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Questions Relating to Mountain Gorillas and Impact Assessment (Aringuv v. Replomuté)

Memorial for the **Respondent** **(Replomute)**

Team 2431

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QUESTIONS PRESENTED

1. Whether, as a procedural matter, Replomute has violated international law with respect to the preparation of an environmental impact assessment; and

2. Whether, as a substantive matter, the actions of Replomute with respect to the proposed oil extraction activities in the DRI comply with international law.

STATEMENT OF JURISDICTION

Pursuant to articles 36 and 40 of the Statute of the International Court of Justice, Replomute unequivocally submits to the jurisdiction of this court and agrees to be bound by its decision based on the Agreed Statements of Facts under the Special Agreement made with Aringuv and the rules and principles of general international law beside any applicable treaties and conventions.

STATEMENT OF FACTS

1. In 1981, the DRI and Replomuté entered into a concession agreement that granted the Lenoir Corporation (hereafter: Corporation), a corporation wholly owned and operated by the government of Replomuté, the right to explore and extract oil from the area inhabited by the southern

population of the Royal Mountain Gorilla, prior to which an environmental impact assessment (hereafter: EIA) was conducted.

2. The Corporation undertook oil exploration from 1983 to 1986 before a civil war and insurgent activity stopped its progress from 1987 to 2002, after which oil exploration resumed until an Ebola outbreak suspended exploration once more from 2006 to 2008.

3. Oil exploration continued from 2009 up to 2012 when the Corporation formally announced plans to begin extraction by constructing a pipeline expected to be completed in 2014. However, the plans were scrambled by General Mina's orchestrated coup.

4. Subsequently, on the back of concerns about the southern population of the Royal Mountain Gorilla from nongovernmental organizations (hereafter: NGOs), the DRI declared its intention to withdraw from the 1981 agreement citing environmental and social impacts with a demand for compensation from Replomute. The result was arbitration proceedings which the DRI lost in 2015, invoking the continuity of the pipeline project.

5. The project was 80% complete in 2015 when it stalled for the third time due to labor challenges, including a series of general strikes in the DRI, as well as supply chain issues.

6. From 2018, the NGOs' concerns have been picked up by the government of Aringuv which has contested that Replomute has failed to respect its procedural obligations in regards to undertaking an EIA before executing oil exploration and extraction and asserted that Replomute has failed to protect biological diversity in the Corporation's activities, which forms the basis of this dispute.

SUMMARY OF ARGUMENTS

1. Whether, as a procedural matter, Replomute has violated international law with respect to the preparation of an environmental impact assessment;

7. Having conducted an EIA prior to oil extraction, the DRI fulfilled the requirement to account for future effects on biodiversity and climate. The blueprint provided by the Algiers Convention to which the DRI was a party at the time catered for protection of endangered species, hence adequately covered gorillas as part of the general populace of fauna.

8. Furthermore, the issue of climate was adequately covered through consideration of land and water resources, whose utilization for economic ends has been flagged by the United Nations as the main cause of climate change through carbon emissions. All other conventions came into force after the 1981 agreement hence cannot apply retrospectively as a principle of international law. Undertaking a new EIA is therefore not mandatory.

2. Whether, as a substantive matter, the actions of Replomute with respect to the proposed oil extraction activities in the DRI comply with international law;

a. Whether Replomute had a Direct Responsibility:

9. The claim that the respondents have direct responsibility under the Convention of Migratory Species (hereafter: CMS) is a creation of Aringuv as no such responsibility is grounded in law. Such responsibility comes at the instance of refusal to fulfill a treaty obligation involving international responsibility. In this case, the respondents submit that no such refusal existed under the CMS as the alleged migratory animals, the Royal Mountain Gorillas, do not migrate in this context, a position substantiated in paragraph 19 of the fact record which unequivocally conveys

that the southern population of the Royal Mountain Gorilla occupies a national park in the DRI, and its members have rarely been sighted in Aringuv.

