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28TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2023

THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

QUESTIONS RELATING TO

MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

ARINGUV

(APPLICANT)

V.

REPLOMUTÉ

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

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INDEX OF AUTHORITIES

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African Convention on the Conservation of Nature and Natural Resources, 15 Sept, 1968, 1001 U.N.T.S 4 ..... 19, 35

Agreement on the Conservation of Gorillas and Their Habitats, Oct. 26, 2007, 2545 U.N.T.S. 55 36,

Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79 ..... 18, 19, 29, 32

Convention on Environmental Impact Assessment in a Transboundary Context, 10 September, 1997, 1989 U.N.T.S 309 ..... 20, 22, 25

Convention on the Migratory Species of Wild Animals, Jun. 3, 1979, 1651 U.N.T.S. 333 ... 27, 28, 36

North American Agreement on Environmental Cooperation, Sept. 14, 1993, 32 I.L.M.1480 25

Paris Agreement, 12 Dec 2015, 3156 U.N.T.S 79 30

Protocol on Environmental Protection to the Antarctic Treaty, 4 October 1991, 2941 U.N.T.S 5778 25

United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards art. V, 330 UNTS 3 (1958) 37

United Nations Framework Convention on Climate Change, May 9, 1992, 1771 U.N.T.S. 107 ..... 21, 31, 32

Vienna Convention on the Law of Treaties, 27 January 1980, 1155 U.N.T.S 331 ..... 21, 27

Aline L. Jaeckel, *The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection*, 27 (BRILL, 2017). 33

Alvaro Hernández-Báez, *Oil Onshore Pipeline Quantitative Risk Assessment under Fire and Explosion Scenarios*. Processes, *11*(2), 557 (2023) 30

Bodansky, D. *The Legal Character of the Paris Agreement* 25(2) *RECIEL* 142 (2016) 30

Bodansky, D. *The United Nations Framework Convention on Climate Change: A Commentary* 18:2 Yale Journal of International Law 451, 516–517 (1993). 30

Boutillon, *The Precuationary Principle: Development of an International Standard*, 23 Michigan Journal of International Law 429 (2009) 32

Damien Caillaud, *Mountain Gorilla ranging patterns: Influence of group size and group dynamics*, Am J Primatol 730 21

David Pimentel, *Conserving Biological Diversity in Agricultural/Forestry Systems*, 42(5) BioScience 354.....19

Decarbonisation of Energy: Determining a robust mix of energy carriers for a carbon-neutral EU (November 2021) https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695469/IPOL_STU(2021)695469_EN.pdf 30

Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 on establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC 31

ILC Report (2000) GAOR A/55/10, para 716.....33

IUCN Species Survival Commission, *IUCN Red List Categories and Criteria: Version 3.1* (2012). .....

Mayer B. *Obligations of conduct in the international law on climate change: A defence*. Review of European Community & International Environmental Law 27(2), 130–140 (2018) 30

Melinda Chandler, *The Biodiversity Convention: Selected Issues of Interest to the International Lawyer*, 4 COLO. J. INT'l ENVTL. L. & POL'y 141.....18

Mohan Munisinghe. *Energy strategies for oil - importing developing countries (English)*. World Bank reprint series no. REP 328 (2010). .....

Nicholas Ashford, Et. Al., *Wingspread Statement on the Precautionary Priniciple*, World Health Organisation 1 (1998).....32

Rainer Lagoni, *United Nations Convention on the Law of the Sea: A Commentary* (Alexander Proelss ed., 2017), 3 27

Rajamani L. & Brunnée J, *The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement*, Journal of Environmental Law 29, 537-551, (2017).....30

Simon Winston Brinsmead, *Oil Concession Contracts and the Problem of Hold-Up*, SSRN (2007) .....

The Normative Status of Climate Change Obligations under International Law, at 28 (June 2023).....30

Update of the NDC of the European Union and its Member States (Dec. 17, 2020) https://unfccc.int/sites/default/files/NDC/2022-06/EU_NDC_Submission_December%202020.pdf 30

Voigt, C. & Ferreira, F. *Differentiation in the Paris Agreement*, 6 Climate Law 58 (2016)...31

Voigt, C. *The Paris Agreement: What Is the Standard of Conduct for Parties?* 26 Questions of International Law 17-28, 20 (2016).....30

A. Kiss and D. Shelton, International Environmental Law, 3rd edn (Oxford University Press, 2009).....25

Heike Krieger et al, Due Diligence in the International Legal Order, 83 (2020).....24

IUCN, Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management, 67th meeting of the IUCN Council (May 14–16, 2007)....32

Lyle Glowka et al., A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge 36 (1994) 18, 20

Neil Craik, The International Law of Environmental Impact Assessment 21

P.W. Birnie, A.E. Boyle and C. Redgwell, International Law and the Environment, 3rd edn (Oxford University Press, 2009), at 170 .....25, 33

2nd Meeting of the Parties to the Gorilla Agreement, Frankfurt Declaration on Gorilla Conservation, ¶18, UNEP/GA/MOP2/Inf.6 (Jun. 10, 2009).....28

3rd Meeting of the Parties to the Gorilla Agreement, *Mountain Gorilla Gorilla beringei beringei Gorilla Agreement Action Plan*, UNEP/GA/MOP3/Inf.6.....

Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, UNEP/CBD/COP/DEC/VII/27 (Apr. 13 2004).....29

Decision VI/20, Forest Biological Diversity, UNEP/CBD/COP/6/20 (Apr. 7-19, 2002).....29

Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, G.A Res 36/103 (Dec. 9 1981). .....

Guidelines on mitigating the impact of linear infrastructure and related disturbance on mammals in Central Asia, 23, UNEP/CMS/COP11/Doc.23.3.2 (Sep. 18, 2014),.....33

I.L.C., Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10.....23,

I.L.C., Draft Conclusions on the Identification of Customary International Law, U.N. Doc. A/73/10.....35

Migratory Freshwater Fish, at 2, UNEP/CMS/Resolution 10.12 (Nov. 20-25, 2011).....28

Minimising the Risk of Poisoning to Migratory Birds, at 1, UNEP/CMS/Resolution 10.26 (Nov. 20-25, 2011).....28

Roberto Ago (Special Rapporteur on State Responsibility), *Eight Rep. on State Responsibility*, U.N. Doc. A/CN.4/318 (Feb. 5, 1979). 34

Strategic Plan 2006-2011,CMS, Res. 8.2, at ¶32, UNEP/CMS/Resolution 8.2, annex (Nov. 20-25, 2005). 27

Terms of Reference for Cooperating Partners, at 1, CMS/Sharks/Outcome 2.9 (Feb. 20, 2016) 28

U.N.,

UNCITRAL Model Law on International Commercial Arbitration art. 35, UN Doc A/40/1737

UNEP, *Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment*, UNEP/CBD/COP/8/27/Add.2 19

Judicial and Arbitral Decisions

Burlington Resources Inc. v. Republic of Ecuador, ICSID Case No. ARB/08/5, Decision on Ecuador's Counterclaims (7 February, 2017). 38

Case of the monetary gold removed from Rome in 1943 (Italy v. France), Judgment, 1954 I.C.J. Rep. 1954, ¶17 (June 15) 34

Certain Activities Carried Out By Nicaragua in the Border Area (Costa Rica v Nicaragua), 2015 I.C.J 665 ..... 23, 24, 26

Certain Activities Carried Out By Nicaragua in the Border Area (Costa Rica v Nicaragua), 2015 I.C.J 665 (Separate Opinion by Judge Donoghue) 22

Certain Phosphate Lands in Nauru (Nau. v. Aust.), Judgment, 1992 I.C.J. Rep. 240 34

Colombian-Peruvian asylum case, Judgment, 1950 I.C.J. Rep. 266 (November 20). 34

Conseil d'Etat [CE] [Council of State] Genève, December 30, 2021, Case 438686 30

Corfu Channel (UK v. Alb.), 1949 ICJ Rep. 4 24

Gabcikovo-Nagymaros Project (Hung./Slov.), Judgment, 1997 1.C.J. Rep. 7, (Sep. 25) 25, 27, 32, 37

Island of Palmas (US v. Netherlands), 2 R.I.A.A. 829, (Perm. Ct. Arb. 1928), I.C.J. Reports 1949, 4, 22 (I.C.J. 1949) 24

North Sea Continental Shelf (Den. v. Neth), Judgment, 1969 I.C.J. 1 (Feb. 20). 22, 25, 34

Perenco Ecuador Ltd. v. The Republic of Ecuador, ICSID Case No. ARB/08/6, Interim Decision on the Environmental Counterclaim (11 August, 2015) 38

Pulp Mills on the River Uruguay (Argentina v. Uruguay) - Provisional measures, Verbatim Records 2006/56 35

Pulp Mills on the River Uruguay (Argentina v. Uruguay) - Provisional measures, Verbatim Records 2006/57 35

Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgement of 20 December 1974 in the Nuclear Tests (N.Z. v. Fr.), Order, 1995 I.C.J. 288 32

Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan), 2000 Arbitral Tribunal 1 (Aug. 4) 32

LIST OF ABBREVIATIONS

¶	Paragraph, Records
A	28th Annual Stetson International Environmental Moot Court Competition Clarifications to the Record
Agreement	1981 Concession Agreement
Algiers Convention	African Convention on the Conservation of Nature and Natural Resources
ARSIWA	Draft Articles on Responsibility of States for Internationally Wrongful Acts 2001
Biodiversity	Biological Diversity
CBD	Convention on Biological Diversity
CMS	Convention on the Conservation of Migratory Species of Wild Animals
DRI	Democratic Republic of Ibirunga
EIA	Environmental Impact Assessment
Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context
EU	European Union
GHG	Greenhouse Gas
Gorilla Agreement	Agreement on the Conservation of Gorillas and Their Habitats
ICJ	International Court of Justice
ILC	International Law Commission
IUCN	International Union for Conservation of Nature
Lenoir	Lenoir Corporation

NDC	Nationally Determined Contribution
NGO	Non-governmental Organization
Northern RMG	Northern population of Royal Mountain Gorillas
PA	Paris Agreement
Project	Proposed oil extraction activities
PP	Precautionary Principle
R	28th Annual Stetson International Environmental Moot Court Competition Record
Revised African Convention	Revised African Convention on the Conversation or Nature and Natural Resources
RMG	Royal Mountain Gorillas
Southern RMG	Southern population of Royal Mountain Gorillas
UN	United Nations
UNFCCC	United Nations Framework Convention on Climate Change
UNGA	United Nations General Assembly
VCLT	Vienna Convention on the Law of Treaties

QUESTIONS PRESENTED

I. AS A PROCEDURAL MATTER, WHETHER REPLOMUTÉ'S ACTIONS WITH RESPECT TO THE PREPARATION OF THE EIA FOR THE PROPOSED OIL EXTRACTION ACTIVITIES VIOLATED INTERNATIONAL LAW

II. AS A SUBSTANTIVE MATTER, WHETHER REPLOMUTÉ'S ACTIONS WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI COMPLIED WITH INTERNATIONAL LAW

STATEMENT OF JURISDICTION

In accordance with Article 40 of the Statute of the ICJ, Aringuv and Replomuté have submitted to the ICJ by Special Agreement, questions concerning their differences regarding state responsibility for the Lenoir's oil-related activities in the DRI, as contained in Annex A, including the Clarifications. The Parties transmitted a copy of the Special Agreement on July 24, 2023.

Pursuant to Article 26 of the Rules of Court, the Registrar of the Court has acknowledged the receipt of the Special Agreement to the Parties on July 31, 2023.

The Parties have accepted the jurisdiction of the ICJ. Accordingly, they request the Court to adjudge the merits of this case following the rules and principles of general international law, as well as any applicable treaties. The Parties further request this Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgment on the questions presented in this matter.

The Parties have agreed to accept this Court's decision as final and binding.

STATEMENT OF FACTS

Aringuv, Replomuté and the DRI are members of the UN,[1] and Parties to the following treaties: Statute of the ICJ,[2] VCLT,[3] CBD,[4] CMS,[5] UNFCCC and PA.[6] Replomuté's NDC is covered by the EU's NDC.[7] The DRI and Aringuv are Range States and Parties to the Gorilla Agreement.[8] Crucially, Replomuté is neither.[9] The DRI and Aringuv are Parties to the Algiers Convention, but Replomuté is not.[10] Replomuté is Party to the Espoo Convention, while Aringuv is a signatory.[11]

The DRI is a low-income country endowed with abundant oil resources.[12] In 1981, the DRI and Replomuté entered into the Agreement for Lenoir to explore and extract oil from the national park inhabited by the Southern RMG.[13] Despite intermittent disruptions, Replomuté continued with the oil exploration and pipeline construction,[14] adhering to its commitments under the Agreement.[15]

In 2017, Aringuv's newly-elected President began advocating for a "green" agenda.[16] In 2018, Aringuv raised environmental concerns over the Project.[17] Replomuté engaged in periodic informal discussions with Aringuv over several months to address these concerns.[18] From

[1] R¶4.
[2] R¶4.
[3] R¶5.
[4] R¶7.
[5] R¶8.
[6] R¶13.
[7] R¶15.
[8] R¶9.
[9] R¶10.
[10] R¶¶9–11.
[11] R¶12.
[12] R¶1.
[13] R¶17.
[14] R¶¶18–24.
[15] R¶17.
[16] R¶25.
[17] R¶26.
[18] R¶26.

December 2018 to 2019, Replomuté exchanged a series of diplomatic notes with Aringuv.[19] By 2019 and 2020, the pipeline was 95%[20] and 98%[21] complete respectively.

The DRI retains territorial sovereignty over the national park wherein the activities were conducted.[22] Additionally, the DRI conducted an EIA, in compliance with its domestic legislation and international obligations, before entering the Agreement. Nevertheless, Aringuv demands that Replomuté conduct another EIA, alleging risks of significant adverse transboundary impact to Aringuv.[23] Aringuv cites the potential impacts to the Southern RMG.[24] However, the Southern RMG reside wholly in the DRI and are rarely spotted in Aringuv.[25] While the Northern RMG regularly cross the DRI-Aringuv border, the two RMG populations do not come into contact.[26] Aringuv seeks to hold Replomuté to obligations created by treaties that either itself or Replomuté are not parties to, including the Espoo Convention and the Revised African Convention.[27]

The Agreement contained a mandatory binding arbitration clause as the exclusive mechanism for dispute resolution.[28] In 2015, Replomuté invoked this clause when General Mina sought to modify the terms of the Agreement.[29] At that time, the pipeline construction was already 80% complete.[30] The arbitral tribunal issued a fair ruling,[31] holding that the DRI should resume the Project to avoid incurring penalties.[32] The DRI acquiesced without protesting.[33] Out of

[19] R¶¶27–31.
[20] R¶28.
[21] R¶32.
[22] R¶9.17.
[23] R¶27
[24] R¶¶27,29,31.
[25] R¶9.
[26] R¶9.
[27] R¶27.
[28] R¶17.
[29] R¶22.
[30] R¶24.
[31] A12.
[32] R¶23.
[33] R¶23.

goodwill, Replomuté established a USD$10 million fund to be jointly administered by representatives from both the DRI and Replomuté.[34]

In 2022, Replomuté sent Aringuv a diplomatic note before resuming with pipeline construction.[35] Aringuv subsequently demanded for the DRI to revoke the pipeline permits, contrary to the DRI's obligations under the Agreement.[36] Negotiations between Aringuv and Replomuté continued before the Parties agreed to submit the matter to the ICJ.[37] Replomuté has agreed that Lenoir will halt the Project until the ICJ has determined the issue.[38]

[34] R¶23.
[35] R¶33.
[36] R¶34.
[37] R¶35.
[38] R¶35.

SUMMARY OF ARGUMENT

I. Replomuté complied with its international obligations regarding the preparation of an EIA

Replomuté acted in accordance with its obligations regarding the EIA. First, Article 14(1)(a) of the CBD does not require Replomuté to conduct an EIA as the Project is conducted in the DRI's jurisdiction. Alternatively, Replomuté had acted in accordance with Articles 14(1)(a) and 14(1)(c). Second, as a non-Party, Aringuv cannot rely on the Espoo Convention to impose an obligation on Replomuté to conduct an EIA. Third, the UNFCCC does not create an obligation to conduct an EIA. Further, there is no obligation to carry out an EIA under customary international law as there was no risk of significant transboundary harm that would warrant an EIA. Even if there was, an EIA has been conducted, and it was the DRI, not Replomuté's duty to conduct the EIA.

II. Replomuté's actions with respect to the proposed oil extraction activities complied with international law

First, Replomuté does not owe CMS obligations as a non-Range State. Any non-Range State obligations arise in subsidiary instruments to the CMS, to which Replomuté is non-Party. Even so, Replomuté endeavored to protect the RMG by adopting pipeline construction which reduced risks of harm. Second, CBD obligations do not apply beyond Replomuté's national jurisdiction. In any event, Replomuté complied with its obligation by openly cooperating with Aringuv to address Aringuv's concerns over the Project. Third, Replomuté adhered to regional climate change commitments in line with its obligations under the UNFCCC and the PA. Moreover, the customary due diligence obligation and the PP are not engaged. Nevertheless, Replomuté adopted the precautionary approach.

Further, Replomuté is not indirectly responsible for coercing any alleged violation of the DRI's international obligations. It was not impossible for the DRI to fulfil both its environmental and Agreement obligations.

ARGUMENTS

I. REPLOMUTÉ DID NOT VIOLATE INTERNATIONAL LAW WITH RESPECT TO THE PREPARATION OF AN EIA

A. Replomuté has not violated treaty obligations with respect to the preparation of an EIA

(1) The CBD does not apply to Replomuté's actions in the DRI; in the alternative, Replomuté did not violate its CBD obligations

a. The CBD does not apply to Replomuté's actions in the DRI

The CBD applies for processes and activities in areas within a Party's national jurisdiction, and for areas beyond the limits of national jurisdiction.[39] The latter refers to areas beyond *any* State's jurisdiction ("**ABNJ**").[40] The CBD does not explicitly require Parties to regulate their nationals' activities in another State's jurisdiction.[41] Since the Project is conducted within the DRI's national jurisdiction, the DRI bears the obligation under CBD Article 14(1)(a).

b. Even if the CBD applies, Replomuté complied with Article 14(1)(a)

Even if the CBD applies, Replomuté complied with Article 14(1)(a) by relying on the EIA conducted by the DRI. Regarding activities likely to cause significant adverse effects on biodiversity, Article 14(1)(a) directs Parties to introduce appropriate procedures requiring an EIA.[42] It does not create an obligation to *conduct* an EIA. Further, the limiting language in

[39] Convention on Biological Diversity, June 5, 1992, art. 4(*b*) 1760 U.N.T.S. 79 [Hereinafter CBD].
[40] Lyle Glowka et al., A Guide to the Convention on Biological Diversity, IUCN Gland and Cambridge 36 (1994) [Hereinafter IUCN CBD Guide].
[41] IUCN CBD Guide, 28; Melinda Chandler, *The Biodiversity Convention: Selected Issues of Interest to the International Lawyer*, 4 COLO. J. INT'l ENVTL. L. & POL'y 141 (1993), 147–148.
[42] CBD, art. 14(1)(a).

Article 14, such as "as far as possible and as appropriate", grants Parties the discretion to determine when and which procedures are appropriate.[43]

Replomuté can rely on the DRI's EIA[44] because the EIA likely considered impacts on biodiversity. The oil exploration activities were conducted in the national park,[45] where the Southern RMG reside.[46] The EIA complied with the Algiers Convention,[47] which contains obligations to conserve and develop faunal resources,[48] and protect national parks by preventing "any act likely to harm or disturb the fauna and flora".[49] Further, the DRI's economy is "primarily agrarian-based".[50] Biodiversity, which is integral to agricultural productivity, is thereby vital to the DRI's human population.[51] Since the EIA focused on the impacts of the oil exploration activities on nearby human populations,[52] it is likely that the EIA also considered the impacts on biodiversity.[53]

Even if Replomuté cannot rely on the DRI's EIA, Replomuté has the power to decide when EIAs are necessary, and if so, the content of the EIA.[54] Parties may exercise this power of discretion in various ways, for example, by requiring EIAs for all projects within a certain demarcated geographical area.[55] Replomuté exercised this power of discretion and does not require EIAs to be done for projects conducted beyond its territorial borders.[56]

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[43] IUCN CBD Guide, 71.
[44] CBD, art. 14(1).
[45] R¶9.
[46] R¶17.
[47] R¶28.
[48] African Convention on the Conservation of Nature and Natural Resources, 15 Sept, 1968, 1001 U.N.T.S 4., art. VII(1) [Hereinafter Algiers Convention].
[49] Algiers Convention, art. III(b) read with art. III(a)(2).
[50] R¶1.
[51] David Pimentel, *Conserving Biological Diversity in Agricultural/Forestry Systems*, 42(5) BioScience 354, 354.
[52] R¶17.
[53] R¶17.
[54] UNEP, *Voluntary Guidelines on Biodiversity-Inclusive Impact Assessment,* ¶10(b), UNEP/CBD/COP/8/27/Add.2 (9 Jan 2006) [Hereinafter CBD EIA Guidelines].
[55] CBD EIA Guidelines, ¶10(b).
[56] R¶28.

c. Even if the CBD applies, Replomuté complied with Article 14(1)(c)

(i) Article 14(1)(c) only encourages the conclusion of agreements; Replomuté complied accordingly

Article 14(1)(c) does not create an obligation for Parties to notify and consult each other on activities likely to significantly affect biodiversity adversely. Rather, it provides that Parties shall *promote* transfrontier cooperation regarding activities likely to have a significant transboundary impact on biodiversity, by encouraging the conclusion of inter-state arrangements.[57] Replomuté fulfilled this obligation by encouraging non-UNECE States to enter into the Espoo Convention.[58] The Espoo Convention obliges Parties to notify and exchange information with each other regarding transboundary impacts on "flora and fauna",[59] which encompasses impacts on biodiversity.

(ii) Even if Article 14(1)(c) creates an obligation to notify and consult, it was not engaged; in any case, Replomuté discharged its obligation

In any event, the obligation in Article 14(1)(c) is only engaged for activities "likely to significantly affect adversely the [biodiversity] of other States".[60] The threshold of "significant" was deliberately left undefined[61] to provide Parties with the discretion to determine when transboundary impact reaches the level of "significant".[62] Exercising this discretion, Replomuté determined that the Project would not adversely affect Aringuv's biodiversity.[63]

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[57] CBD, art. 14(1)(c); IUCN CBD Guide, 74.
[58] R¶28.
[59] Convention on Environmental Impact Assessment in a Transboundary Context, 10 September, 1997, 1989 U.N.T.S 309, art. 1(vii) [Hereinafter Espoo Convention].
[60] CBD, art. 14(1)(c).
[61] Intergovernmental Negotiating Committee for a Convention on Biological Diversity, 27, UNEP/Bio.Div/N7-INC.5/3, (11-19 May 1992).
[62] IUCN CBD Guide, 50.
[63] R¶30.

The Project was conducted in a national park within the DRI,[64] and no evidence suggests that this park is near to the DRI-Aringuv border. Even in the improbable event of any harm caused to the Southern RMG, the Southern RMG, like the *Gorilla Beringei Beringei*, have small yearly home ranges, and do not move across long distances.[65] As Aringuv acknowledges,[66] the Southern RMG are rarely sighted in Aringuv.[67] Although the Northern RMG regularly cross into Aringuv, the Southern and Northern RMG do not interact.[68]

Alternatively, if the obligation to notify and consult was engaged, Replomuté fulfilled it.[69]

(2) The UNFCCC does not oblige Replomuté to conduct an EIA

UNFCCC Article 4.1(f) requires Parties to take climate change considerations, "to the extent feasible", into account. Parties are required to "employ *appropriate* methods, for example impact assessments … with a view to minimize adverse effects on the quality of the environment [emphasis added]."[70] Crucially, the UNFCCC does not oblige Parties to perform EIAs that consider climate-related impacts.[71]

(3) Aringuv cannot rely on the Espoo Convention; in any event, Replomuté did not violate the Espoo Convention

Aringuv is a non-Party to the Espoo Convention as Aringuv has not ratified it.[72] Article 2(2) obliges Parties to conduct EIAs for activities likely to cause a "significant adverse

[64] R¶¶9,17.
[65] Damien Caillaud, *Mountain Gorilla ranging patterns: Influence of group size and group dynamics*, Am J Primatol 730, 730 (2014).
[66] R¶31.
[67] R¶9.
[68] R¶9.
[69] See (I)(B)(3).
[70] United Nations Framework Convention on Climate Change art. 4.1(f), May 9, 1992, 1771 U.N.T.S. 107 [Hereinafter UNFCCC].
[71] Neil Craik, The International Law of Environmental Impact Assessment, 99 (2009).
[72] R¶12; Vienna Convention on the Law of Treaties, 27 January 1980, 1155 U.N.T.S 331, art. 2(g) [Hereinafter VCLT].

transboundary impact".[73] Here, "transboundary impacts" are impacts within an area under a *Party's* jurisdiction, caused by a proposed activity within the area under another Party's jurisdiction.[74] Any alleged impacts to Aringuv are not considered "transboundary impacts" under the Espoo Convention. Moreover, obligations under the Espoo Convention are owed to "affected Parties".

Article 6.3 states that where additional information becomes available to a concerned Party, consultations shall be held to determine whether the final decision to proceed with the proposed activity needs to be revised.[75] Replomuté engaged in informal discussions with Aringuv,[76] though it was not obliged to.

Further, Article 7.1 does not create an obligation to conduct post-EIA monitoring.[77] Instead, the Party, under whose jurisdiction the proposed activity was implemented, has the discretion to determine whether post-EIA monitoring is required.

[73] Espoo Convention, art. 2(2).
[74] *Id*, art. 1(viii).
[75] Espoo Convention, art. 6.3.
[76] R¶26.
[77] Espoo Convention, art. 7.1.

B. Replomuté did not violate its obligations under customary international law

(1) Replomuté did not breach the obligation to prevent significant transboundary harm

a. There is no custom duty to conduct an EIA

While there is a general obligation to exercise due diligence in preventing harm to other States,[78] the narrower obligation to conduct an EIA is not an international custom without evidenced state practice and *opinio juris*.[79]

b. Even if there was a duty to conduct an EIA, it was not engaged as there was no foreseeable risk of significant transboundary harm

This Court held that under the due diligence obligation to prevent transboundary harm, States are obliged to conduct EIAs only for activities harboring a foreseeable[80] risk of significant transboundary harm.[81] Harm is *transboundary* when caused in areas under the jurisdiction or control of a State other than the State of origin;[82] whereas harm is *significant* when it is more than "detectable".[83]

Here, there was no foreseeable risk of significant transboundary harm. First, the risk of transboundary impact to Aringuv's biodiversity was not significant.[84] Second, the Project did not carry the risk of significant transboundary harm *vis-à-vis* climate change. The ILC states that States are not liable for activities causing significant transboundary harm stemming from cumulative factors, including "creeping pollution, where a strict chain of cause and effect

[78] Certain Activities, ¶104.
[79] North Sea Continental Shelf (Den. v. Neth), Judgment, 1969 I.C.J. 1, ¶¶73–77 (Feb. 20) [Hereinafter North Sea]; Certain Activities (Separate Opinion by Judge Donoghue), ¶104.
[80] I.L.C., Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, p 153. [Hereinafter Prevention of TH].
[81] Certain Activities Carried Out By Nicaragua in the Border Area (Costa Rica v Nicaragua), 2015 I.C.J 665, ¶104. [Hereinafter Certain Activities].
[82] Prevention of Transboundary Harm, Commentary, art. 2(d).
[83] Prevention of TH, 152, ¶4.
[84] See (I)(A)(1)(c)(ii).

cannot be established".[85] The impact of GHG emissions on the climate are cumulative.[86] Further, the causal link between the emissions of one oil extraction project and any climate-related impact is tenuous.[87]

c. The EIA conducted by the DRI was adequate and Replomuté can rely on it as it is the DRI's duty to prevent transboundary harm

States may determine the specific content of EIAs in their domestic legislation.[88] The EIA conducted by the DRI complied with its domestic legislation and international obligations which are owed at the time.[89] Although this EIA did not specifically consider the RMG, the RMG's habitats or the climate,[90] it was adequate because it likely considered biodiversity,[91] and impacts on the human population.

In any event, the obligation to conduct the EIA arises from the due diligence obligation to prevent transboundary harm.[92] Only States which possess jurisdiction or effective control over the territory bear the duty of due diligence to prevent transboundary harm.[93] Here, the DRI bears this duty as the governing authority of the Project area. Replomuté only obtained rights for Lenoir to explore and extract oil;[94] it did not have effective control over the area of the Project. Even if Replomuté and the DRI jointly possess jurisdiction over the Project, the DRI's

[85] Pemmaraju Sreenivasa Rao, Special Rapporteur, *First Report on prevention of transboundary damage from hazardous activities*, UNGA/A/CN.4/487, 33.
[86] John Rhys, *Cumulative Carbon Emissions and Climate Change* (2014), https://www.oxfordenergy.org/publications/cumulative-carbon-emissions-and-climate-change-has-the-economics-of-climate-policies-lost-contact-with-the-physics/.
[87] Herbert L. A. Hart & T. Honoré, CAUSATION IN THE LAW, 7 (OUP, Oxford, 1995).
[88] Pulp Mills, ¶205.
[89] R¶28.
[90] R¶29.
[91] See (I)(A)(1)(b).
[92] Certain Activities, ¶104.
[93] Heike Krieger et al, Due Diligence in the International Legal Order, 83 (2020); Prevention of TH, 150–151, ¶¶8–12; Island of Palmas (US v. Netherlands), 2 R.I.A.A. 829, 839 (Perm. Ct. Arb. 1928), Corfu Channel (UK v. Alb.), 1949 ICJ Rep. 4, 22.
[94] R¶17.

territorially-based jurisdiction prevails.[95] Replomuté cannot interfere with the DRI's sovereignty in dictating how the DRI carries out its duty.[96]

(2) There is no customary duty to conduct continuous monitoring; even if there is, it is not engaged

States are obliged to conduct continuous monitoring only when they enter treaties requiring it, and under specific conditions.[97] Given the narrow specificity of the treaties containing this obligation, there is insufficient state practice and *opinio juris* to justify that the general obligation to conduct continuous monitoring is an international custom.[98] Even academic propositions of this general obligation are not supported by analyses of state practice and *opinio juris*.[99]

Alternatively, even if this obligation is an international custom, it only arises if necessary.[100] While the legal test of necessity has not been articulated, new scientific insights and growing awareness of human impact on the environment may require new standards of environmental protection to be considered.[101]

Here, continuous monitoring is unnecessary because there has been no evidence of new scientific discoveries relating to either the RMG or climate change. The RMG were classified as critically endangered on the IUCN Red List of Threatened Species before the EIA was

[95] Prevention of TH, 150.
[96] Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States, G.A Res 36/103, ¶1 (Dec. 9 1981).
[97] Pulp Mills, ¶266; see also Protocol on Environmental Protection to the Antarctic Treaty Annex I, Article 5.1 4 October 1991, 2941 U.N.T.S 5778; the North American Agreement on Environmental Cooperation, art. 2.1(e), Sept. 14, 1993, 32 I.L.M.1480; see also Espoo Convention, art. 7.1.
[98] North Sea, ¶73-¶77.
[99] P.W. Birnie, A.E. Boyle and C. Redgwell, International Law and the Environment, 3rd edn (Oxford University Press, 2009), at 170 [Hereinafter Birnie, Boye & Redgwell]; see also A. Kiss and D. Shelton, International Environmental Law, 3rd edn (Oxford University Press, 2009), 241.
[100] *Pulp Mills*, ¶205.
[101] Gabcikovo-Nagymaros Project (Hung./Slov.), Judgment, 1997 1.C.J. Rep. 7, (Sep. 25), ¶140 [Hereinafter Gabcikovo-Nagymaros].

conducted,[102] indicating that the characteristics and status of the RMG were well understood.[103] Moreover, the EIA did not indicate the risk of harm to biodiversity.

In any event, the content of the obligation to continuously monitor has not been elaborated upon.[104] None of the treaties containing this obligation oblige states to monitor *by conducting EIAs*.

(3) The duty to notify and consult Aringuv was not engaged; in any event, Replomuté has considered Aringuv's interests

The duty to notify and consult only arises after an EIA indicates that an activity has a risk of significant transboundary harm.[105] After the DRI conducted the EIA and determined that it was safe to proceed, the DRI entered into the Agreement.[106] This indicates that the likelihood of significant transboundary harm was low.

Even if this duty arose, Replomuté fulfilled it. First, Replomuté announced in 2012 that Lenoir was planning to begin oil extraction activities.[107] Subsequently, Replomuté continued to communicate the status of the pipeline construction.[108] Second, Replomuté responded to Aringuv's concerns by engaging in informal discussions and negotiations in 2018.[109] Third, Replomuté responded to Aringuv's concerns by explaining its position and reassuring Aringuv that the proposed activities will not have a transboundary impact.[110] Replomuté is minded of Aringuv's interests and agreed to halt the Project until the ICJ issues its judgment.[111]

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[102] A¶8.
[103] IUCN Species Survival Commission, *IUCN Red List Categories and Criteria: Version 3.1*, 4–9 (2012).
[104] Pulp Mills, ¶205.
[105] Certain Activities, ¶104.
[106] R¶17.
[107] R¶20.
[108] R¶33.
[109] R¶26.
[110] R¶30.
[111] R¶35.

II. REPLOMUTÉ'S ACTIONS WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES COMPLIED WITH INTERNATIONAL LAW

States' treaty obligations are not invalidated by international environmental obligations.[112] Accordingly, Replomuté may fulfil its obligations both under the Agreement and at international law.

A. Replomuté bears no direct responsibility; it did not violate any of its international obligations

(1) Replomuté complied with its CMS obligations

a. Replomuté does not owe non-Range State obligations under the CMS

The obligations under Articles III(4) and IV(3)[113] to protect migratory species only apply to Parties that are Range States. While the Fundamental Principles ("**Principles**") call on Parties to protect migratory species, they do not create legally binding obligations.[114]

Moreover, CMS Parties did not intend for the Principles to create non-Range State obligations. Treaties must be interpreted in light of their objects and purposes[115] — in accordance with their preambles, and subsequent agreements and practices.[116] The CMS encourages cooperation among Range States through the "migratory range approach".[117] Its preamble specifies that States should protect migratory species which "live within or pass through their national jurisdictional boundaries". Subsequent CMS Resolutions attribute the commitments under the

[112] Gabcikovo-Nagymaros, ¶112 and ¶132.
[113] Convention on the Migratory Species of Wild Animals, art. III(4), IV(3), Jun. 3, 1979, 1651 U.N.T.S. 333. [Hereinafter CMS].
[114] Rainer Lagoni, *United Nations Convention on the Law of the Sea: A Commentary* (Alexander Proelss ed., 2017), 3, ¶4.
[115] VCLT, art. 31(1).
[116] VCLT, art. 31(2) and 31(3).
[117] Strategic Plan 2006-2011,CMS, Res. 8.2, at ¶32, UNEP/CMS/Resolution 8.2, annex (Nov. 20-25, 2005).

Principles to Range States.[118] As a non-Range State, Replomuté does not owe a duty under the CMS to protect the RMG.

Any non-Range State obligations would only arise if specified in subsidiary instruments, and not from the CMS itself.[119] While the Gorilla Agreement is one such subsidiary instrument, it does not create non-Range State obligations. Further, Replomuté is a non-Party to the Gorilla Agreement, and is therefore not bound by it.

b. Nonetheless, Replomuté endeavored to protect the RMG

CMS Parties endeavor to protect Appendix I migratory species.[120] The CMS does not provide that non-Range States owe a similar obligation. At most, Range States and other Gorilla Agreement stakeholders have *encouraged* extractive companies to mitigate ramifications of mining projects.[121] Even if Replomuté owes this obligation, it has mitigated the Project's impacts on the RMG. First, Replomuté only proceeded with the Project after the completion of an adequate EIA.[122] Second, Replomuté's construction of the pipeline presents low risks of barriers to migration.[123] Third, Replomuté has not begun oil extraction and has willingly halted the entire Project until the ICJ issues its judgement.[124]

[118] Minimising the Risk of Poisoning to Migratory Birds, 1, UNEP/CMS/Resolution 10.26 (Nov. 20-25, 2011); Migratory Freshwater Fish, at 2, UNEP/CMS/Resolution 10.12 (Nov. 20-25, 2011).
[119] Terms of Reference for Cooperating Partners, 1, CMS/Sharks/Outcome 2.9 (Feb. 20, 2016); CMS, art. V(4)(f).
[120] CMS, art. II(3)(b).
[121] 2nd Meeting of the Parties to the Gorilla Agreement, Frankfurt Declaration on Gorilla Conservation, ¶18, UNEP/GA/MOP2/Inf.6 (Jun. 10, 2009).
[122] R¶17. See (I)(A)(1)(a), I(B)(1)(c).
[123] CMS Guidelines on mitigation.
[124] R¶35.

(2) Replomuté does not owe CBD obligations; alternatively, Replomuté acted to conserve biodiversity

The CBD obligations do not apply to Replomuté as the Project does not fall within Replomuté's national jurisdiction or ABNJ.[125] In any case, Replomuté fulfilled its obligation to cooperate with Aringuv pursuant to CBD Article 5.[126] Replomuté was transparent with the construction progress throughout the Project. It announced its oil extraction timeline till the Project's completion, two years before the anticipated date.[127] It also communicated with Aringuv before resuming construction in April 2022, after several unforeseen delays.[128] Evidently, Replomuté cooperated by offering CBD Parties necessary information about the Project to promote discussions. It further engaged openly in periodic informal discussions with Aringuv,[129] and actively exchanged diplomatic notes addressing Aringuv's concerns.[130]

Moreover, Replomuté adopted a precautionary approach to protect the Southern RMG and their habitat. This aligned with its obligation to promote the "protection of ecosystems [and] natural habitats".[131] Such protection entails preventing negative impacts to protected areas and biodiversity.[132] Absent scientific certainty, precautionary measures must be taken to reduce the threat of significant biodiversity loss.[133] In any case, the precautionary approach featured in the CBD has a low threshold.[134]

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[125] See (I)(A)(1)(a).
[126] CBD, art.5.
[127] R¶20.
[128] R¶33.
[129] R¶¶26,35.
[130] R¶¶27–31.
[131] CBD, art. 8(d).
[132] Decision Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Seventh Meeting, at 6-7, UNEP/CBD/COP/DEC/VII/27 (Apr. 13 2004); Forest Biological Diversity, at 226-229, UNEP/CBD/COP/6/20 (Apr. 7-19, 2002).
[133] CBD, Preamble.
[134] U.N., Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992), Principle 15 [Hereinafter Rio Declaration]. Measures for implementing the Convention on | Biological Diversity, ¶1(a), UNEP/CBD/COP/DEC/IV/10 (May 4-15, 1998).

Replomuté mitigated the Project's negative impacts by choosing to extract oil via pipelines. Replomuté did not rely on scientific uncertainty to postpone nor reject undertaking mitigation measures.[135] Upon completion, terrestrial oil pipelines are a comparatively safe method of transporting crude oil, given their lower risk of toxin releases, explosions, and fires.[136]

(3) Replomuté acted in accordance with its commitments under the UNFCCC and the PA

The UNFCCC and the PA create obligations of conduct.[137] UNFCCC Article 4.2(b) does not oblige Annex I Parties, such as Replomuté, to reduce their GHG emissions to 1990 levels. Rather, it acts as an "aim".[138] PA Article 4.2 provides that Parties "shall pursue domestic mitigation measures, with the aim of achieving the objectives of [their NDC commitments]".[139] Parties are not legally bound to achieve their NDC.[140]

Replomuté endeavors to take climate actions in pursuance of the EU NDC.[141] The EU has not pledged to completely decarbonize its electricity system,[142] and most changes in energy production and oil consumption patterns are anticipated to occur between 2030 and 2050.[143]

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[135] R¶¶28,30,33.
[136] Alvaro Hernández-Báez, *Oil Onshore Pipeline Quantitative Risk Assessment under Fire and Explosion Scenarios*. Processes, *11*(2), 557 (2023), 1 and 13.
[137] Mayer B. *Obligations of conduct in the international law on climate change: A defence*. Review of European Community & International Environmental Law 27(2), 130–140 (2018); Rajamani L. & Brunnée J, *The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement*, Journal of Environmental Law 29, 537-551, 542 (2017); *The Normative Status of Climate Change Obligations under International Law*, 28 (June 2023).
https://www.europarl.europa.eu/RegData/etudes/STUD/2023/749395/IPOL_STU(2023)749395_EN.pdf.
[138] Bodansky, D. *The United Nations Framework Convention on Climate Change: A Commentary* 18:2 Yale Journal of International Law 451, 516–517 (1993).
[139] Paris Agreement, art. 4.2 12 Dec 2015, 3156 U.N.T.S 79; Voigt, C. *The Paris Agreement: What Is the Standard of Conduct for Parties?* 26 Questions of International Law 17-28, 20 (2016).
[140] Bodansky, D. *The Legal Character of the Paris Agreement* 25(2) RECIEL 142, 146 (2016) [Hereinafter Bodansky, Legal Character].
[141] R¶15; Update of the NDC of the European Union and its Member States (Dec. 17, 2020) https://unfccc.int/sites/default/files/NDC/2022-06/EU_NDC_Submission_December%202020.pdf.
[142] *Decarbonisation of Energy: Determining a robust mix of energy carriers for a carbon-neutral EU*, 108 (November 2021) https://www.europarl.europa.eu/RegData/etudes/STUD/2021/695469/IPOL_STU(2021)695469_EN.pdf.
[143] *Id*, 14.

Crucially, the PA does not prohibit developmental projects which are incompatible with national climate change mitigation commitments.[144] Thus, the existence of the Project is not in and of itself inconsistent with the EU's NDC commitments. Further, EU-wide regulations[145] account for GHG emissions from Replomuté's industrial activity.[146] Since no evidence demonstrates Replomuté's ability to pursue climate mitigation measures being compromised, Replomuté did not breach its obligation under the PA.

Further, Parties shall provide financial assistance to address the adverse effects of climate change and implementing response measures on developing country Parties.[147] Developed country Parties share the collective obligation[148] to financially assist developing country Parties in continuing their mitigation and adaptation obligations under the UNFCCC.[149] Replomuté's good-will provision of USD$10 million under a Friendship Fund,[150] while allocated for the DRI's economic development, does not preclude it from being used to support the DRI's UNFCCC and the PA obligations.[151] This presents the necessary resources for the DRI to address climate change concerns,[152] with the input of both states' representatives.[153]

[144] Conseil d'Etat [CE] [Council of State] Genève, December 30, 2021, Case 438686, ¶¶23–26.
[145] Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 on establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC.
[146] R¶3.
[147] UNFCCC, art. 4.8.
[148] Bodansky, Legal Character, 147; Voigt, C. & Ferreira, F. *Differentiation in the Paris Agreement*, 6 *Climate Law* 58, 70 (2016).
[149] PA, art 9.1.
[150] R¶23.
[151] R¶16.
[152] R¶22.
[153] R¶23.

(4) Replomuté did not violate its customary due diligence obligation as there was no risk of significant transboundary harm

The obligation to exercise due diligence only arises where there is a risk of significant transboundary harm.[154] The risk of harm posed to Aringuv's biodiversity by the Project was not significant. And the causal link between the GHG emissions of a single oil extraction project and climate change is weak.[155]

(5) The PP is not custom; Replomuté adopted a precautionary approach

The PP requires precautionary measures to be taken when an activity carries threats of environmental harm, even in the face of scientific uncertainty.[156] Even so, the definitions of the PP in various treaties and court decisions are starkly inconsistent.[157] This Court has been hesitant to pronounce on the legal status of this principle.[158] Further, the IUCN acknowledges that the PP is best characterized as a "flexible guideline".[159]

Even if the PP is custom, it was not engaged here. The PP is only engaged when there is: (i) a threat of environmental damage; (ii) of serious or irreversible character; and (iii) scientific uncertainty.[160] These elements are cumulative.[161] Even if scientific uncertainty exists,[162] the PP is still inapplicable since elements (i) and (ii) are not satisfied.[163]

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[154] Prevention of TH, art. 3.
[155] See (I)(B)(1)(b).
[156] Nicholas Ashford, Et. Al., *Wingspread Statement on the Precautionary Principle,* World Health Organisation 1 (1998).
[157] Southern Bluefin Tuna (New Zealand-Japan, Australia-Japan), 2000 Arbitral Tribunal 1 (Aug. 4); see also UNFCCC, art. 3.3; see also the 9th preambular paragraph of the CBD.
[158] Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgement of 20 December 1974 in the Nuclear Tests (N.Z. v. Fr.), Order, 1995 I.C.J. 288; see also Gabcikovo-Nagymaros.
[159] IUCN, Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management, 67th meeting of the IUCN Council (May 14–16, 2007), 1-2, 5.
[160] *Id*,
[161] Boutillon, *The Precautionary Principle: Development of an International Standard*, 23 Michigan Journal of International Law 429 (2009).
[162] R¶17.
[163] See (I)(B)(1)(b).

In any event, Replomuté adopted a precautionary approach. The precautionary approach has a low threshold.[164] It does not dictate how risks, if proven to exist, should be addressed.[165] Replomuté only proceeded with the Project after the potential environmental impacts were assessed by the DRI's EIA.[166] Conducting EIAs is inherently precautionary.[167] Further, transporting the oil using a pipeline, and not other methods, is significantly less harmful for both biodiversity and the climate.[168] Lastly, Replomuté undertook oil exploration activities for three years before beginning to construct the pipeline.[169] These measures, considered with Replomuté's agreement to halt the Project until a judgement is issued,[170] exhibit Replomuté's adoption of the precautionary approach.

B. Replomuté is not indirectly responsible for the DRI's alleged violations of international law

(1) The claim regarding Replomuté's indirect responsibility is inadmissible

A claim is inadmissible if a third Party's legal interest is the very subject matter of,[171] and forms the logical prerequisite for the Court's determination of, the dispute.[172] Notwithstanding this, the Court can determine the dispute with the third Party's express consent.[173] The DRI's international responsibilities under the CMS, the Gorilla Agreement, and the Algiers

[164] U.N., Rio Declaration, Principle 15; Aline L. Jaeckel, *The International Seabed Authority and the Precautionary Principle: Balancing Deep Seabed Mineral Mining and Marine Environmental Protection*, 27 (BRILL, 2017).
[165] Birnie, Boye & Redgwell, 162.
[166] R¶17.
[167] ILC Report (2000) GAOR A/55/10, 716.
[168] Guidelines on mitigating the impact of linear infrastructure and related disturbance on mammals in Central Asia, 23, UNEP/CMS/COP11/Doc.23.3.2 (Sep. 18, 2014), 29–31 [Hereinafter CMS Guidelines on mitigation].
[169] R¶18.
[170] R¶35.
[171] Case of the monetary gold removed from Rome in 1943 (Italy v. France), Judgment, 1954 I.C.J. Rep. 1954, ¶17 (June 15) [Hereinafter Monetary Gold].
[172] Certain Phosphate Lands in Nauru (Nau. v. Aust.), Judgment, 1992 I.C.J. Rep. 240, ¶261 (June 26).
[173] Monetary Gold, 32.

Convention, form the prerequisite for determining Replomuté's responsibility under ARSIWA Article 18. Further, the DRI did not consent to the present proceedings.[174]

(2) There is no international custom for attributing state responsibility based on coercion

Custom is only formed if widespread, representative, and consistent state practice and *opinio juris* exists.[175] Uniform usage is not established if there are major discrepancies and fluctuation in state practice.[176] State practice applying ARSIWA Article 18 is scant,[177] as instances of such coercion are marginal.[178] Among the two cases mentioned in the drafting of ARSIWA, the high threshold of coercion envisaged under ARSIWA Article 18 is not satisfied in one case,[179] whereas ARSIWA Article 18 was not applied in the other.[180] This Court has not ruled determinatively on various interpretations of ARSIWA Article 18 posited by States in their submissions.[181] Further, there has not yet been reported decisions of international bodies referencing ARSIWA Article 18.[182] This does not support the codification of an existing or emerging rule of attributing state responsibility based on coercion.[183]

[174] R¶40.
[175] North Sea, ¶¶73–77.
[176] Colombian-Peruvian asylum case, Judgment, 1950 I.C.J. Rep. 266, ¶277 (November 20).
[177] I.L.C., Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 70, ¶7 [Hereinafter ARSIWA Commentary].
[178] Roberto Ago (Special Rapporteur on State Responsibility), *Eight Rep. on State Responsibility*, U.N. Doc. A/CN.4/318 and Add.1–4, Add.5–7 and Add.8 (Feb. 5, 1979) [Hereinafter Roberto Ago].
[179] Roberto Ago, ¶41.
[180] Roberto Ago, ¶40.
[181] Pulp Mills on the River Uruguay (Argentina v. Uruguay) - Provisional measures, Verbatim Records 2006/57 and 2006/56.
[182] Compilation of decisions of international courts, tribunals and other bodies: Report of the Secretary-General, Resolution 77/97 of 7 December 2022 (A/77/74); Resolution 74/180 of 18 December 2019 (A/74/83); Resolution 71/133 of 13 December 2016 (A/71/80); Resolution 68/104 of 16 December 2013 (A/68/72); Resolution 65/19 of 6 December 2010 (A/65/76); Resolution 62/61 of 6 December 2007 (A/62/62).
[183] I.L.C., Draft Conclusions on the Identification of Customary International Law, U.N. Doc. A/73/10, Conclusion 11.1(a), (b).

(3) In any event, the present case does not constitute coercion under ARSIWA Article 18

a. The Agreement does not preclude the DRI from fulfilling its international obligations

The Agreement for oil extraction is permitted under international law if it is executed in consideration of the Parties' international obligations. International agreements including the CBD encourage the sustainable use of components of biodiversity, rather than prohibiting it.[184] The DRI is further entitled to promote sustainable development,[185] by utilizing its oil reserves. According to the principle of sustainable development, economic development, social development, and environmental protection are "interdependent and mutually reinforcing".[186] States are encouraged to strike a balance between the needs of the present and future generations.[187] The Project contributes to the DRI's developing economy,[188] in line with recommendations for oil production.[189]

CMS Range States are obliged to protect endangered species[190] and to mitigate impairment of migratory routes.[191] This includes the RMG.[192] CMS Resolutions suggest that Range States should also prevent the accidental release of crude oil.[193] The chance of oil spills occurring from pipeline infrastructures is 34 times lower than rail and road transportation.[194] Thus, the

[184] CBD, art. 1.
[185] Algiers Convention, art. XIV(2)(a).
[186] Johannesburg Declaration on Sustainable Development, 2002, Principle 5, UN Doc. A/CONF.199/20 (vol. IV).
[187] Rio Declaration, Principle 3.
[188] R¶1.
[189] Mohan Munisinghe. *Energy strategies for oil - importing developing countries (English)*. World Bank reprint series no. REP 328 (2010).
[190] Agreement on the Conservation of Gorillas and Their Habitats, art. III(2)(a), Oct. 26, 2007, 2545 U.N.T.S. 55 [Hereinafter Gorilla Agreement], read with CMS, art. III(4)(a), (c).
[191] Gorilla Agreement, art. III(2)(*a*), read with CMS, art. III(4)(b).
[192] R¶9.
[193] Oil Pollution and Migratory Species, UNEP/CMS/Resolution 7.3(Rev.COP12) (Oct. 2017).
[194] Kenneth P. Green and Taylor Jackson, *Safety in the Transportation of Oil and Gas: Pipelines or Rail?*, Fraser Research Bulletin (2015), 11.

Project's method of oil transportation drastically reduces the threat to the Southern RMG and their habitats.

Additionally, pipeline construction is one of the least intrusive methods of oil extraction, as it does not involve complete barriers to migration for migratory animals.[195] There is minimal risk to the Southern RMG's migratory movement.

b. Even if the DRI committed an internationally wrongful act, Replomuté did not coerce the DRI to do so

A coercing State is internationally responsible for the coerced state's internationally wrongful act.[196] The coerced State must be left with "no effective choice but to comply with the wishes of the coercing State".[197] The coercion must have rendered it impossible,[198] and not merely more difficult,[199] for the coerced State to comply with its international obligations.

Replomuté's entitlement to enforce the arbitral award does not constitute coercion. The DRI freely entered into the valid Agreement,[200] as it was an economically beneficial project.[201] The DRI would gain royalties and revenue from the Agreement to boost its economy.[202] The DRI also consented to arbitration as the exclusive dispute resolution mechanism upon entering into the Agreement.[203] Mandatory arbitration clauses are common in concession agreements, which protect the rights of the DRI and Replomuté when disputes arise.[204] By consenting, the DRI

[195] CMS Guidelines on mitigation, 23.
[196] ARSIWA, art. 18.
[197] ARSIWA Commentary, 69, ¶2.
[198] ARSIWA Commentary, 70, ¶3.
[199] ARSIWA Commentary, 69, ¶2.
[200] A¶12.
[201] R¶1.
[202] Simon Winston Brinsmead, *Oil Concession Contracts and the Problem of Hold-Up*, SSRN (2007), 14 [Hereinafter Brinsmead].
[203] R¶17.
[204] UNCITRAL Legislative Guide on Privately Financed Infrastructure Projects, 2000, Recommendation 69, UN Doc. A/CN.9/SER.B/4; James Crawford, The International Law Commission's Articles on State Responsibility: Introduction, Text and Commentaries, 112, ¶6 (2002).

accepted the corollary possibility of Replomuté initiating arbitral proceedings and enforcing the award. Crucially, the arbitral tribunal had fairly reached its decision.[205] Thus, Replomuté was legally entitled to enforce the award as the prevailing party.[206]

Moreover, Replomuté's potential enforcement of the award does not render it impossible for the DRI to comply with its Gorilla Agreement and Algiers Convention obligations. While it may not be practically viable for the DRI to withdraw from the Agreement,[207] the DRI is not precluded from engaging with Replomuté to implement mitigation measures.[208] The DRI could use the Friendship Fund to fulfil its obligations under the Gorilla Agreement and the Algiers Convention, [209] such as introducing compensatory measures for habitat loss.[210] The DRI could also leverage on its revenue accrued from the Agreement[211] to restore and rehabilitate the RMG habitat.[212]

Furthermore, the DRI could fulfill its international obligations through domestic legislation. Notwithstanding the Agreement, Lenoir remains subject to the DRI's domestic legislation.[213] If Lenoir violated the DRI's domestic environmental legislation, the DRI would have been entitled to raise a counterclaim to claim for damages,[214] but it did not do so.

[205] A12.
[206] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, art. V, 330 UNTS 3 (1958). UNCITRAL Model Law on International Commercial Arbitration, art. 35, UN Doc A/40/17, Annex I (1985).
[207] R¶1.
[208] Gabcikovo-Nagymaros, ¶112.
[209] Gorilla Agreement, art. III(2); Algiers Convention, art. XV(1)(d).
[210] R¶23.
[211] Brinsmead, 14.
[212] 3rd Meeting of the Parties to the Gorilla Agreement, *Mountain Gorilla Gorilla beringei beringei Gorilla Agreement Action Plan*, 6, UNEP/GA/MOP3/Inf.6 (Apr. 24, 2019).
[213] Perenco Ecuador Ltd. v The Republic of Ecuador, ICSID Case No. ARB/08/6, Interim Decision on the Environmental Counterclaim, ¶34, (11 August, 2015); Burlington Resources Inc. v Republic of Ecuador, ICSID Case No. ARB/08/5, Decision on Ecuador's Counterclaims (7 February, 2017).
[214] *Ibid*.

CONCLUSION AND PRAYER FOR RELIEF

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

1. Replomuté's actions with respect to the EIA for the Project did not violate international law, and
2. Replomuté's actions with respect to the Project in the DRI complied with international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT