oil from DRI to Replomuté. This agreement was commenced with Lenoir conducting oil exploration activities based on DRI's EIA without accounting for gorilla habitats and climate change impact (R¶17).

### **C. SUBSEQUENT DEVELOPMENTS:**

Oil exploration occurred under the 1981 agreement, but operations were paused due to civil unrest (R¶19). Aringuv and DRI became Parties to the Gorilla Agreement in 2007 (R¶9). While DRI attempted to withdraw from the 1981 agreement, Replomuté's success in arbitration allowed Lenoir Corporation to persist with its oil exploration endeavors. International NGOs started raising the negative impact of the oil exploration activity on the RMG (R¶21). Aringuv voiced similar concerns about potential impacts on the RMG habitat from Repolmute's oil extraction plans in the DRI (R¶26).

#### **D. EIA AND FURTHER DEVELOPMENTS:**

Aringuv signed the Espoo Convention in 2017, advocating for EIA and consultations under the convention (R¶25). Aringuv emphasised the necessity of these assessments, citing various conventions (R¶27). Aringuv expressed multiple concerns regarding Replomuté oil exploration activities in a series of diplomatic exchanges, particularly focusing on their potential transboundary impact (R¶¶27-31). While RMGs may not regularly cross borders, the species is migratory, according to CMS. Climate change concerns also persist (R¶29).

#### **E. THE DISPUTE:**

Aringuv and Replomuté engaged in negotiations facilitated by Uganda, agreeing to submit questions to the ICJ and committed to address the issues via their ICJ submissions and oral arguments. Lenoir Corporation's project remains on hold pending the ICJ's judgment. (R¶¶35-38).

## SUMMARY OF ARGUMENTS

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### **I. THE FAILURE OF REPLOMUTÉ TO PREPARE AN EIA FOR THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE REGION VIOLATES INTERNATIONAL LAW.**

Replomuté's conduct regarding the oil exploration and extraction activities and the failure to prepare an EIA contravenes international law. The Lenoir Corporation, owned and operated by Replomuté, is responsible for oil extraction activities detrimental to Aringuv. The harm caused meets the criteria for transboundary harm as outlined in international law, including the severity of the damage. The obligation to conduct an EIA and assess the environmental impacts is continuous. Accordingly, The EIA conducted by DRI is no longer adequate and cannot be used as a ground of approval for oil extraction activities. Replomuté has violated its obligations under the CBD, Espoo Convention, UNFCCC and ACCNNR. Consequently, Replomuté has a duty to assess transboundary impacts on biological diversity and marine environment, which it has failed to do. Replomuté has violated principles of customary international law. The failure to prepare an EIA breaches the principle of due diligence and precautionary principles, which collectively impact the environment and biodiversity, specifically the critically endangered RMGs.

### **II. THE ACTIONS BY REPLOMUTE WITH RESPECT TO OIL-EXTRACTION ACTIVITIES IN DRI VIOLATE INTERNATIONAL LAW.**

Replomuté's actions violate international law. Replomuté's direct responsibility under the Convention on Migratory Species (CMS) regarding the RMG, emphasising RMG's endangered status and Replomuté's obligations as a signatory. Furthermore, DRI is a range state to the RMG and has violated Article III of the CMS and the Gorilla Agreement, providing strict measures to be taken. Additionally, Replomute failed to consider climate change impacts, violating the

UNFCCC. Furthermore, Replomute intervened in *Domaine Réservé*, asserting that Replomute coerced DRI, a low-income country, into continuing an oil concession through economic pressure. Replomuté's coercion of DRI into the concession agreement breaches Article 18 of the Articles on State Responsibility (ASR), with Replomute being aware of the wrongful nature of DRI's actions.

## ARGUMENTS ADVANCED

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### ISSUE I- THE FAILURE OF REPLOMUTE TO CONDUCT AN EIA FOR THE OIL EXTRACTION ACTIVITIES VIOLATES INTERNATIONAL LAW.

#### A. THE ACTIONS OF THE LENOIR CORPORATION CAN BE ATTRIBUTED TO REPLOMUTÉ.

1. The conduct of a company can be attributed to a State if the company carrying out the behaviour is acting under the control of that State.<sup>1</sup> The Lenoir Corporation is owned and operated by the government of Replomuté and exercises control over it.<sup>2</sup> Therefore, the oil extraction activities and responsibility arising are attributable to Replomuté.

#### B. REPLOMUTÉ'S ACTIONS CAUSED TRANSBOUNDARY HARM TO ARINGUV.

2. Replomuté was obligated under CBD to ensure that activities within its jurisdiction or control did not cause damage to the environment of other States,<sup>3</sup> i.e. they were obligated to prevent Transboundary Harm.<sup>4</sup> There exists a four-step criterion to determine whether significant transboundary harm exists.<sup>5</sup> *Firstly*, the harmful effects should be transboundary. *Secondly*, the activity and the damage must have a physical relationship.<sup>6</sup>

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<sup>1</sup> ILC, Rep. on the Work of Its Fifty-Third Session, ¶ 77, art. 8, U.N. Doc. A/56/10 (2001); Certain Activities Carried Out by Nicaragua in the Border Area (“**Nicaragua Case**”) [2018] ICJ Rep 15, ¶¶45 (March 8, 2014).

<sup>2</sup> R¶17.

<sup>3</sup> United Nations Convention on Biological Diversity (CBD), art. 3, Jun. 5, 1992, 1760 U.N.T.S 79; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶29 (Jul 8).

<sup>4</sup> Glossary of Environment Statistics, Studies in Methods, Series F, No. 67, United Nations, New York, 1997; Convention on Environmental Impact Assessment in a Transboundary Context (ESPOO), art. 1(viii), Feb. 25, 1991.

<sup>5</sup> XUE, TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW 4-9, (2003).

<sup>6</sup> ARTHUR BRONWYN, A COMMENTARY ON THE CONVENTION ON BIOLOGICAL DIVERSITY 10, (1993).

*Thirdly*, there shall be a human causation.<sup>7</sup> *Lastly*, the injury must meet a certain level of severity.<sup>8</sup>

**1. The resultant harm is due to the oil extraction project.**

3. Transboundary damage should have some reasonably proximate and causal relationship to human conduct.<sup>9</sup> Physical relationships and human causation require a physical linkage between anthropogenic activity and transnational damage.<sup>10</sup> The harm caused is due to oil extraction activities,<sup>11</sup> and the damage caused is transboundary. Therefore, the damage in Aringuv is caused by the oil extraction project.
4. The impact of extraction experiences gradation from the exploration stage to the extraction, causing significant adverse effects on the ecosystem.<sup>12</sup> The impact of such activities is not limited to RMG but also their ecological environment.<sup>13</sup> Therefore, the first three criteria to establish transboundary harm are satisfied.

**2. The harm meets the threshold of severity.**

5. The threshold of damage required for Transboundary Harm was established in the *Lac Lanoux* case, which described significant harm with the words “*serious consequences*” and

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<sup>7</sup> Chorzow Factory Case (Germany v. Pol), 1928 P.C.I.J. 47, ¶35 (ser. A); AMANDA STAUDT ET AL., THE ADDED COMPLICATIONS OF CLIMATE CHANGE: UNDERSTANDING AND MANAGING BIODIVERSITY AND ECOSYSTEMS, 11(9) 494, 494 (Frontiers In Ecology And The Environment 2013).

<sup>8</sup> Trail Smelter Arbitration (US v. Can.) (1938 & 1941) III RIAA, p.46, 1905; CARMEN CONZALEZ, ROUTLEDGE HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW, 557 (2013).

<sup>9</sup> *Id.*, at 290; Convention on the Ban of Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa, art. 4(3), Jan. 29, 1991, 2101 U.N.T.S. 177.

<sup>10</sup> Iron Rhine Arbitration (Belgium v. Netherlands) Permanent Court of Arbitration (May 24, 2005), 59, 222.

<sup>11</sup> R¶21.

<sup>12</sup> T. Wilde, *Environmental Policies Towards Mining in Developing Countries*, 10 JOURNAL OF ENERGY AND NATURAL RESOURCES LAW 327, 329–30 (1992).

<sup>13</sup> R¶38.

“severe”.<sup>14</sup> Harm includes harm to the environment.<sup>15</sup> Studies of experimental oil extraction sites have found that habitats do not fully recover from the damage caused by mining even decades after the activities have been seized.<sup>16</sup> According to the 2008 NEMA report, discarded equipment such as pipes, fuel pumps, and plastic materials pose a danger to wildlife and humans in areas with oil exploration.<sup>17</sup> The ‘risk’ element requires future possibilities of causing significant harm, thus implying assessing or appreciating the risk involved in an activity.<sup>18</sup>

6. The *Trail Smelter* Case states that it is enough if the evidence shows the extent of the damage as a matter of reasonable inference, even if it is approximate.<sup>19</sup> Due to the complexity of working with hazardous materials, it is susceptible to mishaps,<sup>20</sup> and can significantly disrupt the ecological balance for years.<sup>21</sup> All seven oil extraction processes can lead to contamination and habitat destruction.<sup>22</sup>
7. Aringuv has a prosperous wildlife tourism industry, including RMG tourism.<sup>23</sup> It is a low-income country and heavily dependent on the industry for its major source of income. Additionally, if environmental controls are not take into account, ecological effects could result from other direct anthropogenic factors like fires, increased hunting, fishing, and

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<sup>14</sup> Lac Lanoux Arbitration (Fr. v. Spain), 12 R.I.A.A. 281 (1957); *Story Parchment Company v. Paterson Parchment Paper Company*, 282 US 555 (1931), RIAA, vol. III (1938), ¶32, 1920.

<sup>15</sup> Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries adopted by the International Law Commission at Its 53rd Session, U.N. Doc. A/56/10, 53rd Sess. (2001), Article 2, Commentary 8.

<sup>16</sup> T. WILDE, *Supra* note 12, at 12.

<sup>17</sup> NEMA. *Performance Measurements of Small Animal Positron Emission Tomographs*. NEMA Standards Publication NU4-2008. Rosslyn, VA: National Electrical Manufacturers Association; 2008.

<sup>18</sup> ILC, Draft Articles on Transboundary Harm, Art. 2.

<sup>19</sup> *Id.*

<sup>20</sup> Tootle Mudumba, *The implications of global oil exploration for the conservation of terrestrial wildlife*, 11 ENVIRONMENTAL CHALLENGES 32 (2023).

<sup>21</sup> Drescher, *The Deepwater Horizon Oil Spill, and the Mississippi Gulf Coast: Mental health in the context of a technological disaster*, 84(2) AMERICAN JOURNAL OF ORTHOPSYCHIATRY, 142, 151.(2013)

<sup>22</sup> Francis Juanes, *Visual and acoustic sensors for early detection of biological invasions: Current uses and future 42 potential*, JOURNAL FOR NATURE CONSERVATION 57 (2015).

<sup>23</sup> R¶2.



even poaching.<sup>24</sup> The operations will significantly negatively impact Aringuv's ecosystem and impede tourism. Therefore, oil extraction activities cause severe harm to Aringuv.

### **C. REPLOMUTÉ BREACHED TREATY OBLIGATIONS BY NOT CONDUCTING AN EIA.**

#### ***1. The obligations under the ESPOO Convention bind Replomuté.***

##### ***i. There exists reciprocity between Aringuv and Replomuté under the Convention.***

8. Replomuté and the DRI are parties to the ESPOO Convention,<sup>25</sup> but Aringuv has not ratified it.<sup>26</sup> However, its accession to the Convention demonstrates its commitment to its object, creating mutual obligations and reciprocity.<sup>27</sup> The definition of 'Party' under VCLT states that accession principles validate treating Aringuv as subject to the treaty's obligations.<sup>28</sup> Therefore, reciprocity exists between Aringuv and Replomuté.

##### ***ii. The Replomute has violated its obligations under the ESPOO convention.***

9. Replomuté was required to ensure that an EIA was undertaken before authorising a proposed activity listed in Appendix I of the Convention likely to cause significant transboundary impact.<sup>29</sup> The assessment of the ecological impact of the activities is a continuous obligation that requires monitoring throughout the project's life.<sup>30</sup> Therefore, a Party cannot invoke national law to justify its failure to perform its obligations.<sup>31</sup>

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<sup>24</sup> *Supra* note 22.

<sup>25</sup> R¶¶12,25.

<sup>26</sup> *Id.*

<sup>27</sup> *Glossary of Terms Relating to Treaty Actions*, UNCTC, United Nations (14 August 2023) [https://treaties.un.org/pages/overview.aspx?path=overview%2Fglossary%2Fpage1\\_en.xml](https://treaties.un.org/pages/overview.aspx?path=overview%2Fglossary%2Fpage1_en.xml).

<sup>28</sup> Vienna Convention on the Law of Treaties (VCLT), Art. 2(b), Art. 2(g), May 23, 1969, 1155 U.N.T.S. 331.

<sup>29</sup> ESPOO, Art. 3(4).

<sup>30</sup> Gabčíkovo-Nagymaros, p.21; I.C.J. Rep. 7, ¶111 (Sep. 25, 1997); *Supra* Note 1; ILC, Rep. on the Work of Its Fifty-Third Session, at art. 14 (2) commentary (9)-(10), U.N. Doc. A/56/10 (2001).

<sup>31</sup> Arie Trouwborst, *Evolution and Status of the Precautionary Principle in International Law*, 96(4) AMERICAN JOURNAL OF LAW. 1016, 1016-018 (2002); VCLT, Art. 27.

10. The oil-extraction activity was conducted in a shared resource between Aringuv and DRI,<sup>32</sup> making it a potential threat to the RMG and their ecosystem.<sup>33</sup> RMG is a critically endangered species,<sup>34</sup> with the area in question including a national park,<sup>35</sup> making the project even more sensitive to the severe environmental impact of oil exploration.
11. The ESPOO Convention mandates that if new information about the significant cross-border impact of a project is not known during the initial decision, the responsible party must promptly notify other concerned parties.<sup>36</sup> The EIA conducted by DRI did not consider the transboundary impact on RMGs, a material fact that would have impacted the project's future.<sup>37</sup> Therefore, Replomute has violated its obligations to conduct an EIA under the ESPOO convention.

**2. Replomuté must conduct a revised EIA as per the revised ACCNNR.**

12. Article 14(1) of the 1969 Convention mandates any developmental plans to fully consider ecological, economic and social factors, with one of the objectives being to conserve and protect natural resources.<sup>38</sup> Complying with national laws regarding EIAs does not absolve a state from ACCNNR obligations, as the EIA conducted by DRI overlooked climate change, RMGs, and habitat impacts.<sup>39</sup> Therefore, a fresh EIA should have been conducted because of the substantial time lapse between the initial and present EIA.<sup>40</sup>

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<sup>32</sup> R¶17.

<sup>33</sup> Johnston, *Impact of upstream oil extraction and environmental public health: A review of the evidence*, SCIENCE OF THE TOTAL ENVIRONMENT 657, (2019).

<sup>34</sup> R¶9.

<sup>35</sup> *Id.*

<sup>36</sup> ESPOO, Art 6.3.

<sup>37</sup> R¶17.

<sup>38</sup> ACCNNR, Art. 14(1).

<sup>39</sup> VCLT, Art. 27.

<sup>40</sup> R¶28.

3. *Replomuté, by not conducting an EIA, violated CBD.*

i. *Replomute violated its duty to preserve biodiversity.*

13. Every party to the CBD must ensure that the environmental consequences of its programs are duly considered.<sup>41</sup> States must ensure that an EIA is conducted for proposed projects likely to affect biological diversity significantly.<sup>42</sup> Effective EIAs must extend beyond national boundaries,<sup>43</sup> to account for transboundary impacts.<sup>44</sup> Ukraine's waterway project further accentuates the necessity for effective transboundary EIAs, as a mere national EIA failed to prevent harm and mandated project suspension.<sup>45</sup> The impact of extraction experiences gradation from the exploration stage to the extraction where significant effects occur to the ecosystem, via the pollution and toxic waste generated by the smelting process.<sup>46</sup>
14. In the present case, oil exploration activities have been planned and executed in the area inhabited by the southern population of the RMG.<sup>47</sup> Oil extraction activities have been proven to cause mass deforestation and loss of wildlife habitat.<sup>48</sup> RMGs are critically endangered and included in the IUCN Red List of Threatened Species.<sup>49</sup> In the EIA, the project's impact on the gorilla population or the transboundary impact was not accounted

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<sup>41</sup> CBD, Art. 14 (1)(b).

<sup>42</sup> *Id*; Rio Declaration on Environment and Development ('Rio'), Principle 17, A/CONF.151/26 Vol. I (1992)..

<sup>43</sup> *Meeting Document*, Convention on Biological Diversity, UNEP /CBD/CP {/VI/10/ (Jul. 17, 2013).

<sup>44</sup> Neil Craik, *The Duty to Cooperate in the Customary Law of Environmental Impact Assessment*, 69(1) I.C.L.Q. 239 (2020).

<sup>45</sup> "Bystroye Canal" / Danube-Black Sea Deep Navigation, World Wildlife Fund, [https://wwf.eu.awsassets.panda.org/downloads/bystroye\\_wwfposition\\_may09.pdf](https://wwf.eu.awsassets.panda.org/downloads/bystroye_wwfposition_may09.pdf).

<sup>46</sup> *Supra* Note 12, at p.329–30.

<sup>47</sup> R¶17.

<sup>48</sup> *Supra* Note 12, at p.164-175.

<sup>49</sup> R¶9.

for,<sup>50</sup> thereby making the EIA conducted by DRI inadequate to fulfil the standards as laid out in CBD.

*ii. Replomute violated its obligation to Notify, Consult and Cooperate.*

*a) Replomuté breached its obligation to cooperate with Aringuv.*

15. Replomuté, according to its obligation under CBD, must cooperate with other Contracting Parties to CBD,<sup>51</sup> particularly in the energy sector.<sup>52</sup> Art. 14(1)(a) of the CBD highlights the need for public engagement as an objective of all EIAs and includes a notification and consultation obligation in Art. 14(1)(c).<sup>53</sup> Conducting a transboundary EIA is part of a state's duty to cooperate.<sup>54</sup>
16. The Convention mandates a comprehensive EIA of proposed projects and national policies.<sup>55</sup> Emergency clauses in Article 14(1)(d) permit immediate emergency action when there is a severe threat to biological diversity; in this instance, the RMGs are in grave danger due to the oil extraction activities.<sup>56</sup>
17. Upon receipt of a diplomatic note from the Embassy of Aringuv,<sup>57</sup> Replomuté did not take cognisance of the concerns raised.<sup>58</sup> Further objections and concerns were also ignored.<sup>59</sup> Furthermore, an adverse effect on the southern population could result in environmental

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<sup>50</sup> R¶17.

<sup>51</sup> CBD, art. 5.

<sup>52</sup> *Decision Adopted by Conference of the Parties to the CBD*, CBD/COP/DEC/14/3 (Nov. 2018, 30).

<sup>53</sup> CBD, art. 14(1)(c); Rio, Principle 19; Draft Articles on Transboundary Harm, art. 8(1).

<sup>54</sup> *Supra* Note 41, at p.239.

<sup>55</sup> *Concerning Land Reclamation by Singapore in and Around the Straits of Johor* (No. 12) (Malay. v. Sing.), 126 I.L.R. 487, ¶99 (Int'l Trib. L. of the Sea 2003).

<sup>56</sup> *Supra* Note 41, at p.64. *Convention for the Protection of the Natural Resources and Environment of the South Pacific Region*, 1986, Art. 16(3).

<sup>57</sup> R¶27.

<sup>58</sup> R¶28.

<sup>59</sup> R¶30.

consequences for the regions of Aringuv.<sup>60</sup> In contrast, Aringuv initiated the diplomatic talks, however the cooperation initiation should have come from Replomuté.<sup>61</sup> Replomuté has failed to cooperate with Aringuv despite several attempts.<sup>62</sup>

*b) Replomuté did not notify or consult with Aringuv.*

18. According to general principles of international law, the duty of notification is conceived to strengthen international cooperation between States.<sup>63</sup> The principle of cooperation demands notification of any activities that might harm the environment.<sup>64</sup> States must notify before conducting such activities in the preliminary phase.<sup>65</sup> The Party of Origin must provide to the affected Party the final decision on the proposed activity along with the reasons and considerations on which it was based.<sup>66</sup>
19. The ICJ has held that States must sufficiently disclose all necessary information to potentially affected States in advance about such activities.<sup>67</sup> Thus, Aringuv should have been allowed to review, discuss and conduct a preliminary assessment of the planned activity.<sup>68</sup>
20. Replomuté was obligated to notify Aringuv of activities under its control likely to have significant adverse effects on biological diversity.<sup>69</sup> Replomuté failed to ‘immediately

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<sup>60</sup> R¶9.

<sup>61</sup> R¶27.

<sup>62</sup> R¶29-31.

<sup>63</sup> United States v. Canada, RIAA, vol. III (1938, 1941), ¶1905.

<sup>64</sup> Rio, Principle 18.

<sup>65</sup> Espoo, art. 1(vii); Watercourses Convention, art.1(2), (1997); Rio, Principle 19.

<sup>66</sup> Espoo, art. 6.2.

<sup>67</sup> Pulp Mills, ¶197.

<sup>68</sup> DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENT LAW AND POLICY 525 (3rd Ed., 2007).

<sup>69</sup> R¶18.

notify<sup>70</sup> or ‘mitigate’<sup>71</sup> the harm to Aringuv that would be caused by the project on the RMGs and their surrounding ecosystem.

**4. The obligations under UNFCCC bind Replomuté.**

21. Art. 4.1(f) of the UNFCCC calls for using EIAs to minimise adverse anthropogenic impacts on the global climate.<sup>72</sup> Replomute, DRI and Aringuv have signed and ratified UNFCCC.<sup>73</sup> The act of ratification binds the State internationally to its obligations.<sup>74</sup> Oil extraction activities are a significant source of Methane.<sup>75</sup> Moreover, such activities result in the emission of Toxic Volatile Organic Compounds, which are atmospheric pollutants and pose a significant threat to the ecosystem.<sup>76</sup>
22. The EIA conducted by Replomute did not consider the impact on global climate.<sup>77</sup> Moreover, Aringuv, by its NDC, seeks to reduce greenhouse gas emissions by 40%.<sup>78</sup> However, with the advent of oil extraction activities and increased emissions of greenhouse gasses, the NDC would not be achieved. Therefore, conducting an EIA to ascertain the impact of climate change and take necessary steps to mitigate the damage is pertinent.

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<sup>70</sup> CBD, art. 14(d).

<sup>71</sup> CBD, art. 14(1)(b); EIA Guidelines, ¶1.1(d).

<sup>72</sup> UNFCCC, *Meeting Document*, p.16, (2017).

<sup>73</sup> R¶13.

<sup>74</sup> M. Geistfeld, *Reconciling Cost–Benefit Analysis with the Principle That Safety Matters More Than Money*, 76 NEW YORK UNIVERSITY LAW REVIEW 114, 176 (2001).

<sup>75</sup> *Id.*

<sup>76</sup> United States Environmental Protection Agency, Basic Information about Oil and Natural Gas Air Pollution Standards, 2012.

<sup>77</sup> R¶17.

<sup>78</sup> R¶14.

## D. REPLOMUTE HAS VIOLATED ITS OBLIGATIONS UNDER CIL.

### 1. Replomuté has failed its Due Diligence Duty.

23. The obligation of States to ensure that their activities do not cause harm to the environment is a due diligence burden as “a customary rule”.<sup>79</sup> The obligation of due diligence lies at the heart of the *sic utere tuo ut alienum non laedas*, i.e., the no harm principle.<sup>80</sup> A State must exert its best efforts to minimise transboundary harm risk.<sup>81</sup> Replomuté failed to exercise its best efforts by not conducting a fresh EIA.<sup>82</sup> When transboundary damage exists, a ‘good government’ is responsible for its obligation to exercise proper care not to cause harm in its territory.<sup>83</sup>
24. In the present case, Aringuv and DRI share a border.<sup>84</sup> Aringuv and DRI also share a transboundary national park, in which the RMGs reside, making it a shared resource.<sup>85</sup> The last EIA concerning oil extraction was conducted over 40 years ago.<sup>86</sup> There have been several halts in the project, often for an extended period.<sup>87</sup> Hence, there was an obligation to conduct a new EIA under the due diligence burden, as countries must carry out a continuous EIA to monitor the project's environmental effects.<sup>88</sup>

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<sup>79</sup> Pulp Mills Case, p.101; ILC Draft Articles on Transboundary Harm, *supra* note 15, at Article 3, Commentary (7).

<sup>80</sup> Corfu Channel, p.22.

<sup>81</sup> ILC, Rep. on the Work of Its Fifty-Third Session, ¶98, art. 3 commentary (7), U.N. Doc. A/56/10 (2001).

<sup>82</sup> R¶28.

<sup>83</sup> *Supra* Note 70, at 43.

<sup>84</sup> R¶2.

<sup>85</sup> R¶9.

<sup>86</sup> R¶17.

<sup>87</sup> R¶¶18-20.

<sup>88</sup> PHILIPPE SANDS, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW 881 (4th ed., 2018); Trail Smelter Case, p.143.

## **2. Replomuté failed to take precautionary measures.**

25. Precaution has been defined as preparing for potential, uncertain, or even hypothetical threats without irrefutable proof that damage will occur.<sup>89</sup> The Rio Declaration recognises the need for precautionary measures; even without full scientific knowledge, States should take a precautionary approach in cases where severe damage is likely to occur.<sup>90</sup>
26. The requirement for Transboundary EIA is closely linked with the practical implementation of precautionary principles and obligations.<sup>91</sup> Failure to conduct an adequate EIA *prima facie* indicates such a breach.<sup>92</sup> The EIA should include identifying ways of improving projects by preventing adverse environmental impacts.<sup>93</sup> Further, the EIA did not consider the Transboundary damage and the impact on RMG, causing a breach of the precautionary principle.<sup>94</sup>
27. Oil extraction is a process that is prone to errors because it involves working with dangerous materials.<sup>95</sup> During oil exploration, fragmentation,<sup>96</sup> drilling issues, and inadequate waste management harm the ecosystem.<sup>97</sup> For instance, the Deepwater Horizon oil spill released almost three million barrels of crude oil in which number of animals were damaged and killed by this spill, destroyed the livelihoods of Gulf-dependent people and

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<sup>89</sup> *Supra* Note 70, at p.174; *Supra* Note 84, at p.43; Rio, principle 15.

<sup>90</sup> *Supra* Note 12, at p. 376.

<sup>91</sup> Yoshifumi Tanaka, *Obligation to Conduct an Environmental Impact Assessment (EIA) in International Adjudication*, p.51. (2009).

<sup>92</sup> *Id.*, at p.32.

<sup>93</sup> R. R. Baxter, *Multilateral Treaties as Evidence of Customary International Law*, 41 BRIT. Y.B. INT'L L. 275, 289. (1965-1966).

<sup>94</sup> R¶17.

<sup>95</sup> Victor P. G., *Recovery for Economic Loss following the Exxon Valdez Oil Spill*, JOURNAL OF LEGAL STUDIES 53.

<sup>96</sup> Environmental impacts of the deep-water oil and gas industry: a review to guide management strategies, *frontiers*, <https://www.frontiersin.org/articles/10.3389/fenvs.2016.00058/full>.

<sup>97</sup> *Oil exploration and exploitation: the potential impacts on mountain gorillas*, WWF-UK (Aug. 14, 2023), [http://assets.wwf.org.uk/downloads/mountain\\_gorillas\\_virunga\\_final\\_formatted.pdf](http://assets.wwf.org.uk/downloads/mountain_gorillas_virunga_final_formatted.pdf).



had long-lasting effects on the ecosystem and public health.<sup>98</sup> The 1989 Exxon Valdez oil spill in Prince William Sound, Alaska, revealed what could happen while carrying oil extraction activities through delicate environments.<sup>99</sup>

28. Oil and gas exploration and development disrupt migratory pathways and the degradation of essential animal habitats, which can devastate their ecosystems.<sup>100</sup> The RMGs are critically endangered.<sup>101</sup> Hence, the oil extraction activities in the transboundary national park will affect the migratory pathways of the RMG, threatening the extinction of the 935 RMGs,<sup>102</sup> causing severe and irreversible damage. Hence, Replomute violated the precautionary principle by not conducting a fresh EIA.

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<sup>98</sup> *OIL AND GAS DEVELOPMENT*, WWF, (Aug. 14, 2023) <https://www.worldwildlife.org/threats/oil-and-gas-development>.

<sup>99</sup> Michael Parrish, *Exxon reaches 1 billion spill settlement bill*, LOS ANGELES TIMES, October 1991.

<sup>100</sup> *Id.*

<sup>101</sup> R¶9.

<sup>102</sup> *Id.*

## ISSUE II- THE ACTIONS OF REPLOMUTE WITH RESPECT TO THE OIL EXTRACTION

### ACTIVITIES VIOLATE INTERNATIONAL LAW.

#### A. DIRECT RESPONSIBILITY CAN BE ATTRIBUTED TO REPLOMUTE.

##### 1. RMG is a Migratory Species under CMS.

29. Migratory species under the CMS is defined as a species whose members cyclically and predictably cross national boundaries.<sup>103</sup> Appendix I includes migratory species that are considered to be in danger of going extinct in all or a substantial portion of their range.<sup>104</sup>
30. CMS Resolution 2.2<sup>105</sup> stated that “*predictably*” only meant “*that a phenomenon can be anticipated to recur in a given set of circumstances, though not necessarily regularly in time,*” whereas “*cyclically*” should be understood to relate to a cycle of any nature, such as astronomical (circadian, annual, etc.), life or climatic, and of any frequency.<sup>106</sup>
31. According to Art. III(1), a species cannot be eligible for Appendix I unless it is both migratory and endangered according to the Convention's definitions.<sup>107</sup> For the purposes of this listing, it will be sufficient for a species to be endangered throughout a significant portion of its range; its relative abundance in some places will not automatically exclude it from listing.<sup>108</sup> RMG has been added to Appendix 1, and is therefore classified as a migratory species under the CMS.

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<sup>103</sup> Convention on the Conservation of Migratory Species of Wild Animals, June 3 1979, 1651 U.N.T.S. 333, Art. I(1)(a) [hereinafter **CMS**].

<sup>104</sup> *Id.*

<sup>105</sup> CMS Resolution 2.2, Guideline for the Application of Certain Terms of the Convention, UNEP/CMS/Resolution 2.2 (Oct. 13, 1988), Article 1(a).

<sup>106</sup> SIMON LYSTER, INTERNATIONAL WILDLIFE LAW: AN ANALYSIS OF INTERNATIONAL TREATIES CONCERNED WITH THE CONSERVATION OF WILDLIFE 540 (1985) .

<sup>107</sup> CMS, Art. III (1).

<sup>108</sup> LYSTER, *supra* note 102, at 537.

**2. DRI is a range state.**

32. CMS seeks to safeguard migratory species across national borders, with Article 2 highlighting its core values.<sup>109</sup> The obligations to conserve the species in Appendix I of the CMS are based on a status as a range State.<sup>110</sup>
33. Under the CMS, a range state can be recognised in one of two ways. First, a state may acknowledge that it is the range state for the relevant species<sup>111</sup>. Second, in the proposal for adding a species to the Appendix, it can be described as a range state.<sup>112</sup> In the instant case, both scenarios have been fulfilled as both Aringuv and DRI ratified the Gorilla Agreement.
34. Furthermore, DRI meets CMS Article 1.1(f) and (h)'s definition of a range state.<sup>113</sup> A state is deemed a range state if it has jurisdiction over any part of the range, or the area along the species' typical migratory path. In the instant case, DRI exercises jurisdiction over the habitat and migratory routes of the RMG.<sup>114</sup>

**3. DRI has breached the range state obligations under CMS and the Gorilla Agreement.**

35. Article III of the CMS obligates Range States to "*prevent, reduce, and control factors that are endangering or are likely to further endanger*" migratory species. Article III(4) of CMS mandates the Range States of migratory species listed under Appendix I to conserve and restore their habitats to remove them from the danger of extinction.<sup>115</sup> Relevantly, under

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<sup>109</sup> CMS, Art. II.

<sup>110</sup> CMS, Art. III.

<sup>111</sup> CMS, Art. 6.2.

<sup>112</sup> CMS Resolution 1.5, Format of Proposals for Amendment of the Appendices, UNEP/CMS/Resolution 1.5 (Oct. 26, 1985), ¶2.

<sup>113</sup> CMS, Art. 1.1(f), (h)

<sup>114</sup> R¶9.

<sup>115</sup> CMS, Art. III(4)(b).

- CMS Resolution 12.21, conservation action must be taken beyond the species' historical range to ensure favourable conservation status to address climate-induced range shifts.<sup>116</sup>
36. Article III(5) of CMS prohibits taking “*endangered*” species listed under Appendix I, which includes RMG.<sup>117</sup> Taking includes harassing and deliberate killing of species.<sup>118</sup> In the *Whaling* case, the ICJ held Japan guilty of prohibited taking of whales after Japan granted special permits to kill them.<sup>119</sup> Similarly, DRI engaged in prohibited taking by authorising the construction of an oil pipeline in the areas inhabited by the gorillas.
37. Further, forest clearance and habitat loss, which will be caused by the oil exploration activities, is the main threat to the RMG,<sup>120</sup> being critically endangered and also on the red list of IUCN, which shows the breach of this article.
38. Parenthetically, DRI's actions are not exempt under Article III(5)(d) of CMS because no extraordinary circumstances require such extreme measures.<sup>121</sup> DRI failed to observe the standards for the exception to apply, i.e., the taking must be precise as to the content, limited in space and time, and not disadvantageous to the species.<sup>122</sup>
39. Article III of the Gorilla agreement obliges all parties to undertake strict conservation measures for all species of gorillas as provided under CMS.<sup>123</sup> It also obligates parties to implement remedial measures including habitat restoration,<sup>124</sup> none of which were complied with by the DRI.

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<sup>116</sup> Twelfth Meeting of the Conference of the Parties, Manila, Oct. 2017, CMS Resolution 12.21 on Climate Change and Migratory Species, UNEP/CMS/Resolution 12.21, ¶9 (Oct. 2017); CMS Resolution 11.28, supra note 7, ¶7.

<sup>117</sup> CMS, Art. II (1).

<sup>118</sup> CMS, Art. I (1)(i).

<sup>119</sup> *Whaling in the Antarctic (Austl. v. Jap.)*, Judgment, 2014 I.C.J. 226, 299 (Mar. 31)

<sup>120</sup> IUCN (1996) African Primates. Status survey and conservation action plan. Revised edition.

<sup>121</sup> CMS, Art. III (5).

<sup>122</sup> CMS, Art. III (5).

<sup>123</sup> Gorilla Agreement, Art.III(2)(a)(g).

<sup>124</sup> *Id.*

*i. Arguendo, there is a breach of non-range state obligations.*

40. As a signatory to the CMS,<sup>125</sup> Replomute is obligated to refrain from acts which defeat the object and purpose of a convention.<sup>126</sup> The appropriate standard to determine whether a State's actions undermine the purpose of a treaty is the manifest bad faith test, which finds support in the literature,<sup>127</sup> judicial judgments,<sup>128</sup> and preparatory works of Art. 18 VCLT.<sup>129</sup> Art. 18's goal is to forbid actions taken in bad faith with the intention of denying other parties the benefits they stand to gain from the treaty.<sup>130</sup>
41. The parties must abide by any interpretations that are made from the preamble of a treaty, just as they would from any other section of the document.<sup>131</sup> The preamble of the CMS recognizes that wild animals are an irreplaceable part of the earth, and all signatories must conserve them.<sup>132</sup> In the instant case, even if considering that DRI is not a range state, Replomuté has not taken any measures to conserve the critically endangered species, that is, the RMG.
42. As previously argued, being a developed state and a high-income country and one of the world's largest crude oil importers,<sup>133</sup> Replomute had every opportunity and capability to

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<sup>125</sup> R¶8.

<sup>126</sup> VCLT, Art. 18, Paul Brown, *Landmines Banned but Threats Stay*, THE GUARDIAN at 45, (Mar. 2, 1999); Jonathan Charney, *Entry into Force of the 1982 Convention on the Law of the Sea*, 35 VA.J.INT'L.L. 381, 385 (1995).

<sup>127</sup> BIN CHENG, GENERAL PRINCIPLES OF LAW AS APPLIED BY INTERNATIONAL COURTS AND TRIBUNALS 111 (1953); JAN KLABBERS, THE CONCEPT OF TREATY IN INTERNATIONAL LAW 56 (1996); D. W. Greig, *Reciprocity, Proportionality, and the Law of Treaties*, 34 VA.J.INT'L.L. 295, 345 (1994).

<sup>128</sup> Nuclear Tests case, *supra* note 1; The Frontier Dispute (Burkina Faso v. Mali), 1986 I.C.J. 554, 574; S.S.

<sup>129</sup> J Brierly, *Second Report: Revised Articles of the Draft Convention*, 2 Y.B.INT'L.L.COMM'N 70, 73 (1951); I.L.C., *Summary Records of the 788th Meeting*, 1 Y.B.INT'L.L.COMM'N 87 (1965).

<sup>130</sup> Hersch Lauterpacht, *First Report on the Law of Treaties*, 2 Y.B.INT'L.L.COMM'N. 90, 108 (1953).

<sup>131</sup> Alison Rosser, *Approaches to Sustainable Use: CITES Non-Detriment Findings and C.B.D. Sustainable Use Principles*, 10 J.OF.INT'L.WILDLIFE.L.AND.POL'Y. 200, 210 (2007).

<sup>132</sup> CMS, Preamble.

<sup>133</sup> R¶3.

exhaust measures, both ethical and environmental,<sup>134</sup> and the happening of oil extraction activities in the habitat of the RMGs constitutes a breach of article 3 of the CMS.

**4. Replomute has failed to consider the impact of climate change.**

***i. Replomute has violated its responsibilities under UNFCCC.***

43. Pursuant to Article 3 of the UNFCCC,<sup>135</sup> parties, especially those of developed status such as Replomute, are obligated to ensure the preservation of the climate system for both present and future generations. Article 3 specifically accentuates the needs of developing nations, urging other parties to afford full consideration to these aforementioned nations.<sup>136</sup> In pursuance of this, parties are mandated to undertake precautionary measures, manifesting as safeguards and mechanisms for climate protection.<sup>137</sup> Furthermore, Article 3 delineates the right and obligation of each party to promote sustainable development.<sup>138</sup>
44. It is imperative to note that Replomute appears to have disregarded the potential adverse impacts of its oil extraction activities on the RMGs. Oil extraction, a well-known source of grave environmental consequences, has been associated with groundwater depletion leading to alterations in weather patterns and deforestation.<sup>139</sup> Particularly, the significance of Gorillas in the African Region, with their unique role in seed dispersal dynamics, underscores their indispensable contribution to regional flora.<sup>140</sup> Thus, Replomuté's actions could be construed as a violation of its responsibilities under the UNFCCC.

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<sup>134</sup> Part II(A)(1)(b).

<sup>135</sup> UNFCCC, Art.3.

<sup>136</sup> *Id.*

<sup>137</sup> Sands, p.560.

<sup>138</sup> *Id.*

<sup>139</sup> *Supra* Note 127.

<sup>140</sup> Beanlands, G. E., and Duinker, P. N. (1984). *Lessons from a decade of offshore environmental impact assessment.* *Ocean Manag.* 9, 157–175. doi: 10.1016/0302-184X(84)90001-5.

**B. DRI HAS THE *DOMAINE RÉSERVÉ* WITH REGARDS TO THE CONCESSION AGREEMENT.**

45. The *domaine réservé* is a concept that refers to areas of domestic or foreign policy in which a State has not undertaken international legal obligations. These are the policy areas where a State retains unfettered freedom of action.<sup>141</sup> DRI has all the rights regarding the oil extraction activities and the pipeline within its territory. Further, DRI had not undertaken any international legal obligations pertaining to oil exploration and extraction activities. Therefore, DRI enjoys full *domaine réservé* in oil exploration and extraction activities within its territory.

**C. REPLOMUTE INTERVENED IN THE *DOMAINE RÉSERVÉ* OF DRI.**

46. The ICJ has described coercion as “*the defining element*” and “*the very essence*” of unlawful intervention.<sup>142</sup> Moreover, coercion that intervenes in the *domaine réservé* of another State can constitute intervention.<sup>143</sup> The principal rule of international law that governs the exercise of coercion in international relations is the prohibition of intervention in the affairs of States.<sup>144</sup>

47. The prohibition on intervention protects States against foreign intrusion into this realm where the liberty of States is intact and unencumbered by international legal obligations.<sup>145</sup> The prohibition on intervention is the international law version of “*the right to be let*

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<sup>141</sup> Alfred Verdross, *Domestic Jurisdiction Under International Law*, 3 U. TOL. L. REV. 119 (1971).

<sup>142</sup> Nicaragua Case, ¶205.

<sup>143</sup> BOGDANOVA, *CHAPTER 2: THE LEGALITY OF UNILATERAL ECONOMIC SANCTIONS UNDER PUBLIC INTERNATIONAL LAW, IN UNILATERAL SANCTIONS IN INTERNATIONAL LAW AND THE ENFORCEMENT OF HUMAN RIGHTS* (Brill, 2022).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

- alone”, which Justice Douglas called “*the beginning of all freedom*”.<sup>146</sup> Notably, the prohibition on intervention is “*part and parcel of customary international law*”.<sup>147</sup>
48. In the Nicaragua case, the ICJ identified the two elements of prohibited intervention. The first is the object of intervention, i.e. the matters protected by the prohibition on intervention.<sup>148</sup> The second is the instrument of intervention, which, the Court stated, is the “*methods of coercion*”.<sup>149</sup>
49. As determined previously, oil exploration and extraction activities fall within the *domaine réservé* of DRI. Therefore, by intervening in the oil extraction and exploration activities, Replomute satisfies the first element of prohibited intervention- the ‘object of intervention’.
50. Coercion can take the form of severe economic pressure, provided that it deprives the coerced State of any possibility of conforming with the obligation breached.<sup>150</sup> Moreover, no State may use economic measures to coerce another State to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind.<sup>151</sup>
51. In this regard, due to the arbitration agreement, DRI was left with a choice to either continue with the concession agreement or pay \$825 million in penalties.<sup>152</sup> DRI is a low-income country with a gross national income per capita of \$820.<sup>153</sup> Further, DRI’s initial intention

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<sup>146</sup> William Eskridge, *Relationships Between Formalism and Functionalism in Separation of Power Cases*, 22 HARV.J. L. & PUB. 480; *Griswold v. Connecticut*, 381 U.S. 479 (1965).

<sup>147</sup> Nicaragua Case, p.202.

<sup>148</sup> M.N. Schmitt, & S. Watts. *Beyond State-Centrism: International Law and Non-state Actors in Cyberspace*, JOURNAL OF CONFLICT & SECURITY LAW, 21(3), 595–611 (2002).

<sup>149</sup> Nicaragua Case, ¶205.

<sup>150</sup> ASR, commentaries, ¶56.

<sup>151</sup> McDade, P. (1985). *The Interim Obligation between Signature and Ratification of a Treaty: Issues raised by the recent actions of signatories to the Law of the Sea Convention with respect to the mining of the deep seabed*. NETHERLANDS INTERNATIONAL LAW REVIEW, 32(1), 5-47.

<sup>152</sup> R¶23.

<sup>153</sup> R¶1.



to withdraw from the DRI-Replomuté Agreement so that it could adhere to the Gorilla Agreement indicates that its sovereign rights were violated when it consented to the Lenoir Corporation's oil-related activities solely due to the huge penalty imposed on it.<sup>154</sup> Under such duress, DRI had no choice but to continue with the concession agreement, satisfying the second element of prohibited intervention - the 'instrument of intervention'. Therefore, Replomuté has violated the *domaine reserve* of DRI,

**D. REPLOMUTÉ HAS BREACHED ARTICLE 18 OF THE ASR.**

52. It is submitted that there is a twofold requirement for the State to be held indirectly responsible under Article 18 of ASR. Firstly, an Internationally Wrongful Act must be committed by the coerced State. Secondly, the coercing State must know the circumstances of such an act.<sup>155</sup>

**1. Replomuté has committed an Internationally Wrongful Act.**

53. As submitted in the previous argument [I.B.], DRI has breached the obligations under the relevant provisions of CMS, thereby committing an Internationally Wrongful Act. Additionally, it is a requirement under Article 18 that an Internationally Wrongful Act must have taken place. DRI is a party to the VCLT<sup>156</sup> and has violated its interim obligation under Article 18.

54. Article 18 of the VCLT provides that a treaty signatory is "*obliged to refrain from acts which would defeat the object and purpose of a treaty until it shall have made its intention*

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<sup>154</sup> R¶22.

<sup>155</sup> I.L.C., Responsibility of States for Internationally Wrongful Acts ("ASR"), Art.18, G.A. Res. 56/83, U.N. GAOR, 56th Sess., Supp. No. 49, U.N. Doc. A/RES/56/83.

<sup>156</sup> R¶5.

*clear not to become a party to the treaty*".<sup>157</sup> This article creates an interim obligation for States during the period between the signature of the treaty and its entry into force.<sup>158</sup>

55. In this regard, considering the interpretation of Article 18 and the objective of the CMS, DRI has been involved in actions which would defeat the object and purpose of the CMS. This breach of the relevant provisions of the CMS has been dealt with in the previous argument. Therefore, there is a violation of Article 18 of VCLT, resulting in the breach of a treaty obligation, which is an Internationally Wrongful Act.
56. There is an Internationally Wrongful Act of a State committed when conduct consisting of an action or omission: (a) is attributable to the State under international law and (b) constitutes a breach of an international obligation of the State.<sup>159</sup> In this context, the action can be attributable to DRI, and there is a breach of an obligation under VCLT by DRI. Therefore, DRI has committed an Internationally Wrongful Act and, as submitted hereinabove [I.B.], the Internationally Wrongful Act arose because of the coercion induced by Replomuté.

## **2. Replomuté knew the circumstances of the Act.**

57. It is a requirement under Article 18 of the ASR that the coercing State must be aware of the circumstances which would, but for the coercion, have entailed the wrongfulness of the coerced State's conduct.<sup>160</sup> These circumstances refer to the factual situation rather than the coercing State's judgment upon the legality of the act.<sup>161</sup>

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<sup>157</sup> VCLT, art.18.

<sup>158</sup> *Supra* Note 147.

<sup>159</sup> ASR, commentaries, ¶56.

<sup>160</sup> ASR, Art.18.

<sup>161</sup> ASR, commentaries, ¶70, 2001.

58. In this regard, Replomuté was completely aware of the circumstances and initiated the concession agreement leading to the oil exploration and extraction activities in DRI.<sup>162</sup> Even DRI's reluctance to continue with the Agreement due to concerns that it was not fulfilling its obligations under the Gorilla Agreement indicates that Replomuté knew the internationally wrongful nature of the coerced act. Therefore, DRI fulfils the requirement under Article 18 of the ASR.

## CONCLUSION

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<sup>162</sup> R¶11.

THE APPLICANT, ARINGUV, RESPECTFULLY REQUESTS THE COURT TO ADJUDGE AND DECLARE THAT:

1. REPLOMUTE BY NOT CONDUCTING AN EIA, VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE OIL EXTRACTION PROJECT.

2. THE ACTIONS OF REPLOMUTE CONCERNING OIL EXTRACTION ACTIVITIES IN DRI VIOLATE INTERNATIONAL LAW.

(RESPECTFULLY SUBMITTED)

**AGENT ON BEHALF OF THE APPLICANT STATE.**