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28TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION
2023-2024

Questions Relating to Mountain Gorillas and Impact Assessment

ARINGUV (APPELLANT)

V.

REPUBLIC OF REPLOMUTE (RESPONDENT)

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF JURISDICTION

In accordance with Article 40 of the Statute of the ICJ, Aringuv and Replomuté have submitted questions to the International Court of Justice (ICJ). Replomuté stated that Lenoir Corporation will not proceed with the oil extraction until the ICJ issues its judgment.

In Article 1 of the Special Agreement between Aringuv and Replomuté, the Parties recognized the Court's jurisdiction to decide this matter and will not dispute its jurisdiction in written or oral proceedings.

The Parties will respect the decision of this Court.

STATEMENT OF FACTS

Replomuté, through its subsidiary Lenoir Corporation, has obtained permission to extract oil from an area inhabited by the Southern gorilla population. This economic activity has been conducted with pauses over the years and has consistently adhered to the established guidelines of an Environmental Impact Assessment (EIA) in the territory of the Democratic Republic of Ibirunga (DRI).

Aringuv is a sovereign state in Central Africa that shares its borders with the Democratic Republic of Ibirunga. The economy of Aringuv partially relies on the tourism industry, including mountain gorilla tourism. Aringuv is concerned about the species extinction and the climate change impact.

Replomuté is a state in Europe, characterized by its large population of 80 million people. The country has a high-income, consequently is among the world's leaders in mining and ore industry. Also, consume goods manufacturing, including electronics equipment.

Basically, in 1981, the DRI and Reploumuté signed a concession agreement, allowing the oil extraction, beginning in 1983, and construction of a pipeline , based on the

EIA's guidelines, as mentioned above. During the following three years, Lenoir Corporation conducted the activity. However, because of a civil war in the DRI, it was suspended until 2003. The activity was suspended again during the Ebola outbreak and resumed in 2009. Meanwhile, several conventions were signed, but not encompassing at all states. Replomuté has not been a party to the Gorilla Agreement from 2007, a treaty in which the main focus is to preserve the species and their habits. Also, the DRI entered as a party to this agreement only in 2015.

In the same year of the entrance of the DRI in the Gorilla Agreement, Replomuté established a fund for the economic development of the DRI, as a gesture of good will. After that, during the next two years, three other agreements were signed: Paris Agreement, Revised African Convention on the Conservation of Nature and Natural Resources and the attempt of Aringuv to enter at the Espoo Convention, a signature which was never ratified, making the state not a party of it.

Only after 42 years of Lenoir Corporation's operation, Aringuv sent informal letters to Replomuté's government. However, the negotiations continued for months without resolution. Consequently, Aringuv and Replomuté have encountered difficulties in resolving their disputes concerning the ongoing oil extraction activities in the Democratic Republic of Ibirunga. Recognizing their differences, both states have decided to submit to the court the decision related to the international rules that will be considered treaty-based.

SUMMARY OF ARGUMENTS

I. Replomuté is committed to the Concession Agreement with the DRI

The contract between Replomuté and the DRI is legally binding, that is, the parties are bound by the agreement and must follow it and respect it. The contract was made possible due to the desire of the parties to participate in bilateral agreements, an internationally recognized right, assured by their sovereignty. Even though they are bound by the contract, Replomuté adopted all possible measures to mitigate environmental impacts and respect the international treaties to which it is a signatory.

II. Replomuté aims for sustainable development

There is nothing in the contract signed between Replomuté and the DRI that suggests a disrespect for the environment. On the contrary, they adopted all measures to ensure sustainable development. The agreement stimulates mutual sustainable, social and

economic development. This development is a founding point of the contract and its relevance must be taken into account.

