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INTERNATIONAL COURT OF JUSTICE

THE CASE CONCERNING QUESTIONS RELATING TO REINTRODUCTION OF BEARS

FEDERAL STATES OF ARCTOS

V.

REPUBLIC OF RANVICORA

SPRING TERM 2019-2020

On Submission to the International Court of Justice

The Peace Palace, The Hague, The Netherlands

MEMORIAL FOR THE APPLICANT

CONTENTS

I. THE REPUBLIC OF RANVICORA VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROJECT	1
A. RANVICORA’S REINTRODUCTION OF GREY BEARS [“THE REINTRODUCTION”] VIOLATES ITS TREATY OBLIGATIONS.	1
1. Grey bear is an Invasive Alien Species [“IAS”] in the ecology of Arctos under Convention on Migratory Species of Wild Animals 1979 [“CMS”], Convention on Biological Diversity [“CBD”] and the Convention on the Conservation of European Wildlife and Natural Habitats 1979 [“Bern Convention”].	1
i. Grey bears fall under the definition of IAS under the relevant Conventions.....	1
ii. <i>Additionally</i> , grey bears have not become invasive due to climate change-induced migrations.	2
2. RANVICORA VIOLATED ITS OBLIGATIONS UNDER CBD Article 8.	4
3. RANVICORA VIOLATED ARTICLE 11 OF THE BERN CONVENTION.	5
B. RANVICORA HAS VIOLATED ITS OBLIGATION UNDER CUSTOMARY INTERNATIONAL LAW [‘CIL’].	6
1. RANVICORA HAS VIOLATED ITS DUTY NOT TO CAUSE TRANSBOUNDARY HARM.	6
i. Ranvicora has caused transboundary harm to Arctos.	6
a. Physical relationship between the activity and the damage caused.....	7
b. Human causation.....	7
c. Transboundary movement of harmful effects.....	7
d. Significant harm.....	8
ii. Ranvicora failed to fulfill its due diligence obligations	8
2. RANVICORA HAS VIOLATED THE PRECAUTIONARY PRINCIPLE UNDER CIL AND RELEVANT TREATIES	10

II. THE FEDERAL STATES OF ARCTOS DID NOT VIOLATE INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO RANVICORA’S REINTRODUCTION OF GREY BEARS.....11

A. ARCTOS HAS ADHERED TO ITS TREATY OBLIGATIONS WITH RESPECT TO ITS RESPONSES TO RANVICORA'S REINTRODUCTION OF GREY BEARS..... 11

1. ARCTOS HAS NOT VIOLATED ITS OBLIGATION UNDER CMS.11

 i. Arctos is not a range state of grey bears under CMS and accordingly bears no obligations: 11

 ii. Alternatively, Arctos's responses qualify as exceptions under Article III(5)(d) of the Convention: 12

 a. The exception was precise as to content, limited in space and time, and does not operate to the disadvantage of the Grey.13

2. ARCTOS'S RESPONSES WERE IN COMPLIANCE WITH ITS OBLIGATIONS UNDER CBD: 14

 i. Arctos's responses are not in violation under Article 1 of CBD: 14

 a. Arctos's responses are compatible with the objective of biological diversity conservation:..... 15

 b. Arctos's responses are in compliance with the objective of sustainable use: 15

 iii. Arctos's responses have not violated Article 8 of CBD: 16

3. ARCTOS HAS NOT BREACHED ITS OBLIGATIONS UNDER THE BERN CONVENTION17

 i. Arctos has not violated Article 1..... 17

 ii. Arctos has not violated Article 2 17

 iii. In any case, Arctos' actions qualify as exceptions under Article 9, thus exempting it from the liabilities under Article 6 and 8..... 18

B. ARCTOS HAS NOT VIOLATED THE DUTY NOT TO CAUSE TRANSBOUNDARY HARM.20

1. Arctos has not violated its due diligence obligations concerning transboundary harm.	20
2. Arctos did not cause significant transboundary harm.	21
C. IN ANY CASE, ARCTOS’S RESPONSES QUALIFY AS COUNTERMEASURES UNDER INTERNATIONAL LAW.....	22
1. Taken in response to a previous international wrongful act of another state	22
2. Directed against that state.....	22
3. Proportionate	23
4. Reversible	23

INDEX OF AUTHORITIES

I. LEGAL INSTRUMENTS

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TABLE OF ABBREVIATIONS

ACAP- Agreement on the Conservation of Albatrosses and Petrels

Art- Article

Bern Convention- Convention on the Conservation of European Wildlife and Natural Habitats
1979

Can.-Canada

CBD- Convention on Biological Diversity 1992

CMS- Convention on Migratory Species of Wild Animals 1979

Conf.- Conference

COP- Conference of Parties

CUP- Cambridge University Press

DAPTHHA- Draft Articles on Prevention of Transboundary Harm from Hazardous Activities

Dec.- Decision

Doc.- Document

Ed.- Edition

Eds.- Editors

Envtl- Environmental

Et at.- and others

ETS- European Treaty Series

IAS- Invasive Alien Species

ILC- International Law Commission

Intl.- International

IUCN- International Union for the Conservation of Nature

Jour.- Journal

No.- Number

OUP-Oxford University Press

Para- Paragraph

Res.- Resolution

Rev.- Review

RIAA- Report of the International Arbitration Awards

UK- United Kingdom

UNEP- United Nations Environment Programme

UNFCCC- United Nations Framework Convention on Climate Change

UNGA- United Nations General Assembly

UNTS- United Nations Treaty Series

UNYB- United Nations Year Book

USA- United States of America

VCLT- Vienna Convention on the Law of Treaties

WHO- World Health Organization

YILC- Yearbook of International Law Commission

QUESTIONS PRESENTED

- I. Whether Republic of Ranvicora violated international law with respect to its Grey Bear Reintroduction project
- II. Whether Federal States of Arctos did not violate international law with respect to its responses to Ranvicora's Reintroduction of Grey Bears

STATEMENT OF JURISDICTION

Pursuant to the Special Agreement signed at Barcelona, Spain on 11 July 2019, including the corrections and clarifications agreed to therein, the Federal States of Arctos (“Arctos”) and the Republic of Ranvicora (“Ranvicora”), submit to the International Court of Justice (“the Court”) their dispute concerning the Questions Relating to Reintroduction of Bears pursuant to the Article 40(1) of the Statute of the International Court of Justice (“the Statute”). In congruence with Article 36(1) of the Statute and Article II of the Special Agreement, Arctos and Ranvicora undertake to accept the judgment of the Court as final and binding and also commit to execute the judgment to be made in its entirety in and good faith in conformity with Article IV of the Special Agreement.

STATEMENT OF FACTS

Background

Arctos and Ranvicora are developed sovereign states located in Suredia, separated by a border consisting of forests and privately-owned farms.

Grey Bears and its Reintroduction

Grey Bears, never present in Arctos, historically only migrated within Ranvicora were extinct in Ranvicora in 1963. In 2008, after conducting an EIA that did not include Arctos, Ranvicora moved forward with the Reintroduction.

Despite questions raised by biologists and changes in the Grey Bear's range in recent decades, Ranvicora still Reintroduced the bears 50 km from the border of Arctos.

The Invasion!

In the time afterwards, the Grey Bears killed multiple farm animals in Arctos, damaging orchards, beehives and killing Trowborst tern, an endangered endemic species in Arctos.

UnBEARable!

Arctos's effort to co-operate through a diplomatic note was blatantly refuted by Ranvicora. The invasion and the harm by the bears in Arctos continued to an extent that it started causing human fatalities, in response to which, Arctos issued an emergency regulation permitting citizens to shoot the bears in Arctos.

To the Court!

Further efforts to negotiate failed, leading Arctos to file a case against Ranvicora in this Court seeking justice with regards to Questions Relating to Reintroduction of Bears.

SUMMARY OF ARGUMENTS

Claim I:

Firstly, under treaty obligations, Ranvicora has violated its obligations of in-situ conservation under CBD because the grey bears are invasive alien species reintroduced outside their historic range.

Similarly, Ranvicora has violated Article 2, 3 and 11 of the Bern Convention because the reintroduction of non-native species close to the Arctos border has caused threat to *Trouwborst tern*, an endanger and endemic species to Arctos.

Secondly, under international custom, Ranvicora has violated the duty not to cause transboundary harm as the grey bears caused significant harm to Arctos.

Ranvicora also failed to exercise due diligence obligations.

Ranvicora failed to properly assess the potential impact on Arctos which is an obligation under CBD Article 14.

Thirdly, the reintroduction by Ranvicora contravenes the precautionary principle because it failed to identify potential threat to the biodiversity prior to the reintroduction to avoid serious and irreversible damages

Claim II:

Firstly, under treaty obligations, Arctos has not violated its obligations under CMS because it is not a range state to the species. Alternatively, the responses qualify as exception under Article III(5)(d).

Arctos similarly has not violated its obligations under Article 1 and 8 of CBD, primarily, because grey bear is an invasive alien species.

Arctos has also not violated Article 1, 2 and 10 of Bern Convention because Arctos's responses were required for wildlife conservation. Obligations under Article 6 and 8 are qualified under exceptions in Article 9.

Secondly, Arctos has not violated its customary obligation regarding transboundary harm as significant harm did not occur and due diligence obligations were fulfilled with no risk of significant harm.

Finally, in any case, the measures adopted by Arctos qualify as countermeasures under ARSIWA because the measures adopted was taken in response to the international wrongful act of Ranvicora, directed against Ranvicora, are reversible and proportionate.

PLEADINGS ADVANCED

I. THE REPUBLIC OF RANVICORA VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROJECT

A. RANVICORA'S REINTRODUCTION OF GREY BEARS ["THE REINTRODUCTION"] VIOLATES ITS TREATY OBLIGATIONS.¹

1. Grey bear is an Invasive Alien Species ["IAS"] in the ecology of Arctos under Convention on Migratory Species of Wild Animals 1979 ["CMS"], Convention on Biological Diversity ["CBD"] and the Convention on the Conservation of European Wildlife and Natural Habitats 1979 ["Bern Convention"].

i. Grey bears fall under the definition of IAS under the relevant Conventions.

The textual analysis² of the provisions against IAS in CMS³, CBD⁴ and Bern Convention⁵ establishes two elements for a species to be IAS: a) species extending their historic range and b) detrimental to a native biodiversity.

¹ Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 UNTS 331 ['VCLT'].

² VCLT, art. 31(1).

³ Convention on the Conservation of Migratory Species of Wild Animals, art III(4)(c), June 23, 1979, UNTS 1651 ['CMS'].

⁴ Convention on Biological Diversity, art 8(h), June 5, 1992, 1760 UNTS 79 ['CBD'].

⁵ Convention on The Conservation of European Wildlife and Natural Habitats, art 11(2)(b), Sept. 19, 1979, ETS 104 ['Bern Convention'].

Accordingly, the relevant agreements⁶ and resolutions⁷ under CMS characterize IAS as exceeding their previous known range from human or natural reasons and causing harm to native species, *inter alia*, through predation.

Bern Convention, commensurating with the CBD framework⁸, defines alien species as species introduced outside its natural past or present distribution and defines IAS as an alien species whose introduction and/or spread threaten biological diversity⁹.

Here, IAS have been reintroduced outside their historic range¹⁰ and have been detrimental to the endangered species of *Trouwborst tern*,¹¹ thus qualifying under the criteria.

- ii. Additionally, grey bears have not become invasive due to climate change-induced migrations.

Climate change-induced migrations have been noted to extend the natural range of the species within the paradigm of CMS¹², CBD¹³ and Bern Convention¹⁴. However, grey bears have extended

⁶ Agreement on the Conservation of African-Eurasian Migratory Waterbirds, art. III, June 16 1995, 2365 U.N.T.S. 203; Agreement on the Conservation of Albatrosses and Petrels, Guidelines for the eradication of introduced mammals from breeding sites of ACAP-listed seabirds, December 2017.

⁷ CMS, UNEP/CMS/Res.11.28, preamble ¶¶2,3 (November 2019) ['CMS Resolution 11.28']; CMS, UNEP/CMS/Res.12.21, ¶3 (October 2017) ['CMS Resolution 12.21'].

⁸ CBD, UNEP/CBD/COP/DEC/VI/23, Annex (April 2002) ['CBD Decision VI/23'].

⁹ Bern Convention, Recommendation No. 142 (2009).

¹⁰ Record ¶¶13, 14.

¹¹ Record ¶17.

¹² CMS Resolution 12.21, preamble ¶9.

¹³ CBD, UNEP/CBD/COP/DEC/X/33, (29 October 2010) ['CBD Decision X/33']; CBD Decision VI/23, Annex.

¹⁴ Bern Convention, Recommendation No. 159 preamble ¶¶7,8 (2012); Recommendation No. 142 (2009); Recommendation No. 135, ¶1 (2008).

their historic range, primarily because of the reintroduction of grey bears by Ranvicora outside its historic range¹⁵.

CMS addresses that translocated migratory species may become invasive and requires state parties to prevent the introduction or spread of IAS while implementing any climate change mitigation/adaptation measures.¹⁶ Many species (even those listed under CMS Appendix-I)¹⁷ reintroduced outside their range for conservation efforts have been found to have resulting introduction of IAS.¹⁸

Similar approaches have been taken under CBD¹⁹ and Bern Convention²⁰ frameworks with state parties required to apply the precautionary principle to prevent IAS²¹. Grey bears, reintroduced by Ranvicora as climate change response²² without consideration of its implications, have become invasive.

¹⁵ Record ¶¶13,14.

¹⁶ *CMS Resolution 11.28*, ¶4, ¶5 10, ¶12; *CMS Resolution 12.21*, ¶3.

¹⁷ CMS, UNEP/CMS/COp11/inf.32, 41 (Aug. 2014). (A case study on Sacred ibis and Aoudad: CMS Appendix I species becoming invasive after reintroduction outside their range).

¹⁸ *Ibid*, at 44.

¹⁹ *CBD, Decision X/33*, Annex.

²⁰ Bern Convention, Recommendation No. 158 (2012); Piero Genovesi & Clare Shine, EUROPEAN STRATEGY ON INVASIVE ALIEN SPECIES, 5 (June 2004) [European Strategy on IAS].

²¹ Bern Convention Recommendation 158, CMS Resolution 11.28, CBD Decision VI/23

²² Record ¶13.

2. RANVICORA VIOLATED ITS OBLIGATIONS UNDER CBD Article 8.

In-situ conservation²³ is a primary method for biodiversity conservation²⁴ aiming to maintain and recover viable populations of wild species in their natural surroundings where they have developed their distinct properties.²⁵

CBD requires, as far as appropriate and as possible, to undertake in-situ conservation of biodiversity²⁶. However, such language does not provide a state the absolute discretion or exemption from its obligations²⁷. Article 8(h) requires prevention of IAS, intended or accidental²⁸, in conservation efforts. This follows from obligation under Article 7²⁹ which, not only requires identification of risk³⁰, but also monitoring of the effects of measures under Article 8. Ranvicora's reintroduction, without identification of obvious risk³¹, violates its obligation to prevent IAS, and also to eradicate³² IAS with its subsequent inaction even after the verifiable invasive character of grey bears. Reintroduction, as an ex-situ conservation method,³³ must be done in natural habitat³⁴, predominantly complementing Article 8(h)³⁵.

²³ CBD, art. 8.

²⁴ Micheal Bowman, et al., *LYSTER'S INTERNATIONAL WILDLIFE LAW*, 599 (2nd ed. 2010). [‘Bowman et al.’].

²⁵ CBD, art. 2 ¶12.

²⁶ CBD art 8.

²⁷ *Tasmanian dam*, (Commonwealth of Australia v. State of Tasmania), 46 ALR 625, 21, (1983).

²⁸ CBD Decision VIII/27.

²⁹ Bowman et al., *supra* note 24, at 604.

³⁰ CBD, art. 7.

³¹ See, *infra* note 77, 78.

³² CBD Decision VI/23, Guiding Principle 2.

³³ CBD art. 9(c).

³⁴ CBD art. 9.

³⁵ VCLT Art 31(1).

3. RANVICORA VIOLATED ARTICLE 11 OF THE BERN CONVENTION.

The wording of Article 11 encourages reintroduction only upon the fulfillment that a study is to be first made in light of the experiences of other Contracting Parties which should establish that such reintroduction would be effective and acceptable.³⁶ Even if the Environment Impact Assessment [“EIA”] conducted by Ranvicora is taken as such study, it still does not meet the requirements laid down by Article 11 as Ranvicora itself concedes that it did not inform or consult with other countries about the reintroduction project and also did not assess the potential impacts of the reintroduction project on other countries.³⁷

Instances of livestock loss, human deaths and maulings by bears³⁸ has been recorded at various points of time. The requirement of such widespread consultation is fundamental,³⁹ and despite being titled as a supplementary provision it resonates the fundamental aim of the convention.⁴⁰

Similarly, to control the introduction of non-native species is a critical obligation establishing a three-stage hierarchical approach endorsed by both CBD⁴¹ and Bern.⁴² The IAS in the instant case i.e. Grey Bears are required to be eradicated⁴³ by Ranvicora under Bern Convention’s

³⁶ Bern Convention, art. 11.2.a.

³⁷ Record ¶12.

³⁸ Charles J. Wilson, Could We Live With Reintroduced Large Carnivores in the UK?, 34 Mammal Rev 212, 215, 219 (2004).

³⁹ Bowman, *supra* note 24, at 323.

⁴⁰ Carolina Lasén Díaz, The Bern Convention: 30 Years of Nature Conservation in Europe, 19(2) RECIEL 185, 187 (2010).

⁴¹ CBD Decision VI/23, Guiding principle 2.

⁴² European strategy on IAS, *supra* note 20, at 9.

⁴³ As a second approach.

Recommendations⁴⁴ which fall within the range of action plans made for the effective implementation of Article 11.2.b.⁴⁵

B. RANVICORA HAS VIOLATED ITS OBLIGATION UNDER CUSTOMARY INTERNATIONAL LAW [‘CIL’].

1. RANVICORA HAS VIOLATED ITS DUTY NOT TO CAUSE TRANSBOUNDARY HARM.

i. Ranvicora has caused transboundary harm to Arctos.

The *sic utero tuo ut alienum non laedas*⁴⁶ principle or the duty not to cause transboundary harm⁴⁷ is a rule of CIL⁴⁸ which has been recognized in CBD,⁴⁹ ICJ’s jurisprudence,⁵⁰ international

⁴⁴ Bern Recommendation 99 ¶2(2003); Bern Recommendation 158 ¶¶1, 3, 4, (2012).

⁴⁵ European Strategy on IAS, *supra* note 20, at 10.

⁴⁶ Xue Hanqin, TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW, 290 (2003); International Law Commission (‘ILC’), Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, with Commentaries, UN Doc A/56/10, II.2 YILC 148 art 3[1] (2001) [‘DAPTHHA Commentary’].

⁴⁷ United Nations General Assembly [‘UNGA’], *Stockholm Declaration on the Human Environment*, principle 21, UN Doc. A/CONF.48/14/Rev.1 (1972) [‘Stockholm Declaration’]; UNGA, *Rio Declaration on Environment and Development*, principle 2, UN Doc. A/CONF.48/14/Vol. I (1992) [‘Rio Declaration’]; United Nations Framework Convention on Climate Change preamble ¶ 8, 9 May 1992, 1771 U.N.T.S. 107 [‘UNFCC’].

⁴⁸ Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, 19, ¶ 29 (July 8) [‘Nuclear Weapons’].

⁴⁹ CBD, art. 3.

⁵⁰ Nuclear Weapons, *supra* note 48, at 242; Corfu Channel (UK v Albania), Judgment, 1949 ICJ Rep. 4 (9th April); Gabčíkovo–Nagymaros Project, (Hungary v Slovakia), 1997 ICJ Rep. 7, para 140 (25 September) [‘Gabčíkovo–Nagymaros’]; Pulp Mills on the River Uruguay, (Argentina v. Uruguay), 2010 ICJ Rep.14, para 101 (20 April) [‘Pulp Mills’]; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) and Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), 2015 I.C.J. Rep. 665, ¶¶113-120, (16 December) [‘Construction of Road’].

instruments⁵¹ and scholarly writings.⁵² States have a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.⁵³

The harm incurred must fulfill four elements to entail responsibility for transboundary harm⁵⁴:

a. Physical relationship between the activity and the damage caused

Damage to Arctos is evident from the continuous killing of the farm animals⁵⁵, human deaths⁵⁶ and attacks on *Trouwborst tern*⁵⁷ due to the Reintroduction close to the border.⁵⁸

b. Human causation

Human causation pertains to a reasonably proximate causal relation⁵⁹ and the present effects on the environment, livelihood and security of the citizens of Arctos is not attributable to any natural causes⁶⁰ but to the Reintroduction.

c. Transboundary movement of harmful effects

The reintroduction was carried out in Ranvicora and its ramifications were observed in Arctos which resulted in the aforementioned detriments to the Arctos's environment and citizens.⁶¹

⁵¹ Stockholm Declaration, principle 21; Rio Declaration, principle 2; UNGA Res 2995 (XXVII) para 1 (15 Dec. 1972).

⁵² Patricia Birnie et al., *INTERNATIONAL LAW & THE ENVIRONMENT*, 137 (3rd ed., 2009) [‘Birnie et al.’]; Hanqin, *supra* note 46, at 1; Phillippe Sands, *PRINCIPLE OF ENVIRONMENTAL LAW*, 242 (2nd ed. 2003) [‘Sands’]; Malcolm N. Shaw, *INTERNATIONAL LAW*, 851-53 (6thedn, 2008).

⁵³ Trail Smelter Arbitration (U.S.A. v Can.), 3 RIAA 1905 (1941), 1965 (16 April 1938). [‘Trail Smelter’].

⁵⁴ Hanqin, *supra* note 46, at 4; Oscar Schachter, *INTERNATIONAL LAW IN THEORY AND PRACTICE*, 366-68 (1991).

⁵⁵ Record ¶17.

⁵⁶ Record ¶21.

⁵⁷ Record ¶17.

⁵⁸ Record ¶13.

⁵⁹ Hanqin, *supra* note 46, at 6.

⁶⁰ See Claim I(1)(ii).

⁶¹ Hanqin, *supra* note 46, at. 8-9.

d. Significant harm.

Significant harm refers to ‘something more than detectable’ but the harm need not be serious or substantial to be actionable.⁶² The harm which can be measured by factual and objective standards is sufficient.⁶³ The human deaths⁶⁴, damage to property⁶⁵ and endangered species⁶⁶ by the attacks of grey bears constitutes harm more than detectable and are objectively qualified in this case.

ii. Ranvicora failed to fulfill its due diligence obligations

Due diligence, as a customary rule, constitutes appropriate measures to prevent significant transboundary harm, if there is a risk of such harm.⁶⁷ Due diligence obligation warrants to (i) conduct an Environmental Impact Assessment (EIA) to assess the risk of significant transboundary harm arising from the activity;⁶⁸ (ii) notify and consult the potentially affected State;⁶⁹ and (iii) continuously monitor the ongoing effects of the activity on the environment throughout its duration.⁷⁰

Firstly, the risk of significant harm to the potentially affected state is enough to require an obligation to conduct EIA⁷¹. In light of the experiences⁷² of similar reintroduction of bears⁷³, it has

⁶² DAPTHHA Commentary, *supra* note 46, at para 4.

⁶³ Construction of Road, *supra* note 50, ¶104.

⁶⁴ Record ¶21.

⁶⁵ Record ¶17.

⁶⁶ Record ¶17.

⁶⁷ Pulp Mills, *supra* note 50, para 55-56; Gabčíkovo-Nagymaros, *supra* note 50 ¶50, 140; DAPTHHA Commentary *supra* note 46, art 3.

⁶⁸ Rio Declaration, principle 19; Construction of Road, *supra* note 50 at ¶161.

⁶⁹ Construction of Road, *supra* note 50, ¶104.

⁷⁰ Pulp Mills, *supra* note 50, ¶205.

⁷¹ Pulp Mills, *supra* note 50, ¶204; Construction of Road, *supra* note 50, ¶104.

⁷² Bern Convention, art. 11.2.a.

⁷³ Joseph D Clark, Aspects and Implications of Bear Reintroduction, in REINTRODUCTION OF TOP-ORDER PREDATORS, 126-145 (Matt W. Hayward & Michael J. Somers eds., 2009) [‘Clark, 2009’]; Reintroducing Large

been established that bears migrate hundreds of kilometers in their reintroduced habitats⁷⁴. Similarly, the reintroduction of a species, especially beyond its historic range⁷⁵, is characterized with severe impacts on native ecosystem such as ours⁷⁶, including extinction of species, and to the economy as well⁷⁷. The likelihood of these significant harms⁷⁸ establishes that the EIA for this project should have identified these obvious risks⁷⁹ as the grey bears were reintroduced just within 50 kilometers of Arctos's border⁸⁰.

Secondly, Ranvicora has failed its obligation to notify and consult⁸¹ with Arctos by affirming the risk of significant harm.

Thirdly, Ranvicora has failed its procedural obligation to continuously monitor the effects of the project as part of the EIA process⁸². Ranvicora reasoned grey bear's historic migration only within its territory to exclude the risk assessments of transboundary harm.⁸³ However, no actions were furthered even after the confirmation of first sightings of grey bears in Arctos in 2017⁸⁴ and the subsequent impacts.

Carnivores to Britain, Victoria Forder on Behalf of Wildwood Trust, 2, 17(2006), <http://wildwoodtrust.org.uk/files/reintroduction-large-carnivores.pdf> ['Reintroducing Large Carnivores in Britain'].

⁷⁴ Joseph D. Clark, et al., *Bear Reintroductions: Lessons and Challenges: Invited Paper*, 13 *Ursus* 154, 156 (2002).

⁷⁵ IUCN, 2013, *supra* note 34, at VIII.

⁷⁶ Record ¶¶17, 21.

⁷⁷ IUCN 2013, *supra* note 34, at 2.

⁷⁸ Reintroduction of large carnivores in Britain, *supra* note 73, at 17; Clark, 2009, *supra* note 73, at 4

⁷⁹ JOANNA KULESZA, *DUE DILIGENCE IN INTERNATIONAL LAW*, 255 (2016).

⁸⁰ Record ¶14.

⁸¹ Construction of Road, *supra* note 50, ¶104.

⁸² Pulp Mills, *supra* note 50, ¶205; Construction of Road, *supra* note 50, ¶161; R. Higgins, *General Course on Public International Law*, 207, 5 *Recueil Des Cours* 9, (1991).

⁸³ Record ¶12.

⁸⁴ Record ¶16.

2. RANVICORA HAS VIOLATED THE PRECAUTIONARY PRINCIPLE UNDER CIL⁸⁵ AND RELEVANT TREATIES⁸⁶

The precautionary principle⁸⁷ mandates the states to anticipate, avoid and mitigate the threats to the environment⁸⁸ and requires the states to adopt precautionary measures where there are threats of serious or irreversible damage even if the extent of impact has not been proved scientifically.⁸⁹

IAS⁹⁰ are major threat to biodiversity⁹¹ and are considered to be the second-most cause of biodiversity loss.⁹² In light of these risks, the lack of full scientific certainty as to the extent of possible harm should not prevent Ranvicora from adopting precautionary measures to avoid serious and irreversible damage⁹³. The human deaths⁹⁴, continuous killing of endangered and endemic *Trouwborst tern*⁹⁵ possessing a risk of extinction, constitutes an irreversible damage to Arctos.

⁸⁵ Advisory Opinion to the Seabed Chamber of the International Tribunal of the Law of the Sea, 131,135 (2011) [Seabed Mining (opinion)]; Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan, August), ITLOS Case No. 3, Award of 4 Aug 2000, ¶71 ['Southern Bluefin Tuna'].

⁸⁶ CMS resolution 7.2 (2017).; CBD, preamble ¶9; *CBD, Decision X/33* ¶8 (w).; Bern Convention, Recommendation 158 (2012). ; UNFCCC, Art 3 ¶3.

⁸⁷ Rio Declaration, Principle 15.

⁸⁸ IUCN, Guidelines for Applying the Precautionary Principle, International Union For The Conservation Of Nature 1, (2007) http://cmsdata.iucn.org/downloads/ln250507_ppguidelines.pdf.

⁸⁹ Rio Declaration, Principle 15, CBD Preamble ¶9, UNFCCC, 49 art. 3 ¶3.

⁹⁰ See Claim I(1).

⁹¹ *CBD, Decision VI/23*.

⁹² European Strategy on IAS, *supra* note 20, at 7; Joel Greenberg, A FEATHERED RIVER ACROSS SKY: THE PASSENGER PIGEON'S THE FLIGHT EXTINCTION, 202 (2014); IUCN 2013, *supra* note 34, at 15.

⁹³ Phillipe Sands Nicholas Ashford, et. al., Wingspread Statement on the Precautionary Principle, WHO, 1 (1998).

⁹⁴ Record ¶21.

⁹⁵ Record ¶17.

II. THE FEDERAL STATES OF ARCTOS DID NOT VIOLATE INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO RANVICORA'S REINTRODUCTION OF GREY BEARS

A. ARCTOS HAS ADHERED TO ITS TREATY OBLIGATIONS⁹⁶ WITH RESPECT TO ITS RESPONSES TO RANVICORA'S REINTRODUCTION OF GREY BEARS.

1. ARCTOS HAS NOT VIOLATED ITS OBLIGATION UNDER CMS.

i. Arctos is not a range state of grey bears under CMS and accordingly bears no obligations:

CMS establishes obligations concerning taking of migratory species listed in Appendix I only to the range states of such species.⁹⁷ Range state to a particular migratory species includes any states exercising jurisdiction over any part of the range⁹⁸, which comprises its normal migration route only.⁹⁹ The normal migration route should be discerned accounting the definition of "migratory species" which requires a species to "cyclically and predictably" cross national jurisdictional boundaries to be considered migratory¹⁰⁰. 'Cyclically' relates to a cycle of any nature, such as astronomical (circadian, annual etc.), life or climatic, and of any frequency¹⁰¹. Grey bears, in this case, do not exhibit migration resembling such cyclic nature. Furthermore, the phrase "cyclically

⁹⁶ VCLT, art. 26.

⁹⁷ CMS, art. III(5); Bowman et al., *supra* note 24, at 543.

⁹⁸ CMS, art. I(1)(h).

⁹⁹ CMS, art. I(1)(f).

¹⁰⁰ CMS, art. I(1)(a).

¹⁰¹ CMS, CMS/Conf.2.12.2 Annex, ¶1.

and predictably" replaced the word "periodically" from the earlier drafts¹⁰², with an intent to exclude relatively sedentary species near borders that might cross national frontiers on a random basis¹⁰³.

Similarly, Arctos does not constitute Grey Bear's range due to climate change induced range-shift.¹⁰⁴ Even if it did, the definition of range within CMS does not include those states where the same species is *predicted* to occur in the near future as a consequence of climate change.¹⁰⁵ In any case, *travaux preparatoires* suggests that the phrase "cyclically and predictably" should be interpreted conjunctively¹⁰⁶ excluding Arctos as a range state.

ii. Alternatively, Arctos's responses qualify as exceptions under Article III(5)(d) of the Convention:

The text of Article III(5) is an open-ended clause which, like in other conservation treaties¹⁰⁷, permits the taking of migratory species under its exceptions if 'extraordinary circumstances so require.'¹⁰⁸ Although the phrase "so require" indicates the need for lack of reasonable alternative¹⁰⁹, extraordinary circumstances contemplate a vast range of situations, especially when

¹⁰² See, for example, the 1978 Second Revised Draft Convention, reprinted in Convention on the Conservation of Migratory Species of Wild Animals (Federal Ministry of Food, Agriculture and Forestry, Federal Republic of Germany, 1979).

¹⁰³ Bowman et al., *supra* note 24, at 540.

¹⁰⁴ See Claim I.A.1(ii).

¹⁰⁵ Arie Trouwborst, *Transboundary Wildlife Conservation in A Changing Climate: Adaptation of the Bonn Convention on Migratory Species and Its Daughter Instruments to Climate Change*, ISSN 1424-2818, 282, <https://www.mdpi.com/1424-2818/4/3/258>.

¹⁰⁶ Bowman et al., *supra* note 24, at 540; VCLT art 32.

¹⁰⁷ Convention on Wetlands of International Importance especially as Waterfowl Habitat art. 4.9, Feb. 2 1971, 996 U.N.T.S. 245; Bern Convention art. VII.

¹⁰⁸ CMS, art. III(5)(d).

¹⁰⁹ VCLT, art. 31(1); Arie Trouwborst, Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species, 2 Cornell Intl L. Jour. Online 42, 42 (2014) [Trouwborst 2014].

read in the context of Article III as a whole¹¹⁰ and Arctos can accord a considerable degree of discretion in determining when it is invoked¹¹¹. The imminence of threat¹¹² to life and property meant Arctos required prompt actions with no other discernible alternatives, especially with Ranvicora's refusal to cooperate.¹¹³

The government of Western Australia invoked this exception in 2014 to justify the culling of Great White Sharks¹¹⁴, a species designated under Appendix I of CMS¹¹⁵ in light of sharp rise in shark attacks on human stating it as "a matter of public safety of national significance¹¹⁶ which is a situation similar to ours.¹¹⁷ The CMS's purpose of conservation is not an end in itself; but rather it anthropocentric¹¹⁸ and "for the good of mankind".¹¹⁹

a. The exception was precise as to content, limited in space and time, and does not operate to the disadvantage of the Grey.

First, the exception was precise to content: only, the invasive grey bears have been killed.¹²⁰

¹¹⁰ VCLT, art. 31(1); Oliver Dörr, Kirsten Schmalenbach (eds), VIENNA CONVENTION ON THE LAW OF TREATIES; A COMMENTARY, 543, (2012).

¹¹¹ Trouwborst 2014, *supra* note 109, at 42.

¹¹² Record ¶21.

¹¹³ Record ¶19.

¹¹⁴ Tom Arup, Greg Hunt Grants Western Australia Exemption for Shark Cull Plan, The Sydney Morning Herald (Jan. 21, 2014) <https://www.smh.com.au/politics/federal/greg-hunt-grants-wa-exemption-for-shark-cull-plan-20140121-315zk.html>.

¹¹⁵ CMS Appendix I effective 26 January 2018, https://www.cms.int/sites/default/files/basic_page_documents/cms_cop12_appendices_e_0.pdf.

¹¹⁶ Australian National Report to CMS, UNEP/CMS/COP11/Inf.20.3.AU, 52 (2014).

¹¹⁷ Record ¶17.

¹¹⁸ Bowman et al., *supra* note 24, at 537.

¹¹⁹ CMS, preamble ¶1.

¹²⁰ See, Claim I.A.1.

Second, the exception is limited in space and time: the exception is limited in Arctos's territory and is regulated by an emergency regulation.¹²¹

Third, the exception was not disadvantageous to grey bears: Article III used the word "disadvantageous" instead of "unfavorable", without mentioning "conservation status". The threshold for favourable conservation status is that the grey bear population reach historic abundance¹²², which is not required under the proviso. Rather, in the context of the exception permitting taking, "disadvantage" is better construed as requiring the grey bear to possess and ecologically viable population.¹²³ Taking invasive nature of grey bear¹²⁴ and the unharmed population into account,¹²⁵ the exception qualifies this threshold. It is a relatively high low threshold besides historic abundance¹²⁶ and is, therefore, consistent with the CMS's purpose of conservation.¹²⁷

2. ARCTOS'S RESPONSES WERE IN COMPLIANCE WITH ITS OBLIGATIONS UNDER CBD:

i. Arctos's responses are not in violation under Article 1 of CBD:

Conservation of biological diversity and sustainable use of biological components comprise two of the three objectives of CBD¹²⁸ both of which have been complied with by Arctos.

¹²¹ Record, ¶21.

¹²² CMS, art I(1)(c)(4); VCLT, art 31; Robert L Fischman & Jeffrey B Hyman, *The Legal Challenge of Protecting Animal Migrations as Phenomena of Abundance*, 28 Va Env'tl LJ 173, 199 (2010) ['Fischman and Hyman'].

¹²³ Fischman and Hyman, *supra* note 122, at 197.

¹²⁴ See, Claim I.A.1.

¹²⁵ Record ¶10.

¹²⁶ Fischman and Hyman, *supra* note 122, at 195.

¹²⁷ CMS, preamble; VCLT, art. 31.

¹²⁸ CBD, art. 1.

a. Arctos's responses are compatible with the objective of biological diversity conservation:

Different conventional frameworks, including CBD, recognize the possible invasive nature of reintroduced species.¹²⁹ IAS have been recognized as causing significant harm to biodiversity¹³⁰. For example, the brown tree snake (*Boiga irregularis*), as an invasive alien species, has been considered responsible for the extinction of 10 bird species on the island of Guam where it was introduced in the 1940s¹³¹. COP Decision VIII/27 of CBD, which may have considerable probative value¹³² since both disputing parties have consented to it¹³³, has warrants state parties to contain the spread of IAS for the conservation of biological diversity.¹³⁴ Thus, Ranvicora's responses to protect the domestically protected endemic endangered species *Trouwborst tern*¹³⁵ is in full compliance of this provision.

b. Arctos's responses are in compliance with the objective of sustainable use:

The principle of sustainable use¹³⁶ and forms a part of international custom¹³⁷ of the principle of sustainable development¹³⁸. The principle of sustainable development¹³⁹ puts human beings as the

¹²⁹ CMS resolution 11.28; Recommendation No. 158 (2012) and Recommendation No. 159 (2012).

¹³⁰ CBD, UNEP/CBD/COP/DEC/VIII/27 (15 June 2006) [CBD Decision VIII/27].

¹³¹ IUCN, Invasive Species and Sustainable Development, <https://www.iucn.org/resources/issues-briefs/invasive-alien-species-and-sustainable-development>.

¹³² Whaling in the Antarctic (Australia v Japan: New Zealand Intervening), 2014 I.C.J. Rep 226, ¶46 (31 March).

¹³³ Clarifications ¶5.

¹³⁴ CBD Decision VIII/27 ¶¶4, 5, 16, 18, 19, 29, 38.

¹³⁵ Record ¶17.

¹³⁶ CBD, arts. 1, 10.

¹³⁷ Gabčíkovo–Nagymaros *supra* note 50, Separate Opinion, Vice President Weeramantry, at 89.

¹³⁸ Philippe Sands, *International Courts and the Application of the Concept of Sustainable Development*, 3 Max Planck UNYB 385, 403 (1999).

¹³⁹ Richard L. Revesz, Philippe Sands and Richard B. Stewart (eds), *Environmental Law, the Economy and Sustainable Development: The United States, the European Union and the International Community* (2000)374.

beneficiaries of the application of such principle.¹⁴⁰ Furthermore, the grey bears are IAS¹⁴¹ under CBD.¹⁴² IAS can be detrimental to small farm holders in agricultural productions and the economy as a whole¹⁴³ and been held responsible in impeding the attainment of Sustainable Development Goals¹⁴⁴ by IUCN.¹⁴⁵ Similarly, sustainable use requires conservation of biological diversity and IAS are considered a prominent threat to it¹⁴⁶.

iii. Arctos's responses have not violated Article 8 of CBD:

Article 8 places an obligation on Contracting Parties to conserve, as far as possible and appropriate, its biological resources with a view to ensuring their sustainable use. Parties must also promote the protection of ecosystems within their territories and ensured that viable populations of species are maintained in their natural habitats.¹⁴⁷ However, Article 8(h) requires a party to control or eradicate those alien species which threaten ecosystems, habitats or species. States are afforded considerable latitude in implementing measures under article 8, as suggested by the aspirational language "as far as possible and as appropriate".

¹⁴⁰ Rio Declaration, Principle 1; CBD, Preamble last recital; DINAH SHELTON and ALEXANDRE KISS, A GUIDE TO INTERNATIONAL LAW, 98 (2007).

¹⁴¹ Record ¶23.

¹⁴² CBD, art. 8(h); CBD Decision VIII/27.

¹⁴³ Centre for Agricultural and Biosciences International Invasive Species: A Hidden Threat to Sustainable development, available at <https://www.invasive-species.org/wp-content/uploads/sites/2/2019/02/Invasive-Species-The-hidden-threat-to-sustainable-development.pdf>.

¹⁴⁴ UN Sustainable development Goals 2015, https://www.undp.org/content/dam/undp/library/corporate/brochure/SDGs_Booklet_Web_En.pdf.

¹⁴⁵ IUCN, Invasive Species and Sustainable Development, <https://www.iucn.org/resources/issues-briefs/invasive-alien-species-and-sustainable-development>.

¹⁴⁶ See, Claim I.A.1(i).

¹⁴⁷ CBD, art. 8(e).

Furthermore, the obligation to conserve biological components in their natural habitats must be interpreted in light with the fact that the conservation efforts outside historical range comes with the possibility of a species being invasive in the context of Article 8 as a whole¹⁴⁸.

3. ARCTOS HAS NOT BREACHED ITS OBLIGATIONS UNDER THE BERN CONVENTION

i. Arctos has not violated Article 1.

Article 1 requires state parties to conserve wild flora and fauna and their natural habitats. However, the grey bears entering into the territory of Arctos are translocated outside their natural habitat¹⁴⁹ and have been killing the endangered *Trouwborst tern* in Arctos.¹⁵⁰ Arctos's response to the Reintroduction therefore fulfils the objective of the convention so as to protect an endangered species as the convention also aims to protect the species not listed in its Appendix¹⁵¹ when seen in light of the extent of harm of an IAS to wildlife conservation¹⁵² and the convention's requirement to eradicate such species¹⁵³.

ii. Arctos has not violated Article 2

Article 2 requires Contracting parties to maintain the population of wild fauna at a level which corresponds to ecological and cultural requirements. Ecological conservation is the overriding aim

¹⁴⁸ VCLT art. 31(1).

¹⁴⁹ Record ¶13.

¹⁵⁰ Record ¶17.

¹⁵¹ Bern Convention, art. 2; Bowman, *supra* note 24, at 299.

¹⁵² See, ClaimII.A.2.i(a).

¹⁵³ Bern Convention, art. 11(2)(b); Bern Convention, Recommendation 99 (2003); European Strategy on IAS, *supra* note 20, at 9; VCLT, art. 31(1).

of the convention¹⁵⁴, not human culture or economies.¹⁵⁵ Article 2, as the main obligation that follows from the aim in Article 1(1)¹⁵⁶, should be interpreted¹⁵⁷ to place ecological conservation above the cultural consideration including the economic cost of reintroduction.¹⁵⁸ Arctos is required to regulate invasive grey bear populations¹⁵⁹ under Article 2 as the provision demands the regulation of populations having adverse effect on other wildlife species¹⁶⁰ as done with the action plan for humane killing of yellow-legged gulls for their harmful impact upon native Audouin's gull.¹⁶¹

iii. In any case, Arctos' actions qualify as exceptions under Article 9, thus exempting it from the liabilities under Article 6 and 8.

Article 9 of the Bern Convention exempts state parties to carry out obligations under Articles 6 and 8. Its *travaux préparatoires* concluded that the killing of the species for humane or humanitarian reasons might be required in emergency cases where exceptions would have to be made without fulfilling all conditions and that the convention did not require a separate provision

¹⁵⁴ Bern Convention, art. 1.

¹⁵⁵ Linnell JDC et al., *When is it acceptable to kill a strictly protected carnivore? Exploring the legal constraints on wildlife management within Europe's Bern Convention*, 21 *Nature Conservation* 129, 140 (2017), <https://doi.org/10.3897/natureconservation.21> [Linnell JDC et al.].

¹⁵⁶ Explanatory Report to the Bern Convention, ETS-No. 104, art.2 (1979) ['Explanatory Report'].

¹⁵⁷ VCLT, art. 31(1).

¹⁵⁸ Floor Freuke & Arie Trouwborst, *European Regional Approaches to The Transboundary Conservation of Biodiversity*, in *TRANSBOUNDARY GOVERNANCE OF BIODIVERSITY*, 128, 132 (Louis Kotze & Thilo Marauhn eds., Martinus Nijhoff Publishers, 2014).

¹⁵⁹ Bern Convention, art. 11(2)(b); VCLT art. 31(1).

¹⁶⁰ Bowman et al., *supra* note 24, at 301.

¹⁶¹ B. Heredia, L. Rose and M. Painter (eds.), *GLOBALLY THREATENED BIRDS IN EUROPE: ACTION PLANS* (Council of Europe, 1996). This species is currently classified as 'near threatened'.

for this¹⁶². Therefore, Artcos's killing of the grey bear under Article 9 to protect human lives should be interpreted in such line¹⁶³.

Textually, Article 9 provides two cumulative¹⁶⁴ pre-conditions to invoke exception: a) there is no other satisfactory solution b) the exception will not be detrimental to the survival of the population concerned. Arctos has satisfied both these conditions. The first condition requires to choose among the best possible alternative¹⁶⁵ and Arctos has satisfied it as eradication of IAS to minimize its impacts is considered the best possible solution over containment besides proactively preventing it.¹⁶⁶ Secondly, the exception is not detrimental to the species, as Bern Convention does not overlook geographically separate population to ascertain conservation status¹⁶⁷ and Arctos has invoked the exception only to the invasive grey bear population.

With these pre-conditions satisfied, three non-cumulative¹⁶⁸ purposes are applicable as exceptions under Article 9: first, to protect fauna, as the grey bear's consumption of the eggs and nestlings of the *Trouwborst tern*, an endangered endemic species in Arctos necessitates protection¹⁶⁹; second, to prevent serious damage to livestock and properties that have already occurred¹⁷⁰ and is further likely to extend¹⁷¹; and third, whereby wide discretion is allowed¹⁷² to fulfil the duty of a sovereign

¹⁶² Explanatory Report, *supra* note 156, para 39; Linnell JDC et al, *supra* note 155, at 149 .

¹⁶³ VCLT, art. 32 .

¹⁶⁴ Bern Convention, tpvs02_2011.doc, Appendix ¶7 (2011) [‘Bern Convention, Resolution 2.2’].

¹⁶⁵ Bern Convention, Resolution 2.2 ¶7; Bowman et al., *supra* note 24, at 319.

¹⁶⁶ European Strategy on IAS, *supra* note 20, at 8.

¹⁶⁷ Bowman et al., *supra* note 24, at 303; Explanatory Report, *supra* note 156, Appendices.

¹⁶⁸ Bern Convention, Resolution 2.2’, Appendix ¶ 5.

¹⁶⁹ Record ¶17.

¹⁷⁰ Record ¶17.

¹⁷¹ Bern Convention, Resolution 2.2, ¶16.

¹⁷² Bern Convention, art. 9(1)(iii); Bowman et al., *supra* note 24, at 318.

state to protect the lives and properties in the public interest¹⁷³, with grey bears mauling children¹⁷⁴ and inflicting damages to properties of its citizens¹⁷⁵.

B. ARCTOS HAS NOT VIOLATED THE DUTY NOT TO CAUSE TRANSBOUNDARY HARM.

1. Arctos has not violated its due diligence obligations concerning transboundary harm.

Due diligence is a CIL¹⁷⁶ relating to standards of care to be taken by states to prevent transboundary harm.¹⁷⁷ Due diligence requires a state to carry out an EIA when there is a risk of significant transboundary harm¹⁷⁸ and notify and consult to the potentially affected state after such risk is confirmed.¹⁷⁹ However, this Court has noted recently in *Costa Rica v. Nicaragua*, that an obligation to conduct an EIA does not arise when there is no risk of significant harm.¹⁸⁰

Arctos's responses do not bear risk of significant harm as such IAS reintroduced, in a short time, do not establish food-web in the ecosystem¹⁸¹, and the removal of IAS can only augment protection of other species from predation and competition.¹⁸²

¹⁷³ Birnie et al., *supra* note 52, at 40; Julio Barboza, THE ENVIRONMENT, RISK AND LIABILITY IN INTERNATIONAL LAW, 133 (Martinus Nijhoff Publishers, 2011).

¹⁷⁴ Record ¶21.

¹⁷⁵ Record ¶17.

¹⁷⁶ See, *supra* note 45-51, 66.

¹⁷⁷ *Trail Smelter*, *supra* note 51, 1965.

¹⁷⁸ Rio Declaration, art 19; Construction of Road, *supra* note 50, ¶161.

¹⁷⁹ Construction of Road, *supra* note 50, ¶104.

¹⁸⁰ *Ibid*, ¶105.

¹⁸¹ Patrice David et. al, *Impacts of Invasive Species on Food Webs: A Review of Empirical Data*, 56 *Advances in Ecological Research*, 1, 5, ISSN 0065-2504 (2017), <https://doi.org/10.1016/bs.aecr.2016.10.001>.

¹⁸² Judith H. Myers et. al, *Eradication Revisited: Dealing with Exotic Species*, 15 *TREE* 316, 316-18 (2000).

Accordingly, Arctos was not required to notify and consult Ranvicora as the obligation to do so arises when an EIA is required to ascertain risk of harm.¹⁸³

Furthermore, due diligence is an obligation of conduct, not result.¹⁸⁴ A state is required to exert its best possible efforts to minimize the risk¹⁸⁵ and a way to ensure such compliance is to conduct within its treaty obligations¹⁸⁶, to which Arctos diligently complies.

2. Arctos did not cause significant transboundary harm.

The threshold of significant harm, although considered to be more than detectable¹⁸⁷ or susceptible,¹⁸⁸ should be factually and objectively established¹⁸⁹. Reduction of grey bear population is not a harm in itself, primarily because a newly reintroduced IAS does not show compatibility with the native species and their eradication is beneficial to the ecosystem.¹⁹⁰ The obligations under the relevant treaties¹⁹¹ also indicate that eradication of invasive grey bears does not cause environmental harm. As regards economic cost of reintroduction, the obligation regarding transboundary harm does not entail economic harm¹⁹².

¹⁸³ Construction of Road, *supra* note 50, ¶108.

¹⁸⁴ Pulp Mills, *supra* note 50, ¶ 187; *Seabed Mining (Opinion)*, *supra* note 85, at ¶110; Birnie et al., *supra* note 52, at 218.

¹⁸⁵ DAPTHHA Commentary, *supra* note 46, article 3, at para. 7.

¹⁸⁶ Pulp Mills, *supra* note 50, ¶197; R. Higgins, *General Course on Public International Law*, 5 RECUEIