TEAM NUMBER: 2466R

IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE CASE CONCERNING

QUESTIONS RELATING TO MOUNTAIN GORILLAS AND IMPACT ASSESSMENT

ARINGUV

APPLICANT

V.

REPLOMUTÉ

RESPONDENT

MEMORIAL FOR THE RESPONDENT

THE 28th STETSON MOOT COURT COMPETITION 2023-2024

NOVEMBER 2023

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TABLE OF ABBREVIATIONS

¶	**Paragraph**
AFZ	**Azarlus Fracture Zone**
CBD	**Convention on Biological Diversity**
CHS	**Convention on the High Seas**
EEZ	**Exclusive Economic Zone**
EIA	**Environmental Impact Assessment**
ICJ	**International Court of Justice**
ILC	**International Law Commission**
IMO	**International Maritime Organization**
ITLOS	**International Tribunal for the Law of the Sea**
IUCN	**International Union for Conservation of Nature**
ISA	**International Seabed Authority**

NDC	**Nationally Determined Contribution**
NGO	**Non-governmental Organization**
ORCA	**Ocean Researchers and Cetacean Avengers**
PCIJ	**Permanent Court of International Justice**
R	**27th Annual Stetson International Environmental Moot Court Competition** **Record**
ReCAAP	**Regional Cooperation Agreement on Combating Piracy and Armed Robbery** **against Ships in Asia**
UN	**United Nations**

UNFCCC	**United Nations Framework Convention on Climate Change**
UNGA	**United Nations General Assembly**

UNCLOS	**United Nations Convention on the Law of the Sea**
WCFN	**United Nations World Charter for Nation**
VCLT	**Vienna Convention on the Law of Treaties**

STATEMENT OF JURISDICTION

In accordance with international treaties and agreements, the Democratic Republic of Ibirunga (DRI), Aringuf and Replomut have agreed to refer matters related to environmental and economic issues to the International Court of Justice (ICJ). The DRI is a sovereign country in Central Africa and is classified as a low-income country with an agricultural economy. The region is rich in natural resources, including vast oil reserves.

However, historical European colonization, post-colonial civil wars and political corruption have had a profound impact on its development and stability.

Alingouf, also in Central Africa, is a low- to middle-income economy with an emerging tourism industry including wildlife tourism.

Aringuv and Replomuté have been negotiating environmental issues related to Replomuté's oil production activities within the DRI.

Alinguf claimed that Replomuté's failure to conduct an environmental impact assessment (EIA) violated international law, given the significant environmental impact on mountain gorillas and related laws.

Replomuté disputes these claims, claiming they comply with international environmental impact assessment laws and that the Gorilla Protocol does not apply to them

In light of their differences, Aringuv and Replomuté agreed to refer the matter to the International Court of Justice (ICJ) for adjudication, while the DRI remained neutral on the claims

STATEMENT OF FACTS

The Democratic Republic of Ibirunga (DRI) is a sovereign state in Central Africa, classified as a low-income country with an agrarian economy and rich in natural resources, including extensive oil reserves and a historie of European colonization, post-colonial civil wars, and political corruption have affected its development. (R¶ 6)

Aringuv is a state in Central Africa, with a middle-low-income economy and a growing tourism industry, including wildlife tourism. (R¶ 6)

Replomuté is a high-income European state with a diverse industrial economy, being one of the largest importers of crude oil. (R¶ 6)

Aringuv, Replomuté, and the DRI are members of the UN, parties to the Statute of the International Court of Justice, and the Vienna Convention on the Law of Treaties. (R¶ 6)

All three countries are signatories to various environmental conventions, such as the Convention on Biological Diversity (CBD) and the Convention on the Conservation of Migratory Species of Wild Animals (CMS). (R¶ 6)

Aringuv and the DRI are parties to the Agreement on the Conservation of Gorillas and Their Habitats (Gorilla Agreement), applicable to a critically endangered gorilla species and Replomuté is not a Range State for the Gorilla Agreement. (R¶ 7)

Aringuv and the DRI are parties to the African Convention on the Conservation of Nature and Natural Resources, while Replomuté is not. (R¶ 7)

Replomuté and the DRI are parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention). (R¶ 7)

All three countries are parties to the United Nations Framework Convention on Climate Change (UNFCCC) and the Paris Agreement. (R¶ 7)

An oil agreement was signed in 1981 between Replomuté and the DRI, granting oil exploration rights to the Lenoir Corporation. However, pipeline construction associated with the agreement faced interruptions due to conflicts, including a civil war and an Ebola outbreak. (R¶ 8)

Aringuv and Replomuté had negotiations regarding environmental concerns related to Replomuté's oil extraction activities in the DRI. (R¶ 9)

Aringuv claims that Replomuté's lack of an Environmental Impact Assessment (EIA) violates international law, considering the significant environmental impact and laws related to mountain gorillas. (R¶ 9)

Replomuté contests these claims and argues that they complied with international laws regarding the EIA and that the Gorilla Agreement does not apply to them. (R¶ 10)

Due to disagreements, Aringuv and Replomuté agreed to submit questions for judgment by the International Court of Justice (ICJ). The DRI remains neutral on the claims. (R¶ 12)

SUMMARY OF ARGUMENTS

I

Replomuté has not violated international law concerning the preparation of an EIA, according to the VCLT, the Espoo Convention does not apply to the country. Furthermore, the Espoo Convention establishes that Replomuté does not have the competence to carry out an EIA, since the State of origin - DRI - is in charge of due diligence.

In this sense, Replomuté does not have the duty to conduct another EIA, seeing that the preparation of an EIA is a procedure that must be undertaken prior to the implementation of the project.

II

Replomuté's actions with respect to the proposed oil extraction activities in the DRI comply with international law considering that the CMS, the CDB, and the Gorilla agreement are inapplicable with respect to the proposed oil activities, according to VCLT.

Nevertheless, Replomuté did not violate the CBD once article 14.1 (a) of CBD cannot be applied for projects in other States and has complied with

ARGUMENTS

1. REPLOMUTÉ HAS NOT VIOLATED INTERNATIONAL LAW WITH RESPECT TO THE PREPARATION OF AN EIA

A. According with the VCLT, the Espoo Convention is not applicable for Replomuté

Due to retroactivity, the Espoo Convention is not applicable for Replomuté. In respect to the 1981 framework, the DRI and Replomuté entered into a concession agreement that granted the Lenoir Corporation the right of exploration and oil extraction besides the pipeline construction for safer and faster oil transportation. Equally important, also in 1981, DRI was responsible for conducting an EIA to measure possible environmental impacts on Lenoir's operations, which was successfully concluded following the established parameters **(R¶17)**. Subsequently, in 1997, after the EIA conclusion, Replomuté ratified the Espoo Convention; the DRI, in turn, ratified it in 2015. Furthermore, Aringuv is not a party at this Convention.

According to Article 28 of the VCLT, unless otherwise established, treaty provisions do not bind a Party in relation to any act or fact which took place or any situation that ceased to exist before the date of the entry into force.

The article enunciated the principle of non-Retroactivity, which determines that no contractual obligations arise for the State party in relation to an event which was completed, as explained at ILC Report, in 1966. In regard to its legal certainty, the Venice Commission stated that it is essential for confidence in the legal system, and also argues that retroactivity violates the principle of legal certainty as soon as it negatively affects rights and legal interests[1]. In

[1]European Commission For Democracy Through Law (Venice Commission) Compilation Of Venice Commission Opinions And Reports Concerning Legal Certainty

Eiser and Energía Solar v. Spain[2], the ICSID[3] tribunal held that the retroactive nature of energy sector regulations was one reason for finding a breach of the fair and equitable treatment standard[4].

The EIA conducted by the DRI in light of the DRI-Replomuté Agreement of 1981 is a perfect legal act, meaning an act that was consummated under existing law, regarding the *tempus regit actum* principle. Only in 1997, after the EIA conclusion, Replomuté ratified the Espoo Convention; the DRI, in turn, ratified it in 2015.

Thus, the Espoo Convention, by not having time collision with the act, cannot guide the creation of the EIA, as it also does not foresee a retroactivity on its provision, which was into a situation that was enforceable by other than the prevailing legal rules. That keeps a legitimate expectation of legal certainty by Lenoir corporation, and that the decision to break the correspondent rules, and consequently the company's project, results in a breach of the fair and equitable treatment of international standards. Hence, the Espoo convention is not applicable as an EIA conduct parameter.

i. Replomuté is not responsible for the conduction of the EIA

Replomuté does not have competence to carry out an EIA, since the State of origin, in charge of due diligence obligations, is the DRI.

In the terms of Article 1(i) of the Espoo Convention, "Party of origin" is the term used to refer to the State within whose jurisdiction the activity that is likely to cause transboundary harm will take place. The ILC, in its Draft Articles on Prevention of Transboundary Harm from

[2]Eiser and Energia Solar v. Kingdom of Spain, ICSID Case No. ARB/13/36 (Award rendered May 4, 2017)
[3](International Centre for Settlement of Investment Disputes, https://icsid.worldbank.org)
[4]Kryvoi, Y., & Matos, S. (2021). *Non-Retroactivity as a General Principle of Law*. Utrecht Law Review, 17(1), 46–58.DOI: https://doi.org/10.36633/ulr.604

Hazardous Activities, has further noted that jurisdiction of a State is configured when it detains competence or authority over said activities.

Regarding due diligence obligations, the ICJ has stressed in the *Pulp Mills* case[5] that the specific scope of the EIA must be determined in accordance with domestic laws and with a view to eventual impacts it might have on the environment, this understanding is also adopted by the ILC[6]. As Phillipe Sands also noted, the preventive action is supported by an extensive body of national environmental legislation that provides authorisation procedures as well as the EIA conduction.

Recalling the concession agreement between DRI and Replomuté for oil exploration and pipeline construction on DRI territory to be executed by Lenoir Corporation. Despite it being entirely owned and operated by the Government of Replomuté, the DRI had the jurisdiction in applying its national laws for the assessment of the EIA before the project entered into force in 1983. As Founded by the court, the EIA responsibility lies with the governing authority that applies its domestic laws to define and regulate the scope of the procedure.

Furthermore, the EIA also complied with any of the DRI's international obligations that may have been in place at the time, such as the Algiers Convention.

In line with the facts discussed, the first part of Principle 21 of the 1972 Stockholm Declaration defines States as the sovereign part to exploit their own resources in accordance with its own environmental policies, and the second element of the Principle also reflects the view of States subject to environmental restrictions not to cause damage in areas beyond

[5] Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010, p.14, §205: The court states that it is up to each state to determinate the content of the environmental impact assessment based on the nature of the project and that the assessment must precede the project's implementation

[6] Report of the International Law Commission, Pub. L. No A/56/10, commentary to art. 7, pp. 402-5 (2001)

national jurisdiction[7]. This principle is accepted by customary international law and as a "basic rule" of international law, as understood by the ICJ in its 1996 Advisory Opinion on The Legality of the Threat or Use of Nuclear Weapons and UN General Assembly Resolution 2996. Thus, Replomuté followed the rules imposed by the DRI in accordance with its national policy and did not cause any cross-border harm.

Thus, since the DRI laws were applicable to the EIA, it is clear that it holds jurisdiction over the activities performed, hence Replomuté has no responsibility in this present case.

ii. Replomuté is not obligated to conduct an EIA after the implementation of the project

Replomuté does not have the duty to conduct another EIA. Besides not having the competence to do so, as previously demonstrated, the preparation of an EIA is a procedure which must be undertaken prior to the implementation of the project.

Article 2(3) of the Espoo Convention provides that the EIA is necessary before a decision to authorize the project is granted.

In this sense, it has been held by the ICJ in *Costa Rica v. Nicaragua* that the duties of due diligence shall be observed by a State prior to the beginning of activities which could adversely impact areas beyond national jurisdiction.

On December 11, 2018, Aringuv forwarded a diplomatic note to Replomuté, in which the applicant invoked Article 6(3) of the Espoo Convention, to express its concerns about potential negative impacts on the Royal Mountain Gorilla due to Lenoir Corporation's

[7] Sands, P. (2003) 'Principle of preventive action', in *Principles of International Environmental Law*. Second Edition. New York, United States of America: Cambridge University Press, pp. 246–249.

activities and to require the conduction of a brand new EIA, which should contemplate the provisions of treaties that had not been ratified at the time of the project's idealization, in an attempt to reconsider the entire project. However, the same invoked article more specifically provides that a concerned party must request consultations on whether the decision should be revised, which differs from requesting the conduction of a new EIA.

Therefore, Replomuté is not obligated to conduct a new EIA since this procedure is exclusively adopted in order to verify a project's viability before it is implemented in the first place. In the same manner, Aringuv cannot Exercise of the convention provisions concerning Replomuté, as it has not ratified it.

iii. Aringuv cannot invoke the provisions of the Espoo Convention

As it is not a Party to the Espoo Convention, Aringuv cannot invoke its provisions because it served as convenient to the present matter.

The first article of the Convention states that in order to be subject to it, one must be characterized, in the case of the applicant, as an "Affected Party", and according to Appendix IV, only parties can inquire procedure.

It is important to emphasize that signing an international agreement does not in itself create legally binding obligations. Ratification is the subsequent step that a state must take in order to legally commit to fulfilling the provisions of the treaty.

Therefore, as Aringuv has only signed but not ratified the Espoo Convention **(R¶12)**, it is not only not legally bound by the obligations of the Convention, but also cannot avail of them to pressure Replomuté.

2. REPLOMUTÉ'S ACTIONS WITH RESPECT TO THE PROPOSED OIL EXTRACTION ACTIVITIES IN THE DRI COMPLY WITH INTERNATIONAL LAW

A. The CMS, the CBD and the Gorilla agreement are inapplicable in respect to the proposed oil activities, according to VCLT

The CMS and the CBD cannot be applied as they are both subsequent to the DRI-Replomuté Agreement. Whilst the Gorilla Agreement does not bind Replomuté, due to lack of its signature.

Taking into account Article 28 of the VCLT, the provisions of the treaty do not bind a party with respect to acts or facts that occurred prior to the effective date of the treaty for that party, unless a different intention appears from the treaty or is otherwise established.

In this context, the ICJ in the Ambatielos Case (Greece V. United Kingdom)[8] recognized no retroactive effect when the treaty shows its intentions. The court made its decision based on the Treaty of 1926, whereas Article 32 states that the Treaty shall come into force immediately upon ratification. In other words, it showed the treaty's intention to bind the parties just upon ratification.

Article 18 of CMS, in the present matter, states that all of its provisions shall enter into force on the first day of the third month following the deposit of the fifteenth instrument of ratification, acceptance, approval or accession with the Depositary. Which is to say, the CMS shows clearly its intention to bind parties after the imposed condition of depositing fifteenth instruments.

[8] Ambatielos (Gre v. U.K), Judgment, 1953 I.C.J, Rep 10

Being that the countries became Parties to the CMS in 1983 **(R¶8)** and that the DRI-Replomuté Agreement was celebrated in 1981 **(R¶17)**, the Convention has no retroactive effect.

Likewise, Article 36 of CBD states that the Convention shall enter into force on the ninetieth day after the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession. In this sense, the CBD declares its willingness to bind the Parties after the required condition of depositing the thirtieth instrument.

In this way, the application of retroactivity does not apply to the CBD either, as it was ratified by the countries in 1993 **(R¶7)** and due to the Convention stating the future moment in which it would enter into force.

On the other hand, under Article 34 of the VCLT, a treaty does not create either obligations or rights for a third State without its consent.

Against this background, the ILC deliberated on whether a treaty could automatically grant rights to third States or if the parties were always obligated to include a provision in the treaty requiring the acceptance of other States for its fulfillment[9]. The commission concludes that article 34, as it currently stands, is explicit in stating the requirement for consent[10].

In the present matter, the Gorilla Agreement binds the DRI and Aringuv **(R¶9)**, which cannot impose treaty obligations on non-Parties. The document is only binding if the State has expressed their concern to the treaty in part or in its entirety[11], what was not accomplished by Replomuté.

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[9] Yearbook of International Law Convention,Brigg's statement, vol , Rep. on the Work on Its sixteenth session, U.N. Doc A/CN.4/SER.A/1964, § 99

[10] Yearbook of International Law Convention, Brigg's statement, vol.1, part.2, Rep. on the Work on Its eighteenth session U.N. Doc A/CN.4/SER.A/1966, p. 57, § 17

[11] Statements in Vienna by the Venezuelan delegation, OR 1968 CoW 191, para. 2;and in the ILC by de Luna, YBILC 1966 I/2 56, paras. 5, 8; Yasseen, ibid. 57, para. 14;and Ago, YBILC 1964 I 174, para. 76; also Reuter, Introduction N. 158. Of course, it has traditionally been disputed whether there is an agreement at all (N. 1).

Therefore, any express obligations and burdens in relation to the Gorilla Agreement on Replumuté, as in the implementation of the EIA, are not compatible with international law.

For these reasons, the CMS, the CBD and the Gorilla Agreement cannot be applied in the matter with respect to the proposed oil extraction activities in the DRI, but, subsidiarily, if this Court decides to apply the Conventions' provisions, the operations carried out in the proposed oil extraction are not in breach of the provisions of the Conventions, as approached later.

i. Replomuté did not violate the CBD

i.1. The article 14.1 (a) of CBD cannot be applied for projects in other States

Replomuté did not violate article 14.1(a) of the CBD, as interpreted faithfully, without the placement of additional meaning to what was expressly written in the law.

In accordance with article 14.1 (a) of CBD, each contracting Party should introduce appropriate procedures requiring an EIA of its proposed projects, when they're likely to have remarkable adverse effects on biological diversity[12].

When faithfully interpreted, the provision is best applied in regards to projects in a Party's own territory, specially when considering that article 14.1(c) addresses the correct measures to be taken in regards to projects that "affect adversely the biological diversity of other States or areas beyond the limits of national jurisdiction". Thus, if article 14.1(a) had intended to demand an EIA for projects within the territory of other States, it would have been written clearly, as in article 14.1(c).

[12] The Convention on Biological Diversity of 5 June 1992 (1760 U.N.T.S. 69)

In this sense, according to Lawrence Solum – an internationally recognized legal theorist who works in constitutional theory, procedure and the philosophy of law –, the term "legal interpretation"[13] is the activity of working out the linguistic meaning of the legal texts, as opposed to the content of the law.

In the present matter, on 11 December of 2018, Aringuv sent a diplomatic note to Replomuté **(R¶27)** drawing attention to article 14.1 (a) of CBD, claiming that Replomuté violated it. However, on 21 March of 2019, Replomuté answered affirming that the article mentioned was inaccurately interpreted **(R¶28)**, as Aringuv added a non-existent condition to the article by stating that an EIA should be required for when a project is likely to have adverse transboundary effects.

In that regard, Aringuv committed a wrongful legal interpretation by adding a new normative meaning to article 14.1(a) of the CBD. Therefore, neither was article 14.1(a) of the CBD correctly invoked, nor was it violated by Replomuté.

i.2.Replomuté complied with article 14.1(c), with regard to projects in other States

Replomuté complied with article 14.1(c) of the CBD due to having encouraged arrangements accompanied by the purpose of preserving biological diversity, which Aringuv didn't ratify.

The aforementioned provision encourages Parties to promote – through the celebration of agreements – notification, exchange of information and consultation when it comes to activities likely to cause adverse effects on biological diversity of other States.

[13]Greenberg, Mark. *Principles of Legal Interpretation* (2016).

The article also determines that this should be achieved on the basis of reciprocity, an underlying principle of international law that consists in "the mutual concession of advantages or privileges for purposes of commercial or diplomatic relations"[14]. In the formulation of international treaties, it serves as a fairness mechanism that balances a state's rights, duties and interests, in a costs vs. benefits relation.

Reciprocity also influences how states go about proclaiming their rights and responding to rights claimed by others, operating as a constraining factor, considering that if a state claims a right, other states receive the same benefits[15].

This CBD's provision is consistent with existing international principles relating to transfrontier cooperation, as is the Espoo Convention[16].

In such wise, Replomuté has encouraged non-UNECE Member States to join the Espoo Convention **(R¶28)**, which has the aim to extend assessments across borders between Parties when a planned activity may cause significant adverse transboundary impacts. Since Aringuv has not done so – even though the August 2014 amendment to the Convention made it possible **(R¶12)** –, no reciprocity exists between the States.

Therefore, Replomuté acts in accordance with the article 14.1(c) of CBD by encouraging the Espoo Convention. In contrast, by not joining the Espoo Convention, Aringuv does not collaborate with the CBC.

[14]Fard, Shahrad . *Reciprocity in International Law: Its impact and function*, Routledge Research in International Law, p.1 (2015), DOI: 10.4324/9781315652146

[15] Id. page 2/3

[16] *The Espoo Convention and the Convention on Biological Diversity*, United Nations Economic Commissions for Europe p.2, https://unece.org/DAM/env/eia/documents/links_between_conventions/linkcbdandeiaconventions.pdf

ii. Replomuté did not violate the CMS

As previously cited, the CMS should not be applied to the current matter, because it has no retroactive effect. Nevertheless, if this Court rules on applying the CMS's provision, the activities conducted in the proposed oil extraction will not have a transboundary impact regarding the Royal Mountain Gorilla.

This affirmation is grounded on the evidence that the Royal Mountain Gorilla cannot be properly classified as a migratory species.

The CMS defines "Migratory species" as a population whose members cyclically and predictably cross one or more national jurisdictional boundaries[17], (E) such as *Elephas maximus indicus*, the Asian elephant.

This animal was added to Appendix I of the CMS by the 13th Conference of Parties (COP) of the UN Convention on the CMS, held during the 17th and 22nd of February 2020, after the Ministry of Environment, Forest and Climate Change of India, proposed their inclusion.

The extent of the Asian elephant's home range indicates that transboundary populations can range deep into different States, straddling vast areas and crossing one or more jurisdictional boundaries[18]. Their migration movement within home ranges, which are influenced by seasonal changes in resources, are both cyclic and predictable[19].

This means that the elephants move across state boundaries with a certain frequency, which is not the case for the Royal Mountain Gorilla, as the members of the southern population that occupies the DRI have rarely been sighted in Aringuv (R¶9). Unlike the Asian elephant, there isn't a Royal Mountain Gorilla natural movement to be protected or a traditional migration path to be preserved.

Thus, the Royal Mountain Gorilla shouldn't be considered a migratory species.

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[17] Convention on the Conservation of Migratory Species of Wild Animals, Article I, 1, a). November 1, 1993.
[18] Id page 2, item 3.1
[19] Id pages 2/3, item 3.1

Furthermore, the obligations fixed in Article III, paragraph 4 concern Range-States only, as it reads: “Parties that are Range States of a migratory species listed in Appendix I shall endeavor” to conserve and restore habitats of the Appendix I species and to prevent, reduce or control factors that are endangering or are likely to further endanger the species.

It’s common for international Treaties to propose different obligations to different Parties given the context that it encompasses. The CMS itself issued “Discussion 13.140”[20] in an effort to differentiate “vagrancy” and “Range-States”.

On basic terms, Range-States means any State that exercises jurisdiction over any part of the range of that migratory species, as defined by the CMS, and vagrancy means that the species was recorded once or sporadically, but it is known not to be native to the area, as defined by the IUCN and Birdlife International[21].

This was of the utmost importance given that being a Range State for a species carries special obligations under the Convention, so Parties should know whether they have those obligations for a particular species or not. Therefore, “clear interpretations of both vagrancy and Range States are (...) needed to overcome such uncertainty and help Parties understand when they could or should be undertaking conservation action to maintain or improve the status of a species”[22].

This discussion topic serves as a comparison to identify if Replomuté holds responsibility to protect the Royal Mountain Gorilla, as a species listed in Appendix I, specifically. In this sense, even though Replomuté is a Party to the CMS, it’s not responsible for the obligations listed above, because they're not a Range State Party, nor a vagrancy state, of the Royal Mountain Gorilla.

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[20] Convention on the Conservation of Migratory Species of Wild Animals, 5th Meeting of the Sessional Committee of the CMS Scientific Council (ScC-SC5), DECISION 13.140: DEFINITION OF THE TERMS "RANGE STATE" AND "VAGRANT”, 28 June - 9 July 2021.

[21] Id page 4, paragraph 8

[22] Id page 2, paragraph 4

Therefore, Replomuté is not responsible for any breach of the Convention.

On the contrary, CMS's obligations shouldn't interfere with the Agreement between Replomuté and the DRI.

The Convention establishes, in Article XII, paragraph 2, that its provisions "shall in no way affect the rights or obligations of any Party deriving from any existing treaty, convention or agreement".

By adding this specific drafting technique, the Convention prevents potential conflict between international legislations and contracts from occurring as it provides for the priority of previous texts[23], fostering a procedure that assures coherence within international law.

In accordance with this, VCLT's Article 31 defines that the primary technique of treaty interpretation is textual. Therefore, while treaties are to be interpreted to reach their purposes, purpose is assumed to be clear from the plain meaning of the text[24]. In this sense, the referred Article must be taken as the final expression of the legislative intent.

In that regard, it shall be taken into consideration that the DRI holds a current agreement with Replomuté, which grants the Lenoir Corporation the rights to explore and extract oil from the area inhabited by the southern population of the Royal Mountain Gorilla and to construct a pipeline to transport any oil extracted **(R¶17)**.

Thus, the CMS doesn't invalidate the DRI-Replomuté Agreement, because of its prior nature. Consequently, the oil extraction activities should resume as agreed.

For these reasons, the activities conducted in the proposed oil extraction will not have a transboundary impact regarding the Royal Mountain Gorilla.

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[23] J. Borgen, Christopher, *Resolving Treaty Conflicts,* St. John's University School of Law, vol. 122, p.14 (2005)
[24] Id page 61

B. Replomuté did not violate the UNFCCC nor the Paris Agreement and complied with their NDCs

Activities conducted in the proposed oil extraction do not violate UNFCCC, Paris Agreement or the NDCs, since Replomuté did not breach any article of those Conventions and, on the contrary, followed the established by them.

Article 4.1(f) of the UNFCCC – mentioned by Aringuv on 11 December 2018 in the diplomatic note forwarded to the Government of Replomuté **(R¶27)** – states that the parties of the Convention shall, when undertaking a project, take climate change considerations into account and employ appropriate methods, for example impact assessments, aiming to mitigate or adapt to climate change.

In that regard, it is important to state that an EIA was already conducted in 1981, prior to the ratification of the UNFCCC by Replomuté and DRI. Moreover, both countries agreed, in their concession agreement, that DRI was responsible for the EIA **(R¶17)**; given that, Replomuté does not have any responsibilities regarding the matters of redoing or conducting an EIA. Therefore, the mentioned article 4.1 (f) of UNFCCC does not apply to the Respondent and was not violated.

In addition, regarding the Nationally Determined Contributions, even though Replomuté doesn't submit its own NDC, once it is covered by the NDC of the European Union and its Member States **(R¶15),** it is important to emphasize that the joint EU NDCs are in accordance with article 4 paragraph 16 and article 6.1 of the Paris Agreement, in which Replomuté fulfills with its voluntary cooperation to allow for higher ambition in their mitigation and adaptation actions. It should be noted, on this subject, that the European Union

is a global leader in climate action, having already cut its greenhouse gas emissions by over a quarter since 1990[25].

For instance, based on the American Petroleum Institute (API) and the Liquid Energy Pipeline Association (LEPA), pipelines are one of the safest ways to transport oil and gas[26], which the world depends on, with a variety of techniques to limit the amount of greenhouse gasses released, helping to lower carbon emissions by reducing the need to transport fuel by truck or train (both have higher levels of carbon emissions), constituting a mechanism to contribute to the mitigation of greenhouse gas emissions, conformable with the article 6.4 of the Paris Agreement.

In these terms, Diana Furchtgott-Roth, director of energy, climate and environment at the Heritage Foundation, has an article entitled "There's Safety in Pipelines"[27] in which she discourses about how pipelines are a perfect safe way to transport oil and natural gas.

Therefore, Replomuté, by conducting the proposed oil extraction operation, which includes the pipeline construction, is in accordance with the UNFCCC's Objective, stated in its article 2: "to achieve (…) stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system"[28]. Furthemore, the Respondent also complies with its obligations concerning the NDCs, which are based on an allocation of greenhouse gas emissions at the domestic level to achieve the EU combined emissions target.

Finally, it should also be noted that, as aforesaid in the case of CMS and CBD, the Lenoir Corporation started conducting the oil exploration activities in 1983, prior to

[25]COP27: EU calls on all Parties to take concrete steps to limit global warming to 1.5°C and respect the Paris Agreement (European Commission, Nov. 4, 2022).
[26] *Pipelines*, American Petroleum Institute (Sep. 22, 2023, 8:15 PM).
[27] Diana Furchtgott-Roth, *There's safety in pipelines*, Forbes (Sep. 20, 2021, 7:12 PM).
[28] United Nations Framework Convention on Climate Change, art. 2. May 9, 1992

Reploumuté's entrance in UNFCCC in 1992 **(R¶18)**. Therefore, either way, UNFCCC's provisions do not apply to the Respondent once it has no retroactive effect.

C. Replomuté does not hold indirect responsibility nor did it practice coercion

Replomuté strongly rejects the claim that the DRI is the subject of any coercion.

Firstly, it is important to put into evidence that the inclusion of an arbitral clause is not only valid, but oftentimes valued in international agreements.

This method of conflict resolution is often preferred for its neutrality[29] – because of the joined selection of neutral nationality arbitrators (presumed to be experts in the subject matter[30]), applying a neutral procedure at a neutral place[31] – and flexibility, once international arbitration permits parties to use their own counsel[32].

On further note, arbitration has limitations upon appeals, unless the parties specifically provide in this agreement for expanded judicial review of arbitral awards, making it a cheaper and quicker process than litigation[33].

The DRI-Replomuté Agreement, celebrated freely by both countries, contains a mandatory binding arbitration clause as the exclusive mechanism for dispute resolution **(R¶17)**, with no provision for expanded judicial review of the award.

When confronted with a dispute, in June 2012, Replomuté rightfully invoked said clause **(R¶22)**. The arbitration was then properly conducted, in the absence of any evidence to the contrary, until the panel's result, in March 2015, in which Replomuté prevailed **(R¶23)**.

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[29] Friedland, D. Paul. *Arbitration Clauses for International Contracts.* 2nd ed. JurisNET, LLC (2007), page 9.
[30] Id page 14
[31] Id page 10
[32] Id page 11
[33] Id pages 15/16

On this occasion, Replomuté established a $10 million dollar fund for economic development activities in the DRI, to be administered jointly by representatives from both governments.

As seen, there hasn't been any "colonial extortion", as stated by Aringuv's Minister of the Environment **(R¶34)**, but rather a very cooperative and friendly relation between the Nations, derived from a valid and proper method of conflict resolution, meaning arbitration.

For these reasons, Replomuté rejects the occurrence of coercion.

Besides that, regarding the claim that Replomuté is indirectly responsible for DRI's breaches of the Gorilla Agreement and CMS, because of said "coercion", Replomuté states that it views the ILC's work on the *Draft Articles on Responsibility of States for Internationally Wrongful Acts* as going beyond its mandate, once the document has not codified customary international law but rather has proposed new substantive rules to which Replomuté is not binded to.

Replomuté also highlights a most relevant issue: "state practice" is lacking with respect to the notion of coercion relating to Article 18.

James D. Fry's Article on *Coercion, Causation, and the Fictional Elements of Indirect State Responsibility*[34] is an in-depth analysis of Article 18 of the 2001 ILC's Draft Articles on State Responsibility. In it, he theorizes that the absence of stronger cases cited in the Draft's Commentaries indicate that the article does not reflect customary international law.

Not only that, but the structural and logical flaws within the text formulation leads to the uselessness of the provision in influencing the evolution of state practice.

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[34] D. Fry, James. "*Coercion, Causation, and the Fictional Elements of Indirect State"*, Vanderbilt Journal of Transnational Law 40 (611 ed. 2007)

Subsidiarily, it is important to argue, as Fry does in his text, that there are varying degrees of coercion, which should lead to a proportional way to ascribe responsibility, according to the degree of freedom denied to the coerced state[35].

Contrary to this, Article 18 implies that the coerced state holds no responsibility over the wrongful act, making the act itself disappear in relation to the coerced state[36]. By doing so, the Article doesn't hold up to one's notions of justice and state equality.

Besides, 'coercion' is often seen as legitimate when the 'coerced' state remains a beneficiary[37]. The fact that the DRI has a profitable interest in the oil extraction activities shows that they remain as a beneficiary of the Agreement between the countries.

Taking this into consideration, Replomuté argues that, in order to support their claim, Aringuv has the burden of proof to demonstrate that the coercion in question is absolute. Otherwise, condemning Replomuté to such an extent, for a disproportionate share of the responsibility, would be highly unjust.

On this note, Replomuté rejects the usage of the Articles on State Responsibility as a compilation of binding provisions and argues that Article 18 of the ILC's work can't be applied.

Based on these factors, Replomuté reiterates that the DRI isn't the subject of any coercion capable of resulting in the state's indirect responsibility.

[35] Id page 29
[36] Id page 22
[37] Id page 31