ARGUMENTS

I. REPLOMUTÉ IS COMMITTED TO THE CONCESSION AGREEMENT WITH THE DRI

A. The pact was forged between sovereign states

The commitment to the 1981 Concession Agreement was agreed upon by two sovereign[1] entities. Both parties voluntarily agreed to the terms and conditions of the agreement without any hint of coercion. At the time of the agreement, the DRI was a sovereign state with full agency, possessing the autonomy to make informed and sovereign decisions regarding international accords, and it willingly chose to enter into an agreement with Replomté. As mentioned later in this memoir, gorillas are not a migratory species, and

[1] Sovereignty
"The creation of a legal right is an act of the law; and the law can act only in accordance with itself. The power of a sovereign, therefore, to affect legal rights depends upon the law; and upon the law must be based on all sovereign jurisdiction" Joseph H. Beale - Harvard Law Review, Vol. 36, No. 3 (Jan, 1923),pp. 241-262

"The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territories, must be- traced up to the consent of the nation itself. They can flow from no other legitimate source." - Chief of Justice Marshall in the Schooner Exchange v. M'Faddon

Aringuv should refrain from interfering in the decisions of Replomté or the DRI, as they are both sovereign states.

Therefore, Replomuté strongly asserts that the DRI should act in accordance with the agreement, demonstrating the due respect and commitment expected from a party bound by a treaty. Furthermore, it is imperative that Aringuv acknowledges and respects the sovereignty of the DRI in matters pertaining to the accord.

1. ***Aringuv's allegations that Replomuté coerced DRI to enter the contract are unsubstantiated.***

In the ongoing dispute between Replomuté and Aringuv, Replomuté emphasizes an element regarding the 1981 Concession Agreement: the DRI's voluntary participation in the agreement. There is no credible evidence of external influence or undue pressure during the negotiation and signing of this agreement. In fact, the DRI willingly engaged in the agreement without succumbing to external pressures or influences, all while safeguarding the country's interests.

It is worth noting that the DRI entered the contract voluntarily, exercising its sovereignty. In June 2012, when General Mina, the new president of the DRI, announced that, due to the Gorilla Agreement, the DRI felt compelled to withdraw from the 1981 DRI-Replomuté agreement, the government of Replomuté invoked the mandatory arbitration provision of the DRI-Replomuté agreement. Replomuté prevailed in the binding arbitration, which ordered the DRI to allow the Lenoir Corporation to proceed with its oil exploration and extraction activities or face penalties exceeding $825 million (USD). The DRI complied with the Lenoir Corporation's oil-related activities within the DRI. The fact that the DRI did not challenge the arbitration process or its outcome further underscores the absence of coercion. It solidifies the DRI's decision to accept the arbitral panel's ruling as a voluntary and legally binding commitment to the terms of the 1981 agreement

Beyond that, parting from the idea of its supposed coercion, the DRI voluntarily signed an agreement with Replomuté, and, as such, agreements must be upheld, as international law and the Latin maxim *pacta sunt servanda*[2] encapsulate the importance of voluntary agreements and their binding nature. Therefore, the rules and resolutions of the

[2] *pacta sunt servanda*
"The principle *pacta sunt servanda* applies to the rules in force, i.e., those which have entered into, and remain in, force. This provision is confirmed by Article 26 of the Vienna Convention on the Law of Treaties." At the same time, under Article 18 of the Vienna Convention, the effect of the principle extends also, to a limited degree, to treaties that have been signed but not yet ratified or approved. The parties are obliged to refrain from acts that would defeat the object and purpose of such treaties. The principle covers cases where there is provisional application of treaties pending their entry into force (Article 25 of the Vienna Convention)." Malcolm P. Sharp - Columbia Law Review, Vol. 41, No. 5 (May, 1941),pp. 783-798

proceedings placed on that agreement need to be respected, doing anything other than that underscores the fact that the arbitral panel's decision is legally binding and must be enforced, as it results from due process. Challenging or ignoring this ruling would undermine the established method of dispute resolution through arbitration, recognized in international law. By adhering to the terms of the arbitral ruling, Replomuté fulfills its international obligation, and the DRI is equally bound by its obligations to respect and adhere to the decision, in line with the principles of the rule of law and legal security in international relations.

Therefore, it’s impossible to say that the DRI was forced or coerced into signing the 1981 agreement, and to say that it has been coerced into fulfilling that agreement would be attacking a step further into an already damaging and baseless accusation. Since it has been given the opportunity, after the decision made by the arbitral panel which gave permission for Replomuté to continue their oil exploration, for the DRI to contest the ruling.

A. The covenant was forged in good will and conducted a fair treatment

In the realm of international diplomacy and legal relations, good will serves as a cornerstone that upholds the integrity and credibility of treaties and agreements between sovereign states. The commitment to good will underscores the belief that the international community can only function cohesively when nations maintain their treaty commitments, fostering predictability, trust, and stability in international relations.

In this context, it is imperative to underscore the profound significance of Replomuté's unwavering commitment to the Concession Agreement forged with the Democratic Republic of Ibirunga (DRI). This commitment serves as an unequivocal testament to Replomuté's dedicated adherence to the terms and obligations delineated in the agreement, in perfect alignment with the best interests of both parties. These interests encompass the pursuit of national development, securing vital investments, and engaging in mutually advantageous economic activities.

Aringuv's unfunded claims posting any form of coercion during the agreement's signing not only lacks credible substantiation, but also stands in stark contrast to the fundamental logic that underlie the very essence of this accord. It remains abundantly clear that both Replomuté and the DRI willingly and in the spirit of good will engaged in this agreement, sharing a common objective of advancing their interests as sovereign states.

This shared pursuit reflects a deep-seated commitment to act in accordance with the foundational principles of international relations.

Moreover, Replomuté ensured that the DRI received fair and equitable treatment, an established practice that holds paramount importance within the realm of international relations. This not only bolsters the integrity of the Concession Agreement but also underscores the unwavering commitment of both parties to its conscientious execution.

An aspect of this commitment revolves around the voluntary nature of the 1981 agreement, which was entered into willingly by both parties. The absence of credible evidence suggesting duress, coercion, or external pressure during the negotiation and signing of the agreement underscores that the DRI, as a sovereign state at the time, exercised its full agency and autonomy in the decision to participate in this international agreement.

In addition to that, International law places immense importance on the sanctity of voluntary agreements, firmly dictating that such agreements be upheld. The principle of "pacta sunt servanda" finds its roots here, imposing a fundamental obligation on states to fulfill their treaty commitments in utmost good will. The fundamental principle of public international law, encapsulated by the Latin maxim aforementioned, is formally enshrined

in Article 26 of the Vienna Convention on the Law of Treaties. This article affirms the binding nature of the obligations upheld in the commitments states willingly undertake. Therefore, Replomuté's expectation that the DRI should oblige to the 1981 agreement is consistent with this principle of international law.

B. The contract must be obeyed due to the Pacta Sunt Servanda

The fundamental premise underpinning Replomuté's position is the well-established principle of *pacta sunt servanda*. This principle dictates that international treaties and agreements, serving as instruments of binding commitments, must be respected and upheld by the parties involved in utmost commitment to the fulfillment of what was accorded. Thus, Replomuté has a legitimate expectation that the DRI will honor its obligations as delineated in the 1981 agreement, since the disregard of these obligations would engender uncertainty and imperil the very framework of international law, as predictability is essential for fostering trust and consistency in international relations.

As mentioned, Arangouv's allegations that Replomuté is coercing the DRI into the agreement consequently fail to hold ground. The firm commitment to the voluntary nature of the agreement and the associated principle of pacta sunt servanda belie any accusations

of coercion or undue influence. Replomuté's position is grounded in international law, which mandates that states must honor their treaty obligations.

Moreover, compliance with contractual commitments[3] is not merely a matter of legal duty but also serves a broader purpose. It is essential to maintain the integrity of international agreements, ensuring predictability and consistency in international relations. The principle of adhering to one's contractual commitments fosters stability and reliability in state interactions. To disregard these obligations would not only be a violation of international law but also a breach of trust among nations, undermining the very framework that governs their relationships.

In conclusion, Replomuté's position is fortified by its commitment to the Concession Agreement and the voluntary nature of this agreement, grounded in good will and international law. The allegations of coercion or undue influence are thus

[3] Contract stability
In the law of continental Europe, the contract between the state and private persons—also generally known as the administrative contract—appears in two manifestations: as a private law contract between the administrative state and private persons on the one hand, and as a public law contract between the administrative state and private persons on the other. With this contract, either in the private law or the public law manifestation, the state is using the tool of legally stabilized cooperation to achieve its political goals. Thus, in the private law administrative agreement, a public element is introduced with the setting of a political goal, and in the administrative-law agreement, a traditional element of the private is introduced with the cooperation form of contract.

unsubstantiated, as Replomuté firmly upholds the principles that safeguard the integrity and predictability of international relations.

2. Conducting a new EIA would create legal instability and a dangerous precedent

Aringuv's unsubstantiated claims, contending that Replomuté's failure to conduct an Environmental Impact Assessment (EIA) for the proposed oil extraction activities violates international law, lack a solid foundation. While Aringuv argues that international law imposes an obligation for a new EIA, such an argument overlooks how contractual stability and legal predictability are crucial to the integrity of international agreements.

In that matter, the Costa Rica vs. Nicaragua case offers a relevant precedent. In this judgment, the International Court of Justice found that Costa Rica had an obligation under general international law to conduct an EIA before constructing a road that posed a risk of significant transboundary harm. Importantly, the Court's ruling was centered on the premise that Costa Rica failed to meet this specific obligation, not on the assertion that any change in international law mandated a new EIA in all similar cases. In the context of

Replomuté and the DRI, it's noteworthy that the EIA was indeed conducted at the time of the 1981 agreement, and factually meets the requirements and obligations imposed by the international law of that period.

In the light of what was mentioned, it is crucial to emphasize that the 1981 agreement, including its environmental impact assessment, was created under the legal standards and needs of its time, and it is this legal framework that should dictate the obligations and expectations of both parties subjected to the accord. While international law may evolve, contractual responsibilities should generally remain static unless compelling reasons dictate otherwise. In any other circumstances, the stability of international agreements would be at risk, as they would be subject to constant reinterpretation and adjustment, which is contrary to the very essence of *pacta sunt servanda.*

At the time of the agreement, the rigorous Environmental Impact Assessments (EIA) that was conducted aligned with the foundational principles of the Convention on Biological Diversity (Article 14.1(a) and all regulations and standards applicable during that specific period.

It's important to underline that, at the time of these critical EIAs (1997 for Replomuté and 2015 for the DRI), neither party was a signatory to the Espoo Convention. This distinction is crucial because the Espoo Convention establishes guidelines for conducting EIAs and emphasizes the importance of involving affected parties. Therefore, the assessments were carried out in a context where the specific requirements and standards were clear and followed diligently.

It should also be noted that, the fact that Replomuté and the DRI refrained from signing Algiers 2 signifies their deliberate choice to abstain from entering into subsequent agreements that might introduce legal instability. This choice serves as a testament to their dedication to upholding the original Concession Agreement's integrity and the maintenance of a stable legal framework governing their ongoing relationship.

Replomuté strongly maintains that the terms and obligations specified in the 1981 agreement should endure, except in cases of exceptional and compelling reasons necessitating their reconsideration or initiation of a new Environmental Impact Assessment (EIA). In the face of Aringuv's arguments, which will be addressed in subsequent sections, related to climate change and its impact on gorillas, we will provide a detailed examination in subsequent paragraphs. It is essential to highlight that this contractual arrangement has

remained effective and in force for 42 years, spanning from 1981 to 2023. Remarkably, even during periods of political instability, such as the events of 11 March 2020 when pipeline construction was 98% complete, the agreement remained resilient. This enduring nature of the contract underscores the paramount importance of contractual stability, which is a cornerstone for maintaining legal order and predictability in the realm of international relations.

Given these premises, Replomuté's position finds its strength in the legitimate expectation that the DRI will honor the contractual obligations set out in the 1981 agreement. This expectation extends beyond a mere legal obligation; it is deeply rooted in the principles of legal security and agreement stability. In essence, Replomuté is well within its rights to anticipate that the terms and conditions established in the 1981 agreement be upheld. By adhering to the standards and requirements in place at the time of the agreement's formation, both parties ensured that the contract's terms would remain stable and predictable.

In examining the adherence to contractual obligations in the context of international agreements, it becomes evident that the parties involved are bound not only by their legal duties but also by the legitimate expectations generated through these agreements. The Convention on Biological Diversity (Article 14.1(a)) introduces obligations that have a

direct bearing on Replomuté's stance concerning the 1981 Concession Agreement. The obligations set forth in this convention place a significant responsibility on Replomuté to respect its environmental impact assessment obligations as per the terms of the 1981 agreement.

Article 14.1(a) of the Convention on Biological Diversity introduces a complementary obligation for contracting parties to introduce appropriate procedures for environmental impact assessments of proposed projects with potential significant adverse effects on biological diversity. This obligation resonates with Replomuté's position, as it underscores the importance of anticipatory measures for avoiding or minimizing adverse effects, which was done in accordance with all regulations applicable for the time of the agreement in the conduction of the EIA. These measures are not isolated requirements but part of a broader commitment to responsible environmental practices within the scope of the 1981 agreement.

II. REPLOMUTÉ AIMS FOR SUSTAINABLE DEVELOPMENT

A. Replomuté and the DRI pursue sustainable economic and social development

Replomuté is dedicated to oil exploration through the concession contract, in which the goal is not only the extraction activity itself, but also the development and technological exchange that Replomuté wants to reach with this partnership with the DRI. This agreement, which granted Lenoir Corporation the right to explore and extract oil in a specific area of the DRI's territory, demonstrates cooperation between European countries and African countries, such as the DRI.

Therefore, it is clear that the contract signed between the DRI and Replomuté in 1981 stimulate mutual economic development. The DRI is an agrarian country rich in natural resources and Replomuté is one of the world's largest oil importers. Thus, the contract supports the economic activity of both countries, generating development. Furthermore, in the spirit of goodwill following the arbitration panel's favorable ruling for Replomuté, Replomuté created a "Friendship Fund" of 10 million dollars to support the economic development of the DRI. This initiative not only reinforces the commitment to good will and the mutual benefits of the agreement, but also aligns with Replomuté's sustainable vision.

Moreover, Replomuté and the DRI aim for sustainable development. Both parties attended the 1992 United Nations Conference on Environment and Development at Rio de

Janeiro, where they contributed to make a Declaration[4] that contains, in its 1st article, the Principle of Sustainable Development. Therefore, they are committed to develop socially and economically but in harmony with the environment, by integrating environmental considerations into the development of goals and projects.

A demonstration of this cooperation becomes evident in the context of the "Conflicto de las papeleras"[5], a dispute between Argentina and Uruguay judged by the ICJ. This specific agreement portrays the ongoing dispute between these countries, due to the construction of two cellulose factories on the border between the two countries, both members of MERCOSUL. In fact, the Spanish company ENCE S.A. (ENCE) and the Finnish company Oy Metsä-Botnia Ab (Botnia) were authorized to start the construction of two pulp and paper factory projects: "Celulosas de M'Bopicuá (CMB)" and "Orion", in October 2003 and February 2005, respectively. These plants will be installed on the banks of the Uruguay River, whose waters are jointly administered by Argentina and Uruguay, within the scope of the Uruguay River Administrative Commission (CARU), under the terms of the Uruguay River Statute, signed in 1975.

[4] https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf
[5] https://www.icj-cij.org/case/135

The difference between the case above and the conflict addressed here is divided into two points. Firstly, both Argentina and Uruguay have been positively impacted by economic growth, as profits and labor opportunities are shared between Replomuté and the DRI. Secondly, the court assessed that, by not informing CARU about the works before issuing the environmental authorizations, Uruguay had violated the 1975 statute. In the case under analysis, this is demonstrated by the opposite, since both Replomuté and the DRI are participants in several environmental treaties that seek socio-environmental preservation and development.

Finally, sustainable development requires nations to consider not only the environmental aspect but also the social and economic ones. The agreement stimulates development for the DRI. More specifically, oil exploration in the territory boosts the country's economy, contributing to the circulation of money and goods and creating, consequently, countless job opportunities. As a result, the DRI population will experience a significant improvement in their quality of life and well-being.

Also, reiterating an argument that has already been mentioned in previous topics (*B1*), the Environmental Impact Assessment (EIA) was conducted in accordance with all the conventions to which Replomuté and the DRI are parties and also in accordance with

their national laws. Conducting this EIA assures the parties commitment to sustainable development, having analyzed all possible environmental damage, impacts on the population and use and waste of water that the contract would create, taking measures to mitigate all of them.

B. *Climate Change*

Related to the possible danger that oil extraction would cause to the environment, we will assume that the countries that signed the contract, namely Replomuté and the DRI, both signed the Paris Agreement of December 2015. This agreement has an ambitious target of reducing greenhouse gas (GHG) emissions: avoiding global warming of more than 1.5 degrees Celsius (59 Fº) by the end of the century and thus avoiding the worst effects of climate change. Part of the impact is due to the fact that oil is the largest source of energy in the world and there are few ready substitutes for it.

Therefore, to achieve a reduction in GHG emissions, oil exploration must seek innovation that is technically viable, and investment in new technologies. Despite a historic and concentrated regulatory focus on other fossil fuels and automobiles, the oil sector will increasingly present an opportunity to mitigate climate change.

Research provided by the Carnegie Endowment for International Peace on GHG emissions in the oil sector reports that future damage caused by oil extraction can be reduced in two ways: (i) If the emissions associated with the production, refining and consumption of each barrel of oil are kept constant; (ii) maintaining constant supply volume while reducing oil emission intensities will also reduce emissions.

The way in which Replomuté found to help mitigate these environmental risks was by creating a "Friendship Fund" of 10 million dollars for the economic development of the DRI, reinforcing good will and the goal of mutual benefit of the agreement. Furthermore, Replomuté and the DRI aim for sustainable development. Therefore, they are committed to develop economically, but in harmony with the environment.

If we start from the assumptions present in Arangouv's arguments, oil extraction and the construction of the Pipeline should be stopped immediately due to the Precautionary Principle[6]. From this point of view, Arangouv believes that the mere

[6] **The precautionary principle** enables decision-makers to adopt precautionary measures when scientific evidence about an environmental or human health hazard is uncertain and the stakes are high. It first emerged during the 1970s and has since been enshrined in a number of international treaties on the environment, in the Treaty on the Functioning of the European Union and the national legislation of certain Member States. The precautionary principle divides opinions. To some, it is unscientific and an obstacle to progress. To others, it is an approach that protects human health and the environment. Different stakeholders, experts and jurisdictions apply different definitions of the principle, mainly depending on the degree of scientific uncertainty required for the authorities to take action. Although most experts agree that the precautionary principle does not call for specific measures (such as a ban or reversal of the burden of proof), opinions are divided on the method for determining when to apply precautionary measures. The application of the precautionary principle presents many opportunities as

possibility of damage occurring should be a sufficient deterrent to any situation where there is the slightest chance of environmental degradation.

However, it became clear that this principle cannot and should not be applied in this case.

This is because the mere uncertainty of the damage should not be a barrier or an obligation to abstain from economic and social development, which came and will still happen through the activity. Given this, a case-law that demonstrates the international tendency not to recognize the Precautionary Principle as a custom can be shown by the World Trade Organization[7], in several cases, chooses to prioritize the protection of the economy, consequently preventing the emergence of economic barriers.

The focus is not just on economic development, but on the social impact behind it. If we had started from this principle, social development would be impossible in any instance, as it is directly linked to economic development.

well as challenges. The precautionary principle is closely linked to governance. This has three aspects: risk governance (risk assessment, management and communication), science-policy interfaces and the link between precaution and innovation.

[7] The economic impact of climate change is usually measured as the extent to which the climate of a given period affects social welfare in that period. This static approach ignores the dynamic effects through which climate change may affect economic growth and hence future welfare. In this paper we take a closer look at these dynamic effects, in particular saving and capital accumulation.

Finally, as another way of demonstrating Replomuté's commitment to precaution and preservation of the environment, an EIA was conducted, taking all possible measures for economic development to go hand in hand with environmental preservation.

C. Gorillas as a Non-Migratory Species

The argument presented by Aringuv is that, as the Royal Mountain Gorilla is a migratory species, the oil extraction activities would have a transboundary impact in the southern population of the Royal Mountain Gorilla.

Addressing this affirmation, it is important to acknowledge the definition of migratory species in the CMS document[8], which states that migratory species are the mass directional movements of a large number of members of a species from one location to another, in a predictable and cyclical way, crossing jurisdictional boundaries. Just by objectively interpreting this definition, it is not possible to fully consider the gorillas as a migratory species, as they do not have regular seasonal migrations in the more traditional sense.

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[8] "Migratory species" means the entire population or any geographically separate part of the population of any species or lower taxon of wild animals, a significant proportion of whose members cyclically and predictably cross one or more national jurisdictional boundaries

Regarding the theory that despite the Royal Mountain Gorillas having less common migratory journeys, they can be considered “technical” migrants, due to their characteristic of predictably crossing range state boundaries in the course of their movements, it is important to observe that the “CMS practice does not reveal absolute consistency”, as the second edition of Lyster’s International Wildlife Law phrases it.

To exemplify this affirmation, the situation related to the Asian Elephant (*Elephas maximus*) on the 4th CMS COP properly illustrates how the Convention on Migratory Species does not have a logical method to define migratory species. In the circumstances presented, the suggestion to the CMS to bring this species under the protection of the Convention Text, and to consider them a migratory animal, was rejected, as the Asian Elephant was considered to only oscillate between national frontiers, which cannot be considered a migratory movement.

Nevertheless, even though the Royal Mountain Gorilla have the same kind of insufficient cyclical and predictable movements across national borders of the Asian Elephant, they were included in the CMS Appendices. Therefore, if both species have the same logic of crossing boundaries, which does not characterize as a migration, both of them should not be considered migratory species, not only the Asian Elephant.

Even though the parameters used by the CMS cannot be considered totally consistent, this does not mean that the convention should be disregarded in matters of protection of migratory species, but to the situation being analyzed, this concept of migration should be considered incidental, since we have to consider if there is in fact some kind of migratory movement by the southern population of the Royal Mountain Gorilla, which does not happen in a sufficiently regular way, and even if it happened the gorillas does not have the rational capability to know that they are crossing a jurisdictional boundary, so the soil partition does not impact their ability to shift around territories.

CONCLUSION

The Respondent, Replomuté, respectfully requests the Court to judge and declare that:

1. Replomuté has not violated international law with respect to the preparation of the EIA.
2. The actions of Replomuté, with respect to the oil extraction activities in the DRI, comply with international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT.