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**THE 2019-2020 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT  
COMPETITION**

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**2019 General List No. 24**

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



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**QUESTIONS RELATING TO THE REINTRODUCTION OF BEARS**

**between**

**FEDERAL STATES OF ARCTOS**

**(APPLICANT)**

**v.**

**REPUBLIC OF RANVICORA**

**(RESPONDENT)**

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**MEMORIAL FOR THE APPLICANT**

**(FEDERAL STATES OF ARCTOS)**

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## QUESTIONS PRESENTED

- I. WHETHER THE REPUBLIC OF RANVICORA VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROJECT; AND
- II. WHETHER THE FEDERAL STATES OF ARCTOS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSE TO RANVICORA'S REINTRODUCTION OF THE GREY BEARS.



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## STATEMENT OF JURISDICTION

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The Federal States of Arctos and the Republic of Ranvicora (collectively ‘the Parties’) hereby submit the present dispute concerning Questions Relating to Reintroduction of Bears (‘the Court’). Pursuant to Article 40(1) of the Statute of the International Court of Justice the Parties have concluded a Special Agreement, in Barcelona, Spain on the 11th day of July, 2019 and it has been submitted to the Registrar of the Court.

The Parties have accepted the jurisdiction of this Court in accordance with Article 36(1) of the Statute of the Court. As provided in Article IV (1) of the Special Agreement, each party shall accept the judgment of the Court as final and binding and shall execute it in good faith.

## STATEMENT OF FACTS

The Federal States of Arctos ('Arctos') and the Republic of Ranvicora ('Ranvicora') are neighboring countries in the continent of Suredia. The countries share a 75 kms long border which consists of private farms and forests. In 1963, grey bears (*Ursus smokeysius*) ('the Bears'), a species endemic to Ranvicora, went extinct due to a variety of reasons including over-hunting and habitat destruction. However, there is no historic evidence that the Bears ever existed in Arctos. Due to their cultural significance, Ranvicora decided to reintroduce the bears ('Project'). As a result, an Environmental Impact Assessment ('EIA') was undertaken by Ranvicora. Due the fact(s) of Ranvicoran bears only migrating within the country and their isolation from other bear populations, the EIA's scope was national.

Subsequently, the Bears were introduced in Northern Ranvicora near the border it shares with Arctos. This was done since the bears had been moving poleward in Aloysius and Paddington where they were brought from. However, doubts persisted over whether this area was a part of the Bears historic range. Significantly, one of the bears was dropped off a mere 50 kms from Arctos. Female bears produced offspring within the first year of reintroduction. In 2017, Ranvicoran scientist discovered that the bears were crossing over to Arctos, with even locals spotting them. Subsequently, the Bears caused damage to farms in Arctos, apple orchards, beehives, livestock and the eggs and nestlings of the Trouwborst tern, which is an endangered species endemic to Arctos.

When Ranvicora did not take action on its urging, Arctos began setting out poisoned animal to defend against the bears. Meanwhile, a female grey bear mauled two children who were playing with her cubs, killing one and injuring another. Consequently, to protect the interests

of its citizens, Arctos passed a law authorizing its citizens to shoot any grey bears spotted in Arctos. Successively, 9 bears died as result of Arctos's response.

## SUMMARY OF ARGUMENTS

### I.

Ranvicora violated its treaty obligations under the Convention on the Conservation of European Wildlife and Natural Habitat (“*Bern*”), the Convention on Biological Diversity (“*CBD*”) and the Convention on the Conservation of Migratory Species of Wild Animals (“*CMS*”) by introducing a non-native, invasive alien species and by failing to co-operate with Arctos. Furthermore, Ranvicora violated its duty not to cause transboundary harm by introducing the bears into their territory which caused harm in Arctos. Ranvicora also did not comply with its duty to observe due diligence.

### II.

Arctos’s response to the grey bears crossing over into its territory and causing damage does not violate its treaty obligations under the CMS, CBD and the Bern. Furthermore, Arctos has not acted in violation of the duty to prevent transboundary harm, rather it has tried to prevent further harm to its own environment. In any event, Arcto’s response is precluded from wrongfulness due to necessity.

## PLEADINGS

### **I. RANVICORA HAS VIOLATED INTERNATIONAL LAW BY REINTRODUCING THE GREY BEARS**

Ranvicora has violated international law breaching its treaty obligations[A], and by causing transboundary harm[B].

#### **A. RANVICORA VIOLATED ITS TREATY OBLIGATIONS**

Pursuant to the doctrine of *pacta sunt servanda*, State Parties (‘Parties/Party’) are under a duty to carry out their treaty obligations in good faith.<sup>1</sup> By introducing an invasive and non-native species (1) and by failing to co-operate with Arctos (2) Ranvicora has breached its obligations under the *CBD, Bern CMS*.

#### **1. Ranvicora has violated its duty not to “introduce a non-native invasive alien species”**

Article 11(2)(b) of the *Bern* and Article 8(h) of the *CBD* imposes an obligation on Parties to strictly control the introduction of non-native, and invasive alien species, respectively. Ranvicora has violated the duties enumerated by the abovementioned provisions by introducing the Bears (i) which are a non-native (ii) and invasive species (iii).

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<sup>1</sup> Vienna Convention on the Law of Treaties, art. 26, Jan. 27,1980, 1155 U.N.T.S. 331, 8 I.L.M. 679.

### **i. Ranvicora has introduced the Bears into Arctos**

Introduction of a species includes its release or movement due to human agency in areas beyond the species' natural (past or present) distribution.<sup>2</sup> Notably, the duty to control the introduction of a non-native, invasive species entails preventing their introduction into a natural environment from which they were previously absent.<sup>3</sup> Consequently, this obligation under the *Bern*<sup>4</sup> and the *CBD*<sup>5</sup> extends to species that have been introduced beyond the territorial range of the party conducting such introduction.

Bears in general, are known to travel long distances.<sup>6</sup> This, combined with the proximity of the release sites to Arctos, demonstrates a causal link between the reintroduction and the subsequent entry of the bears into Arctos.<sup>7</sup> Moreover, even though the Bears were reintroduced within Ranvicora,<sup>8</sup> if it wasn't for them<sup>9</sup> being dropped along the border shared by the two countries, they would not have moved into Arctos.<sup>10</sup> Therefore, Ranvicora has introduced the Bears into Arctos.

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<sup>2</sup> Conference of Parties to the Convention on Biological Diversity Dec. VI/23, UNEP/CBD/COP/6/20, at 57 (April 7-19, 2002).

<sup>3</sup> Comm. of Min., *Recommendation No. R (84) 14*, 374<sup>th</sup> Meeting, Doc. No. Rec. (84)14 (1984); Recommendation No. 84 (2000), adopted by the Standing Committee to the Bern on Dec. 1, 2000.

<sup>4</sup> Recommendation No. 142 (2009), adopted by the Standing Committee to the Bern on Nov. 26, 2000.

<sup>5</sup> Convention on Biological Diversity, art 4(b), June 5, 1992, 1760 U.N.T.S. 79 [hereinafter "*CBD*"]; *Supra note 2*, at 57.

<sup>6</sup> John D. Clark et. al., *Bear Reintroductions: Lessons and Challenges*, 13 *URSUS* 335, 336 (2002).

<sup>7</sup> Recommendation No. 57 (1997), adopted by the Standing Committee to the Bern on Dec. 5, 1997.

<sup>8</sup> Record, ¶14.

<sup>9</sup> Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bos. & Herz. v. Serb. & Mont), Judgment, 2007 I.C.J. Rep. 43, ¶462 (Feb. 26) [hereinafter "*Bosnian Genocide*"].

<sup>10</sup> Record, ¶16.

## **ii. The bears are non-native**

A non-native species is one which was not able to sustain a population in an area by itself in historical times.<sup>11</sup> While the Bears existed in Ranvicora for centuries, there are no historic or fossil records of their presence in Arctos.<sup>12</sup> Thus, there is no evidence of them ever sustaining a population in Arctos in historic times. Therefore, the Bears are non-native within Arctos.

## **iii. The bears are an invasive alien species**

An alien species is one which has been introduced in areas beyond its past or present distribution.<sup>13</sup> When such a species either causes damage or poses a threat to the ecosystem or the habitat of an area, it becomes an invasive alien species.<sup>14</sup> As pointed out above, the Bears are alien to Arctos because they had never historically existed there.<sup>15</sup>

Notably, Species like the Ruddy duck,<sup>16</sup> the feral European rabbit<sup>17</sup> and the Muskrat<sup>18</sup> were not considered invasive in one country but were in others. Therefore, even if the bears are not

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<sup>11</sup> Meeting at Strasbourg, *Group of experts on Legal Aspects of Introduction and Reintroduction of Wildlife Species*, 3<sup>rd</sup> Meeting, Doc. No. T-PVS (97) 16, at 17 (1997).

<sup>12</sup> Record, ¶10.

<sup>13</sup> *Supra note 2*, at 98.

<sup>14</sup> Conference of Parties to the Convention on Biological Diversity Dec. V/8, UNEP/CBD/COP/5/23, at 57 (May 15-26, 2000).

<sup>15</sup> Record, ¶10.

<sup>16</sup> Carlez Vila et. al., *Hybridization between the White-headed duck and the Ruddy ducks in Spain*, 16:3 MOLECULAR ECOLOGY 1, 12 (2007).

<sup>17</sup> RUBEN KELLER ET. AL., INVASIVE SPECIES IN A GLOBALIZED WORLD, ECOLOGICAL SOCIAL AND LEGAL PERSPECTIVES ON POLICY 209 (2014).

<sup>18</sup> Standing Comm. to the Bern Convention, *Rep. of the Group of Experts on Invasive Alien Species*, Doc. No. T-PVS/Inf (2017) 9, at 30 (2017).

invasive in Ranvicora,<sup>19</sup> they can be invasive to Arctos. In the present case the Bears have caused damage to livestock, orchards, flora and threatened the Trouwborst terns ('terns') with extinction.<sup>20</sup> Therefore, the Bears are to be considered an invasive alien species ('IAS') in Arctos.

#### **iv. *In arguendo*: species were not extending range due to climate change**

It is recognised that species which naturally extend their range due to climate change should not be considered invasive.<sup>21</sup> However, this does not apply to recently reintroduced species,<sup>22</sup> as they have a propensity to become invasive.<sup>23</sup> Even though the bears existed within Ranvicora for centuries,<sup>24</sup> but for<sup>25</sup> their reintroduction in recent times, they would not have entered Arctos.

Additionally, there are several reasons for an expansion of a bear's range after an introduction which includes aspects like an increase in population<sup>26</sup> or search for food.<sup>27</sup>

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<sup>19</sup> Clarifications, ¶12.

<sup>20</sup> Record, ¶¶17, 21.

<sup>21</sup> Conference of the Contracting Parties to the Convention on Migratory Species, Climate change and Migratory Species, UNEP/CMS/Resolution 12.21 (2005).

<sup>22</sup> Arie Trouwborst et. al., *Legal implications of range expansions in a terrestrial carnivore: the case of the golden jackal (Canis aureus) in Europe*, 24:10 BIODIVERSITY AND CONSERVATION 2593, 2599 (2015).

<sup>23</sup> Conference of the Contracting Parties to the Convention on Migratory Species, Future CMS activities related to invasive alien species, UNEP/CMS/Resolution 11.28 (2014).

<sup>24</sup> Record, ¶11.

<sup>25</sup> *Bosnian Genocide*, supra note 9, ¶462.

<sup>26</sup> Jon Swenson et. al., *Geographic expansion of an increasing brown bear population: evidence for presaturation dispersal*, 67: 5 J. OF ANIMAL ECOLOGY 819, 820 (1998).

<sup>27</sup> Dusko Cirovic, *Home range, movements, and activity patterns of brown bear in Serbia*, 26:2 URSUS 79, 82-83 (2015).



Consequently, the Bern does not extend its protection to species that may have been introduced into a different country and extended their area of distribution to the country concerned.<sup>28</sup> Therefore, no obligation for the protection of the Bears ensues.

## 2. Ranvicora has violated the duty to cooperate

Enshrined under the *Bern*, *CMS*, *CBD*,<sup>29</sup> and various international instruments,<sup>30</sup> Parties have a duty to cooperate with other Parties, especially when there is risk of transboundary environmental harm.<sup>31</sup> Recognised under customary international law,<sup>32</sup> this duty entails direct notification and consultation<sup>33</sup> and prior exchange of information with other Parties.<sup>34</sup> Additionally, this duty is enhanced when an IAS threatens biodiversity loss,<sup>35</sup> since such species can easily cross boundaries into adjacent ecosystems.<sup>36</sup> Cooperation is recognised as a key factor in combating invasive species.<sup>37</sup> Further, it is common and recommended for

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<sup>28</sup> *Supra note 11*, at 17.

<sup>29</sup> Convention on the Conservation of European Wildlife and Natural Habitats art. 11(a), Sept. 19, 1979, 1284 U.N.T.S. 209 [hereinafter “*Bern*”]; Convention on the Conservation of Migratory Species of Wild Animals, art. II (1), June 23, 1979, 1651 U.N.T.S. 333. [hereinafter “*CMS*”]; *CBD supra note 5*, art. 5.

<sup>30</sup> U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, Principle 7 and 27, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter “*Rio Declaration*”].

<sup>31</sup> PATRICIA BIRNIE ET. AL., *INTERNATIONAL LAW AND THE ENVIRONMENT* 137 (OUP, 3<sup>rd</sup> ed., 2009) [hereinafter “*BIRNIE*”].

<sup>32</sup> *Id* at 194; PHILLIPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 516 (CUP, 2<sup>nd</sup> ed., 2003) [hereinafter “*SANDS*”].

<sup>33</sup> Recommendation No. 58 (1997), adopted by the Standing Committee to the Bern on Dec. 5, 1997.

<sup>34</sup> G.A. Res. 2995 (XXVII), Cooperation between States in the Field of the Environment (Dec. 15, 1972).

<sup>35</sup> Recommendation No. 77 (1999), adopted by the Standing Committee to the Bern on Dec. 1, 1999; *Supra note 11*, at 30.

<sup>36</sup> *Supra note 14*, at 105.

<sup>37</sup> Draft Findings of the 1<sup>st</sup> Meeting of the 2<sup>nd</sup> ad hoc Technical Expert Group on Biodiversity and Climate Change (May 22, 2008), <https://unfccc.int/resource/docs/2008/smsn/igo/028.pdf>.

countries to collaborate for the management of large carnivores in their territories<sup>38</sup> especially in the absence of barriers between country borders.<sup>39</sup> Additionally, there are no human made barriers between the two countries.<sup>40</sup>

Here, by attacking local biodiversity, the Bears are causing grievous damage to Arctos' ecosystem<sup>41</sup> therefore enhancing the duty to cooperate, Ranvicora neither notified<sup>42</sup>, nor engaged with Arctos in any exchange of information regarding the Project<sup>43</sup> which was necessary in the given case. Therefore, Ranvicora has violated its duty to cooperate with Arctos.

**B. RANVICORA HAS VIOLATED THE DUTY NOT TO CAUSE TRANSBOUNDARY HARM**

Pursuant to the *sic utere tuo* principle,<sup>44</sup> States are under a customary duty<sup>45</sup> to ensure that activities within their jurisdiction or control do not cause significant transboundary harm to

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<sup>38</sup> PEEP MANNIL AND RAIDO KONT, ACTION PLAN FOR CONSERVATION AND MANAGEMENT OF LARGE CARNIVORES (WOLF *CANIS LUPUS*, LYNX *LYNX LYNX*, BROWN BEAR *URSUS ARCTOS*) IN ESTONIA IN 2012-2021 67 (EME, 2012) .

<sup>39</sup> DURO DECAK ET. AL, BROWN BEAR MANAGEMENT PLAN FOR THE REPUBLIC OF CROATIA, REV. OF THE BROWN MANAG. PLAN 86 (Ministry of Culture, 2007), at 51.

<sup>40</sup> Clarifications, ¶9.

<sup>41</sup> Record, ¶17.

<sup>42</sup> Record, ¶12.

<sup>43</sup> Record, ¶12.

<sup>44</sup> Corfu Channel (U.K./Albania), Merits, 1949 I.C.J. Rep. 4, at 22 (April 9); Nuclear Tests Case (Aus. v Fr.), Judgment, 1974 I.C.J. Rep. 253, at 17, (Dec. 20) (dissenting opinion by de Castro, J.).

<sup>45</sup> Trail Smelter (U.S. v. Can.), 3 R.I.A.A. 1905, at 1941 (1950) [hereinafter "*Trail Smelter*"]; *Rio Declaration*, *supra note* 30, Principle 2.

other States.<sup>46</sup> This duty is also codified under art. 3 of the *CBD*. Here, Ranvicora has violated this duty since a legitimate claim exists (1) and ‘due diligence’ is not observed (2).

### **1. A legitimate claim for transboundary harm exists**

For a claim of transboundary harm to be proven there must be; a transboundary effect (i); a physical relationship between the activity concerned and the subsequent harm (ii); and harm which is significant in nature (iii).<sup>47</sup>

#### **i. Ranvicora’s actions had transboundary effects**

Transboundary harm occurs when damage is caused to the territory of another State<sup>48</sup> with harm crossing State boundaries.<sup>49</sup> Since the harm caused in the territory of Arctos was due to the crossing over of the Bears reintroduced in Ranvicora,<sup>50</sup> therefore there is a transboundary effect.

#### **ii. There is a physical relationship**

To prove claim of transboundary harm, the harm must be a physical consequence of the activity in question.<sup>51</sup> Such a physical relationship includes environmentally harmful

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<sup>46</sup> *Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities, with commentaries*, at 162, [2001] 2 Y.B. Int’l L. Comm’n 148, U.N. Doc. A/56/10 [hereinafter “*DAPTH*”].

<sup>47</sup> OSCAR SCHACHTER, *INTERNATIONAL LAW IN THEORY AND PRACTICE* 336 (Martinus Nijhoff, 1<sup>st</sup> ed., 1991).

<sup>48</sup> Rep. of the Sixth Committee, *Consideration of Prevention of Transboundary Harm from Hazardous Activities and Allocation of Loss in the Case of Such Harm*, at 5, U.N. Doc. A/62/452 (Nov. 27, 2007); Daniel Magraw, *Transboundary Harm: The International Law Commission’s Study of International Liability*, 80 A.J.I.L. 305, 326 (1986).

<sup>49</sup> XUE HANQIN, *TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW* 5 (CUP, 1<sup>st</sup> ed., 2003) [hereinafter “*HANQIN*”]

<sup>50</sup> Record, ¶16.

<sup>51</sup> *DAPTH*, *supra* note 46, ¶17.

consequences, physical injury or loss of life in another country.<sup>52</sup> In the present case, if it wasn't for the Project,<sup>53</sup> damage to Arctos' environment would not have been caused.<sup>54</sup> Therefore, there exists a physical relationship between the harm and the activity in question.

### **iii. The harm caused is 'significant'**

For harm to be considered "significant" it must be more than detectible but not to the level of serious or substantial,<sup>55</sup> and must be capable of being measured by factual and objective standards.<sup>56</sup> Such harm includes harm to human health, property or environment of another state.<sup>57</sup> In the instant case, the Bears not only caused the death of a child,<sup>58</sup> but also damaged livestock, orchards, apiaries and the endangered terns.<sup>59</sup> Therefore, the damage in Arctos, being more than detectible, is significant harm.

## **2. Ranvicora has not observed 'due diligence'**

The duty not to cause transboundary harm is violated if a country does not act with due diligence.<sup>60</sup> This comprises of reasonable<sup>61</sup>, adequate<sup>62</sup> and proportional<sup>63</sup> efforts to take

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<sup>52</sup> HANQIN, *supra note* 49, at 5 & 42.

<sup>53</sup> *Bosnian Genocide*, *supra note* 9, ¶462.

<sup>54</sup> Record, ¶¶17, 21.

<sup>55</sup> *DAPTH*, *supra note* 46, at 151.

<sup>56</sup> *Id.* at 154.

<sup>57</sup> *Id.* at 150.

<sup>58</sup> Record, ¶21.

<sup>59</sup> Record, ¶17.

<sup>60</sup> *Pulp Mills in the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. Rep. 14, ¶197 (April 20) [hereinafter "*Pulp Mills*"].

<sup>61</sup> JAMES CRAWFORD, *BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW* 455 (CUP, 7<sup>th</sup> ed., 2008).

appropriate measures in a timely fashion.<sup>64</sup> However, Ranvicora has failed to act with due diligence by conducting an inadequate EIA **(i)** and by not adopting a precautionary approach**(ii)**

### **i. Ranvicora's EIA is inadequate**

The obligation of states to conduct an EIA, is recognised under the CBD<sup>65</sup> and customary law.<sup>66</sup> This duty is triggered when activities carried out in the territory of one State pose a risk of significant transboundary harm to other States.<sup>67</sup> Further, this obligation is enhanced since there are many instances of bears and other large mammals crossing state boundaries and causing significant transboundary harm.<sup>68</sup>

In assessing the impact of reintroduction projects,<sup>69</sup> States should conduct a transboundary EIA in order to assess impacts on neighbouring States.<sup>70</sup> While states have discretion in

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<sup>62</sup> Rep. of the Subsidiary Body on Scientific, Technical and Technological Advice, UNEP/CBD/SBSTTA/18/INF/420, at 5 (2014).

<sup>63</sup> Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3–14 June 1992 (A/CONF.151/26/Rev.1 (Vol. I, Vol. I/Corr.1, Vol. II, Vol. III and Vol. III/Corr.1)).

<sup>64</sup> Int'l Law Comm'n, Report on the Work of Its Fifty-Third Session, UN Doc. A/56/10, at 159 (2001).

<sup>65</sup> *CBD supra note 5*, art. 14.

<sup>66</sup> *Pulp Mills supra note 60*, ¶204.

<sup>67</sup> *Certain Activities Carried out by Nicaragua in the Border Area and Construction of a Road in Costa Rica Along the San Juan River* (Cost. Ric. v. Nic./Nic. v. Cost. Ric.), Judgment, 2015 I.C.J. Rep. 667, ¶101 (Dec. 16) [hereinafter "*Certain Activities/Construction of a Road*"].

<sup>68</sup> Carlos Bautista et. al., *Patterns and correlated of claims for brown bear damage on a continental scale*, 54 J. OF APPLIED ECOLOGY 282, 290 (2017).

<sup>69</sup> Conference of Parties to the Convention on Biological Diversity, Rep. of the Eighth Meeting, UNEP/CBD/COP/8/31, at 331 (June 15, 2006); Recommendation No. 158 (2012), adopted by the Standing Committee to the Bern on Dec. 3, 2012.

<sup>70</sup> *Certain Activities/Construction of a Road, supra note 67*, ¶35 (separate opinion by Bhandari.J).

determining the contents of their EIAs<sup>71</sup>, they must follow certain internationally accepted standards while conducting the assessment and can be held liable for not exercising sufficient care.<sup>72</sup>

In the present case, even though Ranvicora conducted an EIA, it was merely national in scope.<sup>73</sup> A transboundary EIA was important in light of the shared border with Arctos<sup>74</sup> and the international dimension of large mammals like bears.<sup>75</sup> It is extremely common for bears to cause harm to apiaries,<sup>76</sup> livestock,<sup>77</sup> orchards.<sup>78</sup> As a consequence, states have a duty to assess the potential for species already introduced in their country to become invasive under future climatic conditions.<sup>79</sup>

Considering the migratory nature and the poleward shift of the grey bears,<sup>80</sup> Ranvicora should have conducted a transboundary EIA. Therefore, the EIA conducted by Ranvicora was inadequate.

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<sup>71</sup> *Pulp Mills*, *supra* note 60, ¶205.

<sup>72</sup> *Certain Activities/Construction of a Road*, *supra* note 67, ¶8 & 18 (separate opinion of Dugard, J.).

<sup>73</sup> Record, ¶12.

<sup>74</sup> Record, ¶1.

<sup>75</sup> Arie Trouwborst, *Managing the Carnivore Comeback, International and EU Species Protection Law and the Return of the Lynx, the wolf and the Bear to Western Europe*, 22:3 J. OF ENV'L L 347, 348 (2010); John Linnell et. al., *Guidelines for the Population Level Management of Large Carnivores*, at 84 (July 1, 2008) [https://www2.nina.no/lcie\\_new/pdf/634991411404017564\\_LCIE\\_Guidelines\\_FINALwithNotes.pdf](https://www2.nina.no/lcie_new/pdf/634991411404017564_LCIE_Guidelines_FINALwithNotes.pdf).

<sup>76</sup> Draft Findings of the 1<sup>st</sup> Meeting of the 2<sup>nd</sup> ad hoc Technical Expert Group on Biodiversity and Climate Change (May 22, 2008), <https://unfccc.int/resource/docs/2008/smsn/igo/028.pdf>.

<sup>77</sup> *Supra* note 38, at 43.

<sup>78</sup> DR. MARJGE VOETEN, ACTION PLAN FOR THE BROWN BEAR IN BULGARIA 21 (MEW, 2007), at 76.

<sup>79</sup> Recommendation No. 159 (2012), adopted by the Standing Committee to the Bern on Nov. 30, 2012.

<sup>80</sup> Record, ¶12.

## ii. Ranvicora did not adopt a precautionary approach

Under customary international law,<sup>81</sup> a lack of scientific certainty should not prevent a State from undertaking measures to protect the environment,<sup>82</sup> especially when there is risk of “significant or irreversible damage”.<sup>83</sup> This requires States to take cost-effective measures to prevent environmental degradation.<sup>84</sup> Further, adopting such an approach is particularly recommended for reintroduction projects where there may be a risk of spread of an IAS.<sup>85</sup> This is due to considerable evidence of a reintroduced species spreading to other States,<sup>86</sup> and becoming invasive,<sup>87</sup> as a result of climate change.<sup>88</sup>

Notably, precautionary measures include employment of control and containment of species, to prevent their potential spread.<sup>89</sup> This duty is further enhanced in the case of large carnivores, especially since there is a high potential for conflict between with humans when they return to an area after decades.<sup>90</sup> Additionally, bears have a tendency to travel long

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<sup>81</sup> ARIE TROUWBORST, *EVOLUTION AND STATUS OF THE PRECAUTIONARY PRINCIPLE IN INTERNATIONAL LAW* 8 (Kluwer Law, 1<sup>st</sup> ed., 2002); DAVID FREESTONE & ELLEN HEY, *THE PRECAUTIONARY PRINCIPLE AND INTERNATIONAL LAW: THE CHALLENGE OF IMPLEMENTATION* (Kluwer Law, 1<sup>st</sup> ed. 1995).

<sup>82</sup> *Rio Declaration, supra note 30*, Principle 2.

<sup>83</sup> *Certain Activities/Construction of a Road, supra note 67*, ¶55 (separate opinion of Trindade, J.) *Pulp Mills, supra note 60*, ¶72-73.

<sup>84</sup> *Rio Declaration, supra note 30*, Principle 15.

<sup>85</sup> ARIE TROUWBORST, *PRECAUTIONARY RIGHTS AND DUTIES OF STATES* 206 (Leiden: Martinus Nijhoff, 1<sup>st</sup> ed., 2006).

<sup>86</sup> *Supra note 35*, at 30.

<sup>87</sup> *Supra note 14*, at 111-120.

<sup>88</sup> Recommendation No. 159 (2012), adopted by the Standing Committee to the Bern on Nov. 30, 2012.

<sup>89</sup> *Supra note 2*, at 257.

<sup>90</sup> EUROPEAN COMM’N, *NOTE TO THE GUIDELINES FOR POPULATION LEVEL MANAGEMENT PLANS FOR LARGE CARNIVORES*, at 21 (2008), at 12.

distances and can occupy territories they had never been in before.<sup>91</sup> This has been observed from the return of large carnivores to European countries.<sup>92</sup> Here, while Ranvicora should have undertaken some measures to prevent the spread of the Bears, it did not do so.<sup>93</sup> Therefore, Ranvicora has not adopted a precautionary approach.

## **II. ARCTOS'S RESPONSE TO RANVICORA'S REINTRODUCTION PROJECT DOES NOT VIOLATE INTERNATIONAL LAW**

Arctos' response to the Project does not breach its treaty obligations [A], or the duty to prevent transboundary harm [B]. In any event, it is precluded from wrongfulness due to necessity [C], thereby not violating international law.

### **A. ARCTOS DID NOT VIOLATE ITS TREATY OBLIGATIONS**

#### **1. Arctos has not violated the CMS**

The CMS imposes strict obligations on Parties to protect species listed in its Appendix I.<sup>94</sup> However, under art. III, these obligations only apply to those Parties who are Range States to listed species.

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<sup>91</sup> DJURO HUBER, BROWN BEAR MANAGEMENT PLAN FOR THE REPUBLIC OF CROATIA, REV. OF THE BROWN MANAG. PLAN 60 (Zagreb, 2008), at 71.

<sup>92</sup> *Supra note 75*, at 348.

<sup>93</sup> Record, ¶23.

<sup>94</sup> MICHAEL BOWMAN ET. AL., LYSTER'S INTERNATIONAL WILDLIFE LAW 537 (CUP, 2<sup>nd</sup> Ed., 2010) [hereinafter "BOWMAN"]; *CMS, supra note 29*, art. III.



### **i. Arctos is not a Range State**

While Parties usually declare themselves as a Range State under art. VI,<sup>95</sup> such classification can also be made when a Party exercises jurisdiction over any part of a species' "range".<sup>96</sup> This includes areas inhabited by a species on its normal migration route,<sup>97</sup> its "historical range" and areas where a "significant proportion of its geographically separate population occasionally occurs".<sup>98</sup>

Arctos does not exercise jurisdiction over any areas that fall on the Bear's normal migratory route. Besides, the bears have had no presence in Arctos prior to the Project,<sup>99</sup> therefore, Arctos cannot be a part of their historic range. Furthermore, there is no evidence of a significant bear population occurring in Arctos, with only individual sightings and some bears moving back and forth.<sup>100</sup>

Classification which is not based on established migration patterns, amounts to non-compliance with the CMS,<sup>101</sup> especially since States prefer a grace period of at least 10-15 years in reintroduction scenarios, before declaring an extension of range.<sup>102</sup> This is due to the

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<sup>95</sup> Chairman of the Scientific Council at the Tenth Meeting of the Conference of the Parties to the CMS, UNEP/CMS/Conf. 10.8, at 5 (Sept. 14, 2011); 16<sup>th</sup> Meeting of the CMS Scientific Council: Range State Classification, at 3, UNEP/CMS/ScC16/Doc. 24 (June 28-30, 2011).

<sup>96</sup> *CMS*, *supra note* 29, art. I (1)(h).

<sup>97</sup> *Ibid*, art. I(1)(f).

<sup>98</sup> Conference of the Contracting Parties to the Convention on Migratory Species, Future CMS activities related to invasive alien species, UNEP/CMS/Resolution 3.1, ¶3 (2017).

<sup>99</sup> Record ¶¶10, 13.

<sup>100</sup> Record, ¶16.

<sup>101</sup> Rep. of the CMS Secretariat, Range State Classification, at 8, UNEP/CMS/ScCAP/Doc. 7 (2009).

<sup>102</sup> Rep. of the 16<sup>th</sup> Meeting of the CMS Scientific Council, at 25, UNEP/CMS/ScC16/REPORT (2011).

fact that establishing bear movement patterns usually takes a few decades.<sup>103</sup> Since only a period of 5 years has elapsed, Arctos shouldn't be classified as a Range State for the bears. Additionally, in Northern Italy, a few reintroduced brown bears are periodically moving into States such as Switzerland, Lithuania, Latvia and Belarus, but these States are not considered part of its range.<sup>104</sup>

## **ii. Alternatively, Arctos is permitted to “take” the Bears**

Range States to Appendix I species are prohibited from their “taking” under art. III (5). However, an exception can be made under extraordinary circumstances (a), when there is an absence of reasonable alternatives (b),<sup>105</sup> and the taking is not to the disadvantage of the species concerned (c).<sup>106</sup>

### **a. The crossing over of the bears creates an extraordinary circumstance.**

“Extraordinary circumstances” are not defined within the CMS, therefore Parties have considerable discretion in determining its meaning.<sup>107</sup> Countries like Australia,<sup>108</sup> France,<sup>109</sup>

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<sup>103</sup> Frank C. Craikhead, Jr., *Grizzly Bear Ranges and Movement as determined by Radiotracking* 97 (THIRD INT'L CONF. ON BEARS), [https://www.bearbiology.org/wp-content/uploads/2017/10/FCraighead\\_Vol\\_3.pdf](https://www.bearbiology.org/wp-content/uploads/2017/10/FCraighead_Vol_3.pdf).

<sup>104</sup> BROWN BEARS (*URSUS ARCTOS*), THE IUCN RED LIST OF THREATENED SPECIES (2017), <https://www.iucnredlist.org/species/41688/121229971#geographic-range>.

<sup>105</sup> Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and Convention on Migratory Species*, 2 CORNELL INT'L L.J. ONLINE 44, 41-46 (2014).

<sup>106</sup> CMS, *supra* note 29, art. III (5).

<sup>107</sup> *Aussie Jaws and International Laws*, *supra* note 105, at 42).

<sup>108</sup> B. Foster, *WA Government Did Not Seek Advice from EPA over Shark Cull, Greens Say*, THE GUARDIAN, Mar. 14, 2014 at <http://www.theguardian.com/world/2014/mar/14/wa-governmentdid-not-seek-advice-from-epa-over-shark-cull-greens-say>.

<sup>109</sup> FRENCH REPORT TO THE SECRETARIAT OF THE CMS, [HTTPS://www.cms.int/sites/default/files/document/France\\_cms\\_nlpi.pdf](https://www.cms.int/sites/default/files/document/France_cms_nlpi.pdf).

Croatia,<sup>110</sup> and Belgium,<sup>111</sup> have interpreted extraordinary circumstances allowing for the taking of Appendix I, to include public health and safety concerns, protection of livestock and other species. All which are present in the instant case.<sup>112</sup>

**b. There are no reasonable alternatives**

Methods such as barricading against the entry of an IAS have proven highly effective.<sup>113</sup> However the fact that the bears are already in Arctos,<sup>114</sup> renders such border controls useless.<sup>115</sup> In any case, erecting barriers along the border would result in a grievous loss of biodiversity, since much of the area is forested.<sup>116</sup> Furthermore, an IAS, once it establishes itself, can cause irreversible loss of biodiversity,<sup>117</sup> with their removal becoming impracticable<sup>118</sup> and prohibitively expensive, as with Australia's zebra mussels.<sup>119</sup> In the

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<sup>110</sup> CROATIAN REPORT TO SECRETARIAT OF THE CMS, <https://www.cms.int/sites/default/files/document/Croatia cms nlpi.pdf>.

<sup>111</sup> BELGIUM REPORT TO THE SECRETARIAT OF THE CMS, <https://www.cms.int/en/activities/national-legislation-programme>.

<sup>112</sup> Record, ¶21.

<sup>113</sup> J. Mumford, *Economic Issues Related to Trade in International Trade*, 29:3 EUR. REV. OF AGRI. ECO. 329, 330 (2009).

<sup>114</sup> Record, ¶¶16, 17.

<sup>115</sup> *Supra note* 113, at 331..

<sup>116</sup> Record, ¶1.

<sup>117</sup> Conservation and Sustainable Use of Agricultural Biodiversity, U.N. Doc. UNEP/CBD/COP/DEC/III/11 (Feb. 11, 1997).

<sup>118</sup> Standing Committee of the Bern Convention, *Contribution to the European Strategy on invasive alien species*, 21<sup>st</sup> Meeting, at 10, Doc. No. T-PVS (2001) 12 rev (2001).

<sup>119</sup> CLAIRE SHINE ET. AL. , A GUIDE TO DESIGNING LEGAL AND INSTITUTIONAL FRAMEWORKS ON ALIEN INVASIVE SPECIES 8-10 (IUCN Gland Switzerland Cambridge and Bonn, 2000); LYLE GLOWKA ET. AL., A GUIDE TO THE CONVENTION ON BIOLOGICAL DIVERSITY 46 (IUCN, Gland and Cambridge, 3<sup>rd</sup> ed., 1999. [hereinafter "GLOWKA"]).

instant case the presence of cubs<sup>120</sup> in Arctos and the fact that the bears are vertebrate,<sup>121</sup> large carnivores that can cause disproportionate damage,<sup>122</sup> along with the fact that they are alien to Arctos<sup>123</sup> results in a higher possibility of conflict. Consequently, culling of the bears is the only viable alternative.<sup>124</sup>

### **c. The taking is not to the disadvantage of the species**

In considering whether the taking of the species is to its disadvantage, regard must be given to its overall conservation status and the entirety of its population.<sup>125</sup> While, the bears are an endangered species, their populations numbers in Ranvicora have been steadily increasing as evidenced by most females producing offsprings.<sup>126</sup> Since, culling of the bears is only allowed when they are spotted by the farmers inside Arctos<sup>127</sup> and not to bears found elsewhere, the taking of the bears is not to their disadvantage.

## **2. Arctos has not violated the CBD**

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<sup>120</sup> JOHN SWENSON, ACTION PLAN FOR THE CONSERVATION OF THE BROWN BEAR IN EUROPE 29 (URSUS ARCTOS) (COE, 2000).

<sup>121</sup> Sophie Riley, *Preventing Transboundary Harm From Invasive Alien Species*, 18 REV. EUR. COMP. & INT'L ENV'L L. 198, 200 (2009).

<sup>122</sup> Nimish Vyas, et. al., *Pesticide-Laced Predator Baits: Considerations for Prosecution and Sentencing*, 9 ENV'L L. 589, 600 (2003).

<sup>123</sup> T. Rosen and A. Bath, *Transboundary Management of Large Carnivores in Europe: From Incident to Opportunity*, 2 CONSERV LETT 109, 112 (2009).

<sup>124</sup> J.H. Myers et. al., *Eradication revisited: dealing with exotic species*, 15 TRENDS ECOL. EVOL. 316, 320 (2000); P. GENOVESI, LIMITS AND POTENTIALITIES OF ERADICATION AS A TOOL FOR ADDRESSING BIOLOGICAL INVASIONS, IN BIOLOGICAL INVASIONS 385–402 (Springer, 2007).

<sup>125</sup> *Supra note* 118, at 11.

<sup>126</sup> Record, ¶15.

<sup>127</sup> Record, ¶21.

Conservation of biodiversity is recognised as the principle objective of the CBD.<sup>128</sup> Art. 8 which enshrines the primary method of such conservation,<sup>129</sup> involves in-situ conservation of habitat and recovery of species in their natural surroundings<sup>130</sup> or habitat<sup>131</sup> Since, the bears are an alien species in Arctos,<sup>132</sup> they are not within their natural surroundings and therefore no in-situ obligations ensue.

Alternatively, IAS are a major source of biodiversity and habitat loss.<sup>133</sup> As a consequence, Parties are to take measures to protect species and their habitat within their natural surroundings.<sup>134</sup> Such measures include the eradication or control of IAS that threaten ecosystems, natural habitats, and viable populations of other species<sup>135</sup>, at the earliest possible.<sup>136</sup> The response of Arctos is aimed towards to the protection of elements of its own biodiversity, including the Trouwborst terns, their habitat and agriculture of Arctos which is threatened by the invasive bears.<sup>137</sup> Therefore, in furtherance of its obligation of in situ under

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<sup>128</sup> *CBD*, *supra* note 5, art. 1; GLOWKA *supra* note 119, at 15; SANDS, *supra* note 32, at 516.

<sup>129</sup> BOWMAN, *supra* note 94, 599.

<sup>130</sup> *CBD*, *supra* note 5, art. 2 ; Conference of Parties to the Convention on Biological Diversity Dec. 14/11, UNEP/CBD/COP/14/11, at 7 (Nov. 30, 2018).

<sup>131</sup> CH. 2 THE CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/gbo1/chap-02.shtml> (last visited on Nov. 15, 2019).

<sup>132</sup> *Supra*, Issue I, A, 1, *iii*.

<sup>133</sup> Sophie Riley, *supra* note 121, at 199.

<sup>134</sup> *CBD*, *supra* note 5, art. 8(d).

<sup>135</sup> *Supra* note 2, at 257-261; DANIEL BODANSKY ET. AL., THE OXFORD HANDBOOK ON INTERNATIONAL ENVIRONMENTAL LAW 385 (OUP, 2<sup>nd</sup> ed., 2008).

<sup>136</sup> *Supra* note 2, at 261.

<sup>137</sup> Record, ¶17.

the CBD. Countries like South Africa,<sup>138</sup> Afghanistan<sup>139</sup> and the European Union,<sup>140</sup> have all enacted legislation for the eradication of IAS.

### **3. Arctos has not violated the Bern Convention**

The Bern recognizes conservation of flora and fauna, with special emphasis on endangered and vulnerable species as its primary objectives.<sup>141</sup> As a result Parties are to undertake measures to maintain the wild flora and fauna at, or adapt it to “a level which corresponds in particular to ecological, scientific and cultural requirements.”<sup>142</sup> But these efforts must also take into account sub-species at-risk locally,<sup>143</sup> and balance human interests with the preservation of species.<sup>144</sup> In the present case, the bears are being culled as they threaten the endangered terns through consuming their nestlings and causing loss of habitat.<sup>145</sup> Additionally, they also pose a threat to the safety of local farmers of Arctos as evidenced by the mauling of two children.<sup>146</sup>

Moreover, art. 6 of the Bern prohibits the deliberate taking of species listed in its Appendix II. However, this obligation is understood to require the in-situ conservation of species in

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<sup>138</sup> The National Environment Management: Biodiversity Act, 2004 (No. 10 of 2004), Sec. 73.

<sup>139</sup> Environmental Law Gazetted #15924, art. 51(7).

<sup>140</sup> Regulation 1143/2014 on Non-Native Species (Jan. 1, 2015).

<sup>141</sup> *Bern*, *supra* note 29, art. 1.

<sup>142</sup> *Id.*, art. 2.

<sup>143</sup> *Id.*

<sup>144</sup> *Supra* note 72, at 75.

<sup>145</sup> Record, ¶17.

<sup>146</sup> Record, ¶21.

areas where they “naturally occur”.<sup>147</sup> Since the bears do not naturally occur in Arctos as a consequence of them being alien, no obligations arise against Arctos. Notably, under art. 10 this obligation is enhanced for the protection of those migratory species to whom Parties are Range States.<sup>148</sup> Since Arctos. is not a Range State to the bears,<sup>149</sup> therefore no obligations ensues.

**i. In any case, Arctos is permitted to cull the bears**

Art. 8 of the Bern proscribes the methods such as shooting and poison, listed in its Appendix IV. However, Parties can claim exemption from this in addition to the prohibition on taking<sup>150</sup> under art. 9 of the Bern. To claim a valid exemption; the taking must not be to the detriment of the species and there must be no alternate solutions.<sup>151</sup> In the present case, due to the threats posed by the invasive and alien bears, there are no alternate solutions available.<sup>152</sup> Since the culling is not to the detriment of the species population,<sup>153</sup> the exemption can be validly invoked. Notably, New Zealand has been using poisoned baits to deal with invasive species.<sup>154</sup> Further, Iceland, Spain, the United Kingdom and Italy<sup>155</sup> have

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<sup>147</sup> Recommendation No. 7 (1998), adopted by the Standing Committee to the Bern on Dec. 4 1998.

<sup>148</sup> *Bern, supra note 29*, art. 10(1) .

<sup>149</sup> *Supra*, Issue II, A, 1, *i*.

<sup>150</sup> *Bern, supra note 29*, art. 6.

<sup>151</sup> *Id.*, art. 9(1) .

<sup>152</sup> *Supra*, Issue II, A, 1, *ii*, b.

<sup>153</sup> *Supra*, Issue II, A, 1, *ii*, c.

<sup>154</sup> PARL. COMM’R FOR THE ENV., EVALUATING THE USE OF 1080: PREDATORS, POISONS AND SILENT FOREST (2011), at 33, <http://www.pce.parliament.nz/assets/Uploads/PCE-1080.pdf>.

<sup>155</sup> Standing Comm. to the Bern Convention, *Rep. of Dir. of Culture and Cultural Heritage*, Doc. No. T-PVS/Inf (2010) 16, at 17 (1999).

used poisoned baits to deal with species causing damage to livestock and other species. Sweden, on the other hand has used shooting to protect against brown bears, which are also protected under Appendix II of the Bern, that threatened human safety.<sup>156</sup>

Remarkably, Parties have considerable discretion in defining the motives for which derogations may be granted.<sup>157</sup> Large scale damage to crops and orchards allows for a valid derogation under this article.<sup>158</sup> Consequently, the exemption has been validly invoked by countries such Norway<sup>159</sup> and in Switzerland,<sup>160</sup> when wolves, which are protected under Appendix II of Bern, crossed over from Italy and caused large scale damage to species.

#### **B. THE DUTY TO PREVENT TRANSBOUNDARY HARM HAS NOT BEEN VIOLATED**

Customary law obligates States<sup>161</sup> not to permit activities within their jurisdiction to injure another State.<sup>162</sup> The duty to prevent transboundary harm is an obligation of “due diligence”, the standard of which is examined against international practice.<sup>163</sup> States are required to

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<sup>156</sup> *Id.*, at 22.

<sup>157</sup> Appendix to the Rev. Recommendation No. 2 (1983), adopted by the Standing Committee to the on Dec. 2, 2011.

<sup>158</sup> Case C-247/85, Comm’n v. Belgium, 1987 E.C.R. 3029.

<sup>159</sup> Standing Comm. to the Bern Convention, *Rep. of Dir. of Culture and Cultural Heritage*, Doc. No. T-PVS (1999) 30 (1999).

<sup>160</sup> Standing Comm. to the Bern Convention, *Rep. of Dir. of Culture and Cultural Heritage*, Doc. No. T-PVS (2003) 24 at 14 (2003).

<sup>161</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. Rep. 226, ¶29 (July 8).

<sup>162</sup> *Trail Smelter*, *supra note 45*, at 1965; U.N. Conference on the Human Environment, *Stockholm Declaration*, Principle 21, U.N. Doc. A/CONF.48/14/Rev.1 (June 6, 1972); *Rio Declaration*, *supra note 30*, Principle 2.

<sup>163</sup> *DAPTH*, *supra note 46*, at 154; *Pulp Mills*, *supra note 60*, ¶101.



undertake the best possible efforts to minimize the risk of transboundary harm.<sup>164</sup> Consequently, States affected by transboundary harm, should take all appropriate measures to mitigate harm.<sup>165</sup> Being essential to public interest such measures include any within the affected State's power and jurisdiction.<sup>166</sup>

Arctos's response is a measure taken to mitigate the transboundary harm caused to it by the bears in the form of the death of its citizen, the damage to the terns, the livestock and its flora and fauna.<sup>167</sup> Prevention becomes essential when the harm is of irreversible character,<sup>168</sup> like further deterioration of the conservation status of an endangered species.<sup>169</sup> Therefore, the duty to prevent transboundary harm has not been violated.

### **C. IN ANY EVENT, NECESSITY PRECLUDES ARCTOS' RESPONSE FROM WRONGFULNESS**

Actions undertaken by States to safeguard an essential interest against a grave and imminent peril, in the absence of alternatives,<sup>170</sup> are precluded from wrongfulness by 'necessity'.<sup>171</sup>

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<sup>164</sup> *Id.*, ¶155.

<sup>165</sup> *Draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, with commentaries*, at 85, [2006] II:2 Y.B. Int'l L. Comm'n 59, U.N. Doc. A/61/10; *Gabčíkovo-Nagymaros Project (Hung. v. Slov.)*, Judgment, 1997 I.C.J. Rep. 7, ¶80 (Sept. 25)[hereinafter "*Gabčíkovo-Nagymaros*"].

<sup>166</sup> Int'l Law Comm'n, Rep. on the Work of its Fifty-Sixth Session, U.N. Doc. A/59/10, at 87 (2004).

<sup>167</sup> Record, ¶¶20, 21.

<sup>168</sup> *Gabčíkovo-Nagymaros*, *supra* note 165, ¶140.

<sup>169</sup> *Southern Bluefin Tuna (No.'s 3 & 4) (N.Z. v. Japan; Austl. v. Japan)*, Case No.'s 3 & 4, Order of Aug. 27, 1999, ITLOS Rep. 280, ¶8 (separate opinion of Treves J.).

<sup>170</sup> *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, at 83, [2001] 2 Y.B. Int'l L. Comm'n 31, U.N.Doc. A/56/10 (2001) [hereinafter "*DARSIWA*"].

<sup>171</sup> Int'l Law Comm'n, Rep. on the Work of its Thirty-Second Session, U.N. Doc. A/35/10, at 26-34 (1980); *DARSIWA*, *supra* note 170, at 83.

Such interests encompass public safety<sup>172</sup> and the protection of a State's ecology.<sup>173</sup> Arctos's response measures were the only way to<sup>174</sup> protect its ecology, and citizens against the bears, as they caused damage to flora and fauna, and threatened the endangered terns with extinction because of habitat loss and consumption.<sup>175</sup>

### **1. Ranvicora's rights are not impaired**

Additionally, such actions also should not impair the essential interests of another State.<sup>176</sup> The emergency regulation limits the culling to bears found only within Arctos and not to all the reintroduced bears.<sup>177</sup> Besides Arctos's obligation to protect the lives of its citizens must be given precedence over any harm caused to the Project, as such determination is based on relative State circumstance.

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<sup>172</sup> *DARSIWA*, *supra* note 170, at 83.

<sup>173</sup> *Gabčíkovo–Nagymaros*, *supra* note 165, ¶53.

<sup>174</sup> *Supra* note, Issue II, A, 1, ii, c.

<sup>175</sup> Record, ¶17.

<sup>176</sup> *DARSIWA*, *supra* note 170, at 83.

<sup>177</sup> Record, ¶21.

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PRAYER

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Arctos respectfully requests the Court to adjudge and declare that:

1. Ranvicora's grey bear reintroduction project violated international law; and
2. Arctos' response to the project does not violate international law.

Respectfully Submitted,

Agents for the Applicant.