

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



**THE CASE CONCERNING  
QUESTIONS RELATING TO REINTRODUCTION OF BEARS**

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**THE FEDERAL STATES OF ARCTOS**

*APPLICANT*

**V.**

**THE REPUBLIC OF RANVICORA**

*RESPONDENT*

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**MEMORIAL FOR THE RESPONDENT**

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THE 2019-2020 STETSON INTERNATIONAL ENVIRONMENT MOOT COURT  
COMPETITION

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## **STATEMENT OF JURISDICTION**

The Federal States of Arctos and the Republic of Ranvicora, hereinafter referred to as “the Parties,” have agreed to submit to the jurisdiction of the ICJ in accordance with Article 40(1) of the Statute of the International Court of Justice. The Parties appear before the International Court of Justice for resolution of all the differences between them concerning the grey bear reintroduction project and other matters. The parties concluded this special agreement in The Hague, The Netherlands and jointly notified this Court of their special agreement on 15 November 2019.

## **QUESTIONS PRESENTED**

1. WHETHER THE GOVERNMENT OF RANVICORA VIOLATED INTERNATIONAL LAW WITH THEIR GREY BEAR REINTRODUCTION PROJECT.
2. WHETHER THE FEDERAL REPUBLIC OF ARCTOS' ACT OF KILLING THE GREY BEARS OF RANVICORA VIOLATED INTERNATIONAL LAW.



## **STATEMENT OF FACTS**

The continent of Suredia is home to four nations. The Federal States of Arctos (hereinafter Arctos), the Republic of Ranvicora (hereinafter Ranvicora), Paddington, and Aloysius. Arctos is located in the North, Ranvicora in the South. Between the two nations they share a 75 km border, consisting primarily of forests and privately-owned farms.<sup>1</sup>

With the exception of Arctos, there has been a grey bear population throughout the region for centuries. Ranvicora's grey bear population was mostly isolated from other nations, although the bears were known to migrate within the region.<sup>2</sup>

In 1963, because of overhunting and habitat destruction, the Grey bear species in Ranvicora went extinct. Due to biodiversity concerns and the grey bear's cultural importance, Ranvicora's government began considering the possibility of reintroducing the grey bear. To achieve this goal, over the next five years, Ranvicora worked with a team of scientists and other professionals to plan a project to reintroduce the grey bears.<sup>3</sup>

Pursuant to Ranvicora's national laws and as part of its planning process, Ranvicora conducted an environmental impact assessment (hereinafter "EIA") that was national in scope with multiple reintroduction phases planned up until 2026. Ranvicora did not assess the potential transboundary impact of the reintroduction project nor did they consult or inform other countries about the reintroduction project.<sup>4</sup>

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<sup>1</sup> R. ¶¶ 1&10.

<sup>2</sup> R. ¶¶ 10&12.

<sup>3</sup> R. ¶¶ 12.

<sup>4</sup> R. ¶¶ 11-14.

Due to rising temperatures and shifting vegetation attributable to climate change Ranvicora decided to release the grey bears at the largest remaining habitat suitable to sustain a viable grey bear population in their Northern region bordering Arctos—with the nearest release point to Arctos being about 50 km from Arctos' border.<sup>5</sup>

On 23 March 2013, Ranvicora released their first grey bear. Over the next five years, Ranvicora released 20 grey bears (14 female and 6 male) fitting half of the released bears with GPS collars. Most of the female bears had offspring after a year of being released but a few of the reintroduced bears died from various causes leading the Ranvicoran government to create another phase of reintroducing more bears beginning in 2021.<sup>6</sup>

On 19th September 2017, a grey bear was spotted in Arctos not far from the Arctos-Ranvicora border. For the next several months, citizens occasionally reported seeing grey bears in Arctos. Based on the tracking information available, scientists involved with the reintroduction project confirmed that some of the grey bears had been intermittently moving back and forth between Ranvicora and Arctos.<sup>7</sup>

On 27th February 2018, on a farm in Arctos located 5km from the Arctos-Ranvicora border, one farmer reported that one of her horses had been attacked and killed. Over the next five and a half months, 7 horses and 20 sheep were killed on different farms in Arctos near the border. Although there were no witnesses to any of the attacks, authorities determined that grey bears had killed the animals.<sup>8</sup>

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<sup>5</sup> R. ¶¶ 13.

<sup>6</sup> R. ¶¶ 14.

<sup>7</sup> R. ¶¶ 16.

<sup>8</sup> R. ¶¶ 1-2.

In addition, grey bears damaged apple orchards and beehives in Arctos, and it was determined that grey bears sniffed out the nests and consumed the eggs and nestlings of the Trouwborst tern (*Sterna ariensis*) an endangered endemic species in Arctos that breeds on the ground in dense colonies.<sup>9</sup>Arctos sent a diplomatic note to Ranvicora accusing Ranvicora of violating customary and conventional international law by reintroducing grey bears. <sup>10</sup>Ranvicora responded detailing their position of adhering to international law.. <sup>11</sup>

In January 2019, Arctos' policy of setting out poisoned animal carcasses near the farms led to the death of four grey bears who had crossed into Arctos.<sup>12</sup> On 22 April 2019, on a farm in Arctos, a female grey bear attacked two children, one child died as a result of the attack, and the other sustained significant permanent injuries. Two days later, the government of Arctos issued an emergency regulation that expressly granted permission for the citizens of Arctos to shoot any grey bear spotted in Arctos.<sup>13</sup>Four weeks after the press release, a farmer in Arctos shot and killed a female grey bear and her two cubs that had wandered onto his farm. A day later, another farmer shot and killed a pregnant grey bear.<sup>14</sup>

On June 5<sup>th</sup>, 2019, Ranvicora sent a diplomatic note to Arctos accusing Arctos' of breaching international law and demanded that Arctos stop poisoning and shooting the bears. On 23rd June 2019, Arctos sent a note in response vehemently expressing their right to poison and shoot the grey bears as a means of protecting their citizens and their citizen's property.

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<sup>9</sup> R. ¶¶ 17.

<sup>10</sup>R. ¶¶ 18.

<sup>11</sup>R. ¶¶ 19.

<sup>12</sup> R. ¶¶ 20.

<sup>13</sup> R. ¶¶ 21.

<sup>14</sup> *Id.*

## **SUMMARY OF ARGUMENT**

- I. The Republic of Ranvicora did not violate international law with its grey bear reintroduction project because it complied with its duty to prevent transboundary harm.
  
- II. The Federal States of Arctos violated international law in its responses to the grey bear reintroduction project by poisoning the grey bears and by issuing an emergency regulation that granted permission to shoot any grey bear spotted in Arctos.

## ARGUMENT

### **I. THE REPUBLIC OF RANVICORA’S GREY BEAR REINTRODUCTION PROJECT DID NOT VIOLATE INTERNATIONAL LAW.**

#### **A. Ranvicora fulfilled its responsibility to prevent transboundary harm.**

Ranvicora upheld its duty to prevent transboundary harm. First, Ranvicora satisfied its substantive obligations by satisfying its due diligence duty recognized in the Trail Smelter case to “Do No Harm.”<sup>15</sup> Secondly, the possibility of harm from the bear reintroduction project did not rise to the level of ‘significant’. Third, Ranvicora satisfied its procedural obligations by conducting an Environmental Impact Assessment (EIA)<sup>16</sup>. Finally, Ranvicora satisfied the tenets of the Precautionary principle<sup>17</sup>.

##### 1. Ranvicora satisfied its substantive obligations by adhering to their due diligence duty.

Customary International Law recognizes the obligation of states to take measures in protecting persons or activities beyond their territories to prevent harmful events and outcomes when engaging in any activity.<sup>18</sup>

Principle 21 of the Stockholm Declaration declares that States have, in accordance with the Charter of the United Nations and the Principles of international law,<sup>19</sup>... the responsibility to

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<sup>15</sup> Trail Smelter Arbitration, United States v Canada, UN Reports of International Arbitral Awards (UNRIAA), 16 April 1938 and 11 March 1941, Vol. III, pp. 1905-1982, available at [http://untreaty.un.org/cod/riaa/cases/vol\\_III/1905-1982.pdf](http://untreaty.un.org/cod/riaa/cases/vol_III/1905-1982.pdf) or American Journal of International Law, Vol.33 (1939), p.182 & Vol.35 (1941), p.684.

<sup>16</sup> Record ¶12.

<sup>17</sup> Declaration on Environment and Development, 14 June 1992, UN Doc. A/CONF.151/5/Rev.1.

<sup>18</sup> Corfu Channel Case (UK v Albania) (Merits) [1949] ICJ Rep. 4.

<sup>19</sup> Rio Declaration on Environment and Development, Rio de Janeiro, 14 June 1992. Principle 2.

ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.<sup>20</sup>

Article 3 of The Draft Articles on the Prevention of Transboundary Harm from Hazardous Activities (ILC of Transboundary harm)<sup>21</sup> indicates that states have a duty to prevent significant transboundary harm. In addition, Article 7<sup>22</sup> of the ILC of Transboundary Harm indicates that States have a responsibility to provide an assessment of possible transboundary harm. Also, Article 8 of the ILC mandates that when an assessment of the risk indicates a risk of causing significant transboundary harm, the state of origin shall provide the state likely to be affected with timely notification and assessment of the risk.<sup>23</sup>

Furthermore, the tribunal in the *Pulp Mills* case opined that, at least within the context of industrial activity on a transboundary waterway:

“[the] obligation to protect and preserve . . . has to be interpreted in accordance with a practice, which in recent years has gained so much acceptance among States that it may now be considered a requirement under general international law to undertake an environmental impact assessment where there is a risk that the proposed . . . activity may have a significant adverse impact in a transboundary context, in particular, on a shared resource.<sup>24</sup>

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<sup>20</sup> Declaration of the United Nations Conference on the Environment, UNEP, Principle 21 (1972).

<sup>21</sup> Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with commentaries, UN 2001, Commentary to Art 3, 154, para (7).

<sup>22</sup> *Id.*, Article 7.

<sup>23</sup> *Id.*, Article 8.

<sup>24</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, 204.

Though the concept of due diligence is often framed in general terms, its apparent ambiguity does not detract from its importance. Judge Donoghue opined in *Costa Rica v. Nicaragua*<sup>25</sup> that outside of those obligations expressly or implicitly found in specific treaties or conventions signed by the parties, state action and *opinio juris* does not support specific notification and consultation obligations with the other state regarding the risk.<sup>26</sup> Also, under customary international law, a state is obliged to use all means at its disposal to avoid activities which take place in its territory, or in any area under its jurisdiction, causing significant damage to the environment of another State.<sup>27</sup>

Here, Ranvicora was not mandated to inform Arctos of their grey bear reintroduction project because Ranvicora has jurisdiction over activities within its territory and historically there had never been presence of the grey bear in Arctos.<sup>28</sup> Moreover, the absence of a grey bear population shows that there was no clear and convincing evidential basis for Ranvicora to consult with Arctos about the reintroduction project.<sup>29</sup>

In addition, Ranvicora acknowledged the possibility of a potential harm within its borders or for bears from Paddington and Aloysius crossing the border<sup>30</sup> and enlisted the help of the adequate authorities to mitigate whatever risk the reintroduction project would cause.<sup>31</sup> Also,

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<sup>25</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica)*, 2015, I.C.J. p. 665.

<sup>26</sup> *Id.* at 4-6.

<sup>27</sup> *Pulp Mills on the River Uruguay (Argentina vs. Uruguay)*, I.C.J. Rep. 2010 (1) p. 14, 56, para. 101.

<sup>28</sup> Record ¶ 10.

<sup>29</sup> *Id.*, ¶ 11.

<sup>30</sup> *Id.*, ¶ 11.

<sup>31</sup> *Id.*, ¶ 11.

based on Judge Donahue opinion, Ranvicora never had any treaty or convention that expressly or implicitly obliged Ranvicora to inform or consult with Arctos about Ranvicora's plan to reintroduce the grey bears.

For these reasons, Ranvicora fulfilled all its due diligence obligations the reintroduction project required.

2. The potential harm that Ranvicora's grey bear reintroduction caused did not rise to the level of 'significant'.

The ILC draft articles on transboundary harm defines 'significant' as a harm that is "more than 'detectable' but need not be at the level of 'serious' or 'substantial'".<sup>32</sup> However, the "soft law" that helped solidify the doctrine that is the duty to prevent transboundary harm as "the corpus of international law"<sup>33</sup> seemed to require just that: serious or substantial harm to human welfare and/or the environment. For example, in an early illustration of the fashioning of international environmental law, the "Experts Group on Environmental Law convened under the patronage of the United Nations World Commission on Environment and Development and opined that "States shall ... prevent or abate any transboundary environmental interference or a significant risk thereof which causes *substantial* harm."<sup>34</sup>

The legal maxim *sic utere tuo ut alienum non laedas* ( you should use your property in such a way not to cause injury to your neighbor). The ICJ further emphasized the principle In the

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<sup>32</sup> ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities Art 2. Comment 4.

<sup>33</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, paras. 29- 30 (July 8).

<sup>34</sup> U.N. Experts Group on Environment and Development, *Legal Principles for Environmental Protection and Sustainable Development*, June 18, 1986, U.N. Doc. WCED/86/23/Add.1, Art. 10 (1986) <http://www.un-documents.net/ocf-a1.htm> (emphasis added).



*Corfu Channel Case*, noting that states have an obligation “not to allow knowingly its territory to be used for acts contrary to the rights of other States.”<sup>35</sup>

Also, In the *Corfu Channel case*, the ICJ declared Albania responsible for the explosion of mines that occurred which resulted in the loss of human life because of the foreseeable and imminent danger that the mines posed. The ICJ said that based on “elementary considerations of humanity... and every State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of States” Albania was “responsible under international law for the explosions which occurred ... and for the damage and loss of human life which resulted from them.”<sup>36</sup>

Also, though Ranvicora reintroduced the bear in a region that was close to Arctos’ border, Ranvicora never knowingly created harm within its territory that infringed on the rights of Arctos evidenced by Ranvicora putting trackers on all the bears to ensure the bears could be observed and located at all times. Also, Unlike the Corfu Channel case, where the mines were a man-made creation, grey bears are a natural phenomenon and are not an imminent danger. Furthermore, Ranvicora’s phasing of the bear introduction showed they were taking necessary precautions in keeping the population of the bear under control and thus could not have knowingly introduced bears to cause harm over in Arctos’ border.

3. Ranvicora satisfied its procedural obligations by conducting an Environmental Impact Assessment (EIA).

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<sup>35</sup> Corfu Channel Case 1949 (United Kingdom v. Albania) p. 22, para. 101.

<sup>36</sup> Corfu Channel case of 1949 (United Kingdom v. Albania).

Ranvicora has satisfied its international obligation spelt out in treaties, conventions and legal opinions for states to conduct an EIA prior to the beginning of any activity that could cause transboundary harm to the environment.

The 1991 Convention on Environmental Impact Assessment in a Transboundary Context of the United Nations Economic Commission for Europe (Espoo Convention) on Environmental Impact Assessment describes an EIA as “a national procedure for evaluating the likely impact of a proposed activity on the environment.”<sup>37</sup>

EIA’s provide information to national authorities of environmental impacts when deciding whether to authorize an activity. This allows states conducting EIA’s inform themselves of potential environmental impacts before they make decisions. Also, EIA’s play an important role in implementing environmental consideration into development projects and thus in promoting sustainable development.<sup>38</sup>

Principle 17 of the Rio Declaration<sup>39</sup> mandates EIA’s as a national instrument to be undertaken for activities that could have an adverse impact on the environment. However, though States have an international obligation to conduct EIA on acts that could hurt the environment, there is no global framework for all states to follow and therefore States are given the discretion to determine the potential effects of the EIA they conduct.<sup>40</sup>

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<sup>37</sup> The Espoo Convention on Environmental Impact Assessment in a Transboundary Context, Article 1 (vi).

<sup>38</sup> Birnie, Patricia, et al., *International Law and the Environment*, 3rd edition. Oxford 2009 p. 165.

<sup>39</sup> Rio Declaration on Environment and Development, Rio de Janeiro, 14 June 1992. Principle 17.

<sup>40</sup> UNCLOS, Article 206 and Biodiversity Convention, Article 14.

In *Argentina v. Uruguay*,<sup>41</sup> the Court acknowledged that international law required nations conduct a prior EIA before engaging in potentially hazardous activity. However, despite acknowledging that EIA are required, the court narrowed the EIA's scope emphasizing that there need not be a need for these nations to "assess remote or purely speculative risks".<sup>42</sup>

In this case, Ranvicora's EIA was based on its national laws and was limited to its national jurisdiction.<sup>43</sup> Also, in consideration of the environment and in a bid to promote a project that adheres to the tenets of sustainable development, the Ranvicoran government put the project into a set time by setting the reintroduction of the bears into multiple phases.

In addition, based on the Court's ruling in *Argentina v. Uruguay*, Ranvicora's EIA was valid since Ranvicora could not evaluate the project's impact on Arctos because that evaluation would have been a purely remote or speculative risk since grey bears had never been seen historically or recently in Arctos.<sup>44</sup>

Because Ranvicora went through the process of planning an EIA based within its national jurisdiction and because Ranvicora would have been engaging in speculative activity by evaluating a potential impact on Arctos, Ranvicora satisfied its procedural obligations by conducting an EIA.

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<sup>41</sup> *The Case Concerning Pulp Mills on the River Uruguay, Argentina v. Uruguay*, ICJ Rep. (2010).

<sup>42</sup> *Ibid.* Para. 205.

<sup>43</sup> Record ¶ 12.

<sup>44</sup> *Id.*, ¶ 12.

4. Ranvicora did not violate the precautionary principle.

The precautionary principle mandates states to prevent environmental degradation irrespective of the threat of damage or a lack of full scientific uncertainty.<sup>45</sup> Principle 15 of the Rio declaration allows states to apply the precautionary approach based on their capabilities.<sup>46</sup> Even if there is a lack of full scientific certainty as long as there is a threat of serious or irreversible damage to the environment than cost effective measures to protect the environment can be used. Also, anticipation is central to principle 15.<sup>47</sup> Anticipation reflects a requirement that effective environmental measures need to be based upon actions which take a long-term approach, and which might anticipate changes on the basis of scientific knowledge.

In *Whaling in the Antarctic Case*, the court held that Nations must employ appropriate conservation methods to prevent harm to the environment, even if scientific evidence is inconclusive about an activity's possible environmental effects.<sup>48</sup> Also, Judge Adhoc Charlesworth, defined the precautionary principle as “ the avoidance of activities that may threaten the environment...giv[ing] priority to the prevention of harm to the environment... including biological diversity, resource conservation and management.”<sup>49</sup>

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<sup>45</sup> U.N Convention on Biological Diversity, Preamble, June 5, 1992, 31 I.L.M. 818 [Hereinafter CBD]; Principle 11, World Charter for Nature, , UNGA Res. 37/7, 37 U.N. GAOR, Suppl. (No. 51), at 17, U.N.Doc. A/37/51 (Oct. 28, 1982); principle 15, Rio Declaration supra note 21; Art. 10, Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 39 I.L.M 1027; See also David Freestone and Ellen Hey, *The Precautionary Principle and International Law: The Challenge of Implementation*, 10 (Kluwer Law Int'l, 1st ed. 1996).

<sup>46</sup> United Nations Conference on Environment and Development, June 3-14, 1992, Rio Declaration on Environment and Development, princ. 2, U.N. Doc. A/CONF.151/5/Rev.1 (1992).

<sup>47</sup> *Id.*

<sup>48</sup> *Whaling in the Antarctic (Australia v. Japan)*, New Zealand intervening, 2014 I.C.J.

<sup>49</sup> *Id.* Para. 6.

In this case, Ranvicora has fulfilled all the requirements of the precautionary principle evidenced by their conduction of an EIA.<sup>50</sup> Not only did Ranvicora look into the prospects of reintroducing the bear they also spaced out the project and set about a timeline for the phases of reintroducing the bears.<sup>51</sup> In addition, Ranvicora worked with a team of scientists and professionals to evaluate the reintroduction project .<sup>52</sup> Over the period of time with which the government of Ranvicora and the team of professionals and scientists worked together, both parties set the reintroduction plan in phases and kept GPS trackers on the bears to minimize the threat of extinction and loss of the grey bears—which would have been irreversible damage.<sup>53</sup>

In conclusion, Ranvicora took the necessary precautions international law required before reintroducing the grey bears because Ranvicora, in conjunction with the necessary experts and under the required time frame, conducted the necessary procedural requirements spelt out by international law.

## **II. ARCTOS VIOLATED INTERNATIONAL LAW IN ITS RESPONSES TO RANVICORA'S REINTRODUCTION OF GREY BEARS.**

### **A. Arctos violated international law by poisoning the grey bears and by issuing an emergency regulation that granted permission to shoot any grey bear spotted in Arctos.**

Arctos violated international law in its responses to the reintroduction project. First, Arctos violated its obligation to conserve biological diversity described in the Convention on Biological Diversity (CBD). Second, Arctos violated its obligation to protect migratory species provided for in both the Convention on the Conservation of European Wildlife and Natural

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<sup>50</sup> Record ¶ 12.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

Habitats (Bern Convention) and the Convention on the Conservation of Migratory Species of Wild Animals (CMS). Finally, there are no available defenses to justify Arctos' actions.

1. Arctos violated its obligation to conserve biological diversity under the CBD

Arctos was aware of the importance of biological diversity when it signed and ratified the CBD.<sup>54</sup> This Convention emphasizes the need for onsite conservation known as *in-situ conservation* and urges contracting parties to restore degraded ecosystems and promote the recovery of threatened species.<sup>55</sup> Arctos failed to abide by this obligation when it poisoned and allowed its citizens to kill the threatened grey bears.

Arctos also violated Article 8(k) which calls for contracting parties to “[d]evelop or maintain necessary legislation [...] for the protection of threatened species.”<sup>56</sup> Not only did Arctos fail to pass such legislation, it passed a regulation that stood in direct contravention of its obligations.<sup>57</sup> The conservation of biodiversity was discussed in *Gabčíkovo-Nagymaros*, where the ICJ noted that “the general protection of the environment[...]has been received as [an] obligation[s] erga omnes”, that is an obligation applicable to all.<sup>58</sup> Indeed, in the *Southern Bluefin Tuna* cases, Japan was ordered to refrain from experimental fishing since the amount of tuna taken under the programme could endanger the species' existence.<sup>59</sup> In the present case, grey bears are already a threatened species and Arctos' interference with the bears will further

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<sup>54</sup> CBD, Preamble, June 5, 1992, 1760 U.N.T.S. 79, 146.

<sup>55</sup> *Id.* art 8(f).

<sup>56</sup> *Id.* at 8(k).

<sup>57</sup> Record, Para. 21.

<sup>58</sup> *Gabčíkovo-Nagymaros Project*, “Case Concerning the Gabčíkovo-Nagymaros Project (Hungary v. Slovakia) (Judgment), Spec. Op. of V.P. Weeramantry, 1997 I.C.J. 95.

<sup>59</sup> Southern Bluefin Tuna Case (Austl. & N.Z. v. Japan), Provisional Measures, Case Nos. 3 and 4, Order of Aug. 27, 1999, [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_3\\_4/Order.27.08.99.E.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_3_4/Order.27.08.99.E.pdf).

endanger them. Therefore, like Japan, Arctos must be ordered to refrain from its activities in order to protect the ecosystem.

Additionally, the Ecological Society of America investigated how the loss of large carnivores affect communities and found that “the local extinction of the grizzly bear triggered an overpopulation of the moose.” Since the moose was previously hunted by the bears, the bears’ extinction created an imbalance in the food chain.<sup>60</sup> Researchers found that when these species are removed from their food webs, “the systems become unbalanced triggering often-catastrophic alterations unlikely to be reversed.”<sup>61</sup> Therefore, killing the grey bears will not only affect Ranvicora, it will affect the entire ecosystem. As *Endangered Species International* (“The Organization”) posits, saving endangered animals from becoming extinct must be a world priority.<sup>62</sup> This is a crucial time for the environment, as the Guardian reports, researchers speak of “biological annihilation” and of an ongoing “sixth mass extinction” in which 50% of animals have already been lost.<sup>63</sup> The organization warns that this mass extinction event will go faster than the extinction that wiped out the dinosaurs.<sup>64</sup> Therefore, Arctos should have taken into consideration the already damaged state of the environment.

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<sup>60</sup>Berger, Stacey, Bellis & Johnson, 11 *Ecological Application*, issue 4. *A Mammalian Predator-Prey Imbalance: Grizzly Bear and Wolf Extinction Affect Avian Neotropical Migrants* (2001).

<sup>61</sup> Predator Defense, *The Ecological Role of Coyotes, Bears, Mountain Lions, and Wolves* [www.predatordefense.org](http://www.predatordefense.org) Retrieved November 1, 2019.

<sup>62</sup> Endangered Species International, *The Five Worst Mass Extinctions* <https://www.endangeredspeciesinternational.org/overview.html> Retrieved November 1, 2019.

<sup>63</sup> Damian Carrington, The Guardian, *Earth’s Sixth Mass Extinction Event Underway* <https://www.theguardian.com/environment/2017/jul/10/earths-sixth-mass-extinction-event-already-underway-scientists-warn>, Retrieved October 29, 2019.

<sup>64</sup> Endangered Species International, *The Five Worst Mass Extinctions* <https://www.endangeredspeciesinternational.org/overview.html> Retrieved November 1, 2019.

Nevertheless, Arctos invoked Article 8(h) of the CBD which calls parties to “prevent the introduction of, control or eradicate those *alien species* which threaten ecosystems, habitats or species.”<sup>65</sup> However, this provision is not applicable to grey bears because they are not invasive alien species (IAS). IAS are “organisms that are non-native to an ecosystem, and which may cause economic or environmental harm or adversely affect human health and the disruption of local ecosystems.”<sup>66</sup> However, as the Bern Convention notes, IAS should not be interpreted to include “native species naturally extending their range in response to climate change.”<sup>67</sup> In the present case, grey bears were reintroduced in the Northern region of Ranvicora, their natural habitat, and extended some 50km into Arctos.<sup>68</sup> Therefore, grey bears are too close to their natural habitat to be considered alien. Additionally, for a species to become *invasive*, it must successfully out-compete native organisms for food and habitat, spread through its new environment, increase its population and harm ecosystems in its introduced range;<sup>69</sup> none of these factors are applicable here. An example of what CBD characterizes as IAS is the ship rat (*Rattus Rattus*) which is native to the Indian sub-continent but was introduced in the Island of New Zealand.<sup>70</sup> This introduction of the ship rat has caused extinctions and catastrophic declines of native birds on islands and have spread throughout the world, their negative effects may take decades to solve.<sup>71</sup> In the present case, the grey bears’ effects in Arctos, such as the can hardly

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<sup>65</sup> CBD art 8(h), June 5,1992, 1760 U.N.T.S. 79,146.

<sup>66</sup> See generally, CBD.

<sup>67</sup> Recommendation No. 142 (2009) of the Standing Committee to the Convention on the Conservation of European Wildlife and Natural Habitats [hereinafter Bern Convention].

<sup>68</sup> Record, Para. 21.

<sup>69</sup> See generally, CBD.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*



be described as “catastrophic effects which may take decades to solve.” As such, the grey bear is not an IAS because it is neither alien nor is invasive.

Finally, in regard to the Trouwborst tern (*Sterna Ariensis*), the special protections listed in Article 6(d) of the Bern Convention do not apply to the because it is not listed in Appendix II despite other types of “sternas” being listed<sup>72</sup>; noting that *Expressio Unius Est Exclusio Alterius*.

Thus, Arctos’ disproportionate responses were a violation of the CBD; alternatively, Arctos should have considered less damaging measures, such as building fences or creating policing efforts to prevent the bears from doing any harm.

2. Arctos violated its obligation to protect migratory species under the Bern Convention and the CMS.

Article 1 of the Bern Convention states that “particular emphasis [is to be]given to endangered and vulnerable species, including endangered and vulnerable migratory species.”<sup>73</sup> While Arctos is party to this Convention, and so is Ranvicora, it failed to its obligation to protect the grey bears, which are vulnerable migratory species. Additionally, Arctos’ responses violated Article 6(c) of the Bern Convention which strictly prohibits the deliberate disturbance of wild fauna “particularly during the period of breeding, rearing and hibernation” as well as Article 8 which prohibits “the use of all indiscriminate means of capture and killing.”<sup>74</sup> The death of a female grey bear as well as that of a female grey bear that was pregnant are particularly troubling because females bears carry the species forward.<sup>75</sup>

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<sup>72</sup> See generally, Bern Convention.

<sup>73</sup> *Id.* at art 1.

<sup>74</sup> *Id.* at art 8.

<sup>75</sup> *Id.* at art 6.

Arctos also violated Article 10(1) of the Bern Convention which obligates contracting parties to “coordinate their efforts for the protection of migratory species specified in Appendices II and III and whose range extends into their territories.”<sup>76</sup> The grey bear at issue here is listed in Appendix II.<sup>77</sup> The bears range has been extending polewards due to rising temperatures likely correlated with climate change. This understanding is also supported by Article 1 of the CMS which defines “range” and “range state.”<sup>78</sup> As a result, Arctos is a range state for the grey bear and Arctos’ failure to resolve the dispute collaboratively with Ranvicora suggests that Arctos is unwilling to coordinate efforts with Ranvicora on this issue.

The government of Arctos cannot escape responsibility by invoking the fact that grey bears are new migratory species. According to the CMS instruments 12.21, new range states are to coordinate action to help migratory species adapt to climate change even if these states “are not currently within the range of the species involved but are expected to become range states in the future due to climate change.”<sup>79</sup>

Furthermore, Arctos violated Article III of the CMS which provides that range states “shall endeavor to prevent, remove, compensate for or minimize, as appropriate, the adverse effects of activities obstacles that seriously impede or prevent the migration of the species.”<sup>80</sup> As a range state for the grey bears, Arctos should have been striving to ensure smoother migration

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<sup>76</sup> Convention on the Conservation of European Wildlife and Natural Habitat, art 10(1)[hereinafter CMS].

<sup>77</sup> Record, Para. 13.

<sup>78</sup> “Range” means all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route and "Range State" means any State that exercises jurisdiction over any part of the range of that migratory species. See CMS art 1(f)&(h), June 23, 1979, 1651 U.N.T.S.

<sup>79</sup> See generally, CMS instruments 12.21.

<sup>80</sup> *Id.* at art. III(4)(b).

patterns for the grey bears. Instead, Arctos has been either killing or authorizing its citizens to kill grey bears that wander into its territory.<sup>81</sup>

3. There are no defenses available to justify Arctos' actions

There are a number of circumstances that preclude wrongfulness such as force majeure, necessity and countermeasures; however, none of them are applicable here. Article 23 of the International Law Commission's Articles on State Responsibility ("ILC") define force majeure as "the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation."<sup>82</sup> The reintroduction of grey bears occurred in 2013 and the first damage was reported in 2017, Arctos cannot claim it was an unforeseen event.

Additionally, Article 25 provides that necessity may not be invoked unless "it is the only way for the State to safeguard an essential interest against a grave and imminent peril."<sup>83</sup> In the present case, there were other less harmful alternatives available that Arctos should have considered such as policing the area where the bears were.

Lastly, Arctos cannot claim the poisoning and the emergency were countermeasures because they were disproportionate to the harm caused. Even if they tried, Article 50 of the ILC provides that countermeasures cannot affect "the obligation to refrain from the threat or use of

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<sup>81</sup> Record, Para 20-21.

<sup>82</sup> I.L.C., Articles of Responsibility of States for Internationally Wrongful Acts, GA U.N. Doc. A/56/10, Art. 23 (2001).

<sup>83</sup> *Id.* at art 25.

force.”<sup>84</sup> In parallel, COP 9 provided that lethal responses are not advisable. All the Conventions that Arctos signed call for the conservation of the ecosystem and indiscriminate killing is the exact opposite of conserving.<sup>85</sup>

Further, unlike other international leaders, Arctos’ leaders refuse to cooperate. Presidents Emmanuel Macron of France and Xi Jinping of China recently reaffirmed their strong commitments to enhance international cooperation on climate change.<sup>86</sup> Arctos’ refusal to abide by the previously mentioned Conventions risks decelerating “the vision of living in harmony with nature by 2050.” This vision is a part of the “Aichi Biodiversity Targets” which was set at COP 10 by CBD contracting parties.<sup>87</sup>

Therefore, the Government of Ranvicora requests the ICJ to order Arctos to immediately revoke its emergency regulation and stop killing grey bears through poisoning or shooting. As demonstrated above, Arctos violated the CBD, CMS and the Bern Convention; to validate Arctos’ actions would be to render these Conventions futile.

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<sup>84</sup> *Id.* at art 50.

<sup>85</sup> Decisions IX/20 Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Ninth Meeting, U.N. Doc. UNEP/CBD/COP/DEC/IX/20 (Oct. 9, 2008).

<sup>86</sup> Rachael Kennedy, EuroNews, *France and China Reassert Mutual Support for the Irreversible Paris Climate Agreement*, <https://www.euronews.com/2019/11/06/emmanuel-macron-and-xi-jinping-in-beijing>. Retrieved November 11, 2019.

<sup>87</sup> Decision X/2 Adopted a revised and updated Strategic Plan for Biodiversity, including the Aichi Biodiversity Targets, for the 2011-2020 period by the Conference of the Parties to the Convention on Biological Diversity at its Tenth Meeting, U.N. DOC. UNEP/CBD/COP/10/27/Add.1 (Dec. 19, 2010).

## **CONCLUSION AND PRAYER FOR RELIEF**

Respondent, the Republic of Ranvicora, respectfully requests the Court to adjudge and declare that:

1. The Republic of Ranvicora did not violate international law with respect to its grey bear reintroduction project.
2. The Federal States of Arctos violated international law with respect to its responses to Ranvicora's reintroduction of grey bears.

RESPECTFULLY SUBMITTED

AGENTS OF RESPONDENT