10. The respondents maintain and submit that regarding the CMS, the duties pertaining to Appendix I species contained in Article III apply to Range States only and the trial by the applicants to have Replomute bound by these provisions is inherently vague as Replomuté is not a Range State for the Royal Mountain Gorilla, and thus Article III's duties do not apply.

b. Whether there was an Indirect Responsibility through 'coercion' of the DRI:

11. The respondents submit that the claim of indirect responsibility through coercion is one which is devoid of substance. Coercion seeks "to structure someone's motives, while brute force tries to overcome his strength." In other words, unless it decides to wage war, the coercing state shapes the behavior of the coerced state by exploiting its vulnerabilities and manipulating its fears, thereby limiting its will to resist the demands of the coercing state. It is noteworthy that from the fact record the DRI was neither exploited of its vulnerabilities nor manipulated to accept and sign the concession agreement. Replomuté maintains that the DRI was under no duress.

12. On Aringuv's reliance on the ILC Articles on State Responsibility, we assert that the articles adopt a similar understanding of coercion. The ILC noted that coercion "has the same essential character as force majeure," which is "irresistible force" that "makes it materially impossible" for the coerced state to resist the coercing state. The respondents vehemently maintain that no will was forced from the state of DRI to violate any international law and the claim of indirect responsibility through coercion from the appellants is vague.

ARGUMENTS

1. Replomute has NOT violated Law with respect to the Preparation of an EIA;

a. Original Assessment:

13. Paragraph 17 of the fact record is explicit that the DRI conducted an EIA prior to signing the 1981 agreement with Replomute. Above according to its national laws, the DRI used the blueprint provided by the African Convention on the Conservation of Nature and Natural Resources (hereafter: Algiers Convention).

14. Contrary to Aringuv's assertions in paragraph 29 of the fact record, the EIA took into consideration general environmental factors which include the plight of all wildlife, including the Royal Mountain Gorilla which is a mammal for the purpose of the list of protected species under class A of the Algiers Convention.

15. In the foregoing, Article VIII of the Algiers Convention mandates Contracting States, the DRI being among them, to provide special protection to animal species threated with extinction, or **which may become so**, and to the habitat necessary for their survival.

16. The phrase 'which may become so' is crucial for it encapsulates the commitment of the DRI to support all future endeavors to protect gorillas. Therefore, the enforcement of the Gorilla Agreement, the Espoo Convention, the Convention on Biological Diversity, the Revised Algiers Convention and the U.N. Framework Convention on Climate Change is only a reiteration of the provision and is ancillary, not adversarial, to the validity of the EIA conducted before the 1981 agreement.

17. It is Replomute's view that the court should pay attention to the doctrine of substantial performance.[1] The mere fact that the EIA focused more on human populations ought not be construed as a neglect of gorillas. The prudence of harmonious construction is crucial in this case.[2]

18. As stated in **paragraph xxx** above, the protection of gorillas was and remains to be as important to the DRI, and in extension, Replomute, as the protection of all other species. It is crucial to examine the intention of the regime of laws on the EIA as aimed to protect all species, not just gorillas.[3]

19. In regard to climate change conventions, the Intergovernmental Panel on Climate Change terms human activities, principally through emissions of greenhouse gases, with unequal historical and ongoing contributions arising from unsustainable energy use, land use and land-use change, lifestyles and patterns of consumption and production across regions, between and within countries, and among individuals, have unequivocally caused global warming.[4]

20. Such economic activities are tied to soil, water, flora and faunal resources as captured by Articles IV, V, VI and VII of the Algiers Convention respectively. Thus, in covering these aspects in the EIA, the DRI accounted for the future climatic effects of the Corporation's work.

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[1] Regina v. Soneji and another, UKHL 49 (2005).

[2] Jonathan Law & Elizabeth A. Martin, A Dictionary of Law (7th ed., 2014).

[3] UKHL, supra, 49.

[4] Hoesung Lee et al., Summary for Policymakers, in Climate Change 2023: Synthesis Report, Intergovernmental Panel on Climate Change, 4, 5 (2023), https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_SPM.pdf.

b. Retrospective Application of Law and Continuity of the Corporation's Project:

21. Non-retroactive application of law is a general principle of international law.[5] There was no other international instrument related to environmental matters except the Algiers Convention and the Stockholm Declaration at the time of concessioning the 1981 agreement.

22. The Algiers Convention gives the DRI full responsibility on environmental matters within its jurisdiction while principle 21 of the Stockholm Declaration gives states the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

23. Aringuv relies purely on speculation evidenced by repeated use of the world "likely" in paragraphs 21 and 27 of the fact pattern. As much as the word is reflected in the Convention on Biological Diversity and the Convention on Migratory Species, no tangible sign has been provided to back up such a claim in all the years of the Corporation's activities, rendering Aringuv's claims

[5] Conocophillips Gulf of Paria B.V. v. Corporación Venezolana de Petróleo, S.A., Petróleos de Venezuela, S.A., ICC 22527/ASM/JPA, 378 (2019); Perenco Ecuador Limited v. Republic of Ecuador (Petroecuador), ICSID ARB/08/6, 357 (2015); Hissein Habre v Republic of Senegal, Judgement ECW/CCJ/JUD/06/10, (2010); Hunt-Matthes v. Secretary-General of the United Nations, Judgment 2014-UNAT-444/Corr.2, 26 (2014); RREEF Infrastructure (G.P.) Ltd and RREEF Pan-European Infrastructure Two Lux Sarl v. Kingdom of Spain, ICSID ARB/13/30, 474 (2018).

unsubstantiated. Nothing prevents Aringuv from conducting its own EIA on its southern territory in any case, if indeed it is convinced the gorillas are a migratory species.

24. Espoo Convention came into effect after the project was commissioned, meaning that Article 6.3 does not apply to the Corporation's activities. Revising the EIA would solely be by Replomute's choice, not the convention's or Aringuv's demand.[6] In line with article 28 of the Vienna Convention on the Law of Treaties, Only an agreement between Replomute and the DRI or Aringuv to apply any of the provisions on environmental assessments retrospectively would serve as an exception to the principle of non-retroactivity.

25. The Corporation's oil extraction and exploration activities are intertwined, continuous and perpetual. The project has been ongoing from 1983 to date. The unprecedented breaks occasioned by the civil war and Ebola outbreak suspended exploration but did not cancel it. It has been a single process, a reality supported by the fact that Replomute and the DRI still operate within the premises of the 1981 agreement. None other has been concessioned to demand a new EIA to be conducted.

2. The Actions of Replomute with respect to the proposed Oil Extraction Activities in the DRI comply with international law

a. Whether Replomute had a Direct Responsibility:

[6] Al Albani v. Secretary-General of the United Nations, Judgement 2016-UNAT-663, 25-27 (2016).

26. On the claim that the respondents have direct responsibility under the CMS, it is our submission that this responsibility is a creation of the applicants as no such responsibility is grounded in law.

27. In the Phosphates in Morocco case, PCIJ in respect to article 1 of the ILC Draft articles on Responsibility of States for Internationally Wrongful Acts (hereafter: Draft articles on Responsibility) reaffirmed that when a State commits an internationally wrongful act against another State international responsibility is established "immediately as between the two States."[7] The respondents avert the claim of the applicants and maintain that no such "wrongful act" was committed against them and their assertion that Replomuté violated their obligations under the CMS is one which is misguided.

28. It is noteworthy that this court has applied this principle on several occasions, for example in the Corfu Channel case,[8] in the Military and Paramilitary Activities in and against Nicaragua case,[9]36 and in the Gabˇcíkovo-Nagymaros Project case.[10] This court also referred to the principle

[7] Phosphates in Morocco, Judgment, Series A/B 74 P.C.I.J., 10, 28 (1938); S.S. "Wimbledon", Series A 1 P.C.I.J., 15, 30 (1923); Factory at Chorzów, Judgment 8 (jurisdiction), Series A 9 P.C.I.J., 21 (1927); Factory at Chorzów, Judgment 13 (Merits), Series A 17 P.C.I.J., (1928).

[8] Corfu Channel, Merits, Judgment, I.C.J. Reports, 4, 23 (1949).

[9] Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports, 14, 142, 149 (1986).

[10] Gabˇcíkovo-Nagymaros Project, 38.

in its advisory opinions on Reparation for Injuries,[11] and on the Interpretation of Peace Treaties (Second Phase),[12] in which it stated that "refusal to fulfil a treaty obligation involves international responsibility."[13]

29. In this case the respondents submit that no such refusal existed under the CMS as the alleged migratory animals, The Royal Mountain Gorillas, do not migrate in this context and this position is substantiated in paragraph 19 of the fact record which unequivocally conveys that the southern population of the Royal Mountain Gorilla occupies a national park in the DRI, and its members have rarely been sighted in Aringuv. A census conducted in 2020 found that the northern population of Royal Mountain Gorillas had 640 individuals, and the southern population had 295 individuals. The northern and southern populations have no contact with each other. It is rather ironical and far-fetched that the applicants claim the proposed activities will likely have a devastating impact on the southern population of the critically Royal Mountain Gorilla and that there is likely to be a significant adverse trans boundary impact yet there is no contact and the southern population in the DRI are rarely seen in their national jurisdiction.

30. Additionally, the respondents maintain and submit that regarding the CMS, the duties pertaining to Appendix I species contained in Article III apply to Range States only and the trial

[11] Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports, 174, 184 (1949).

[12] Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, Advisory Opinion (second phase), I.C.J. Reports, 221 (1950).

[13] Id. At 228.

by the applicants to have us bound by these provisions is inherently vague as Replomuté is not a Range State for the Royal Mountain Gorilla, and thus Article III's duties do not apply.

31. The arbitral tribunals have repeatedly affirmed this principle in Article 1 of the Draft articles on Responsibility in the Claims of Italian Nationals Resident in Peru, the Dickson Car Wheel Company case,[14] the International Fisheries Company case,[15] the British Claims in the Spanish Zone of Morocco case,[16] and in the Armstrong Cork Company case.[17] In the "Rainbow Warrior" case,[18] the arbitral tribunal stressed that "any violation by a State of any obligation, of whatever origin, gives rise to State responsibility."[19] The respondents maintain that no such obligation existed.

32. The Draft articles on Responsibility go forth and provide for two elements to establish responsibility. Firstly, the conduct in question must be attributable to the State under international law. Secondly, for responsibility to attach to the act of the State, the conduct must constitute a breach of an international legal obligation in force for that State at that time. These two elements were specified by PCIJ in the Phosphates in Morocco case. The Court explicitly linked the creation

[14] Dickson Car Wheel Company (U.S.A.) v. United Mexican States, 4 UNRIAA, 669, 678 (1931).

[15] International Fisheries Company (U.S.A.) v. United Mexican States, 4 UNRIAA, 691, 701 (1931).

[16] 2 UNRIAA, 615, 641 (1925).

[17] 14 UNRIAA, 159, 163 (1953).

[18] 20 UNRIAA, 215 (1990).

[19] Id. At 251.

of international responsibility with the existence of an "act being attributable to the State and described as contrary to the treaty right[s] of another State."[20]

33. This honorable court has also referred to the two elements on several occasions. In the United States Diplomatic and Consular Staff in Tehran case, it pointed out that, in order to establish the responsibility of the Islamic Republic of Iran: firstly, it must determine how far, legally, the acts in question may be regarded as imputable to the Iranian State. Secondly, it must consider their compatibility or incompatibility with the obligations of Iran under treaties in force or under any other rules of international law that may be applicable.[21] The respondents submit that on examination of the first element from the fact record, the action is in no way imputable to the state of Aringuv, and, on the second element, there is total incompatibility with the rules the applicant is asserting. Similarly, in the Dickson Car Wheel Company case, the Mexico-United States General Claims Commission noted that the condition required for a State to incur international responsibility is "that an unlawful international act be imputed to it, that is, that there exist a violation of a duty imposed by an international juridical standard."[22]

b. Whether there was an Indirect Responsibility through 'coercion' of the DRI:

[20] Supra nt. 7.

[21] United States Diplomatic and Consular Staff in Tehran, Judgment, I.C.J. Reports, 3, 29, 41 (1980); Military and Paramilitary Activities in and against Nicaragua, 117–118; GabˇcíkovoNagymaros Project, 54.

[22] UNRIAA, supra, 669, 678.

34. The respondents submit that claim of indirect responsibility through coercion is one which is devoid of substance. The respondents submit that coercion is a process in which a state exercises power to alter the behavior of an adversary. Power, hence, is an instrument, while coercion is a strategy in which power is used to achieve policy objectives.[23]

35. The ultimate form of coercion is the use of force to destroy the capabilities of an adversary and compel its capitulation. Naked aggression, in which a state wages war to subvert the will and liberty of another state, remains, nevertheless, an exceptional form of coercion. In most cases, coercion is employed as a bargaining strategy.[24] Non-forceful coercion is a strategy that alters the behavior of an adversary, not by destroying its capabilities, but by weakening its resolve.[25]

36. As Thomas Schelling explained, this form of coercion seeks "to structure someone's motives, while brute force tries to overcome his strength."[26] In other words, unless it decides to wage war, the coercing state shapes the behavior of the coerced state by exploiting its vulnerabilities and manipulating its fears, thereby limiting its will to resist the demands of the coercing state.[27] It is noteworthy that from the fact record the DRI was never exploited of its vulnerabilities and they were not manipulated to accept and sign the concession agreement. Replomute maintains that the DRI was under no duress.

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[23] Joseph Nye, The Future of Power, 12-13 (2011).

[24] Todd Sechser, A Bargaining Theory of Coercion, in Coercion, 55, 56 (Kelly Greenhill & Peter Krause eds., 2018).

[25] Francis Grimal, Threats of Force, 103 (2012).

[26] Thomas Schelling, Arms and Influence, 3 (1966).

[27] Alexander George, Forceful Persuasion, 11 (1991).

37. The respondents submit that scholars of both law and philosophy posit that coercion ought to be judged on the bases of its impact on the coerced party. Writing from a philosophical perspective, Virginia Held argued that "coercion is the activity of causing someone to do something against his will, or of bringing about his doing what he does against his will."[28] Similarly, in a seminal study on threats of force in international law, Romana Sadurska posited that, "only communications that arouse the anticipation of severe deprivation or destruction of values in the target audience and, hence, trigger a reaction of stress that leads to accommodating or adaptive behavior as the only reasonable alternative can be regarded as a threat."[29]

38. Whether an act is coercive, in other words, depends, not on the nature of the act, but on its impact on the coerced party. If the latter acts, not out of its own volition, but out of a desire to avoid the imposed or threatened harm, then its acts are unfree, and therefore, coerced. The respondents maintain that no harm or threat was imposed on the DRI and their acceptance of the concession agreement to allow the extraction of Oil was free from any coercion.

39. On Aringuv's reliance on the ILC Articles on State Responsibility, we assert that the articles adopt a similar understanding of coercion. Article 18 discusses the assigning of international responsibility in situations where a state is coerced by another state to commit an internationally wrongful act. The impact of coercion in these situations is that responsibility for the wrongful conduct is transferred from the coerced state, which committed the internationally wrongful act,

[28] Virginia Held, Coercion and Coercive Offers, 50,51 (1972).

[29] Romana Sadurska, Threats of Force, 238, 244 (1988).

to the coercing state. The rationale underlying this rule is that "the coercing State is the prime mover in respect of the conduct and the coerced State is merely its instrument."[30]

40. To allow for this reassigning of responsibility from the coerced state to the coercing state, the coercion must be of such gravity that it "forces the will of the coerced state… giving it no effective choice but to comply with the wishes of the coercing state." This, the ILC noted, means that coercion "has the same essential character as force majeure," which is "irresistible force" that "makes it materially impossible" for the coerced state to resist the coercing state. The respondents vehemently maintain that no will was forced upon the DRI to violate any international law and the claim of indirect responsibility through coercion from the appellants is vague.

CONCLUSION

Aringuv has failed to prove a binding standard to require a new EIA to be conducted by Replomute in view of the legal requirements at the time the Corporation's activities began. The assessment conducted prior to the 1981 agreement was sufficient since assessments encompass both medium and long-term consequences. Aringuv has also failed to substantially prove that the biodiversity within its own territory and within the DRI has adversely been affected in any way. Furthermore, the DRI has the primary responsibility as the country within which the project is being undertaken to ensure the environment is adequately protected. Claims of coercion are entirely speculative,

[30] International Law Commission, Draft articles on Responsibility of States for Internationally Wrongful Acts, 65 (2001).

vexatious and misleading and aim simply to discredit the economic benefit the Corporation's activities to the DRI once oil extraction begins.

With humility, then, does Replomute seek conclusive declarations from the court that:

1. As a procedural matter, Replomuté has not violated international law with respect to the preparation of an EIA; and

2. As a substantive matter, the actions of Replomuté with respect to the proposed oil extraction activities in the DRI comply with international law.

Signatures of team members: (1) 

(2) 

(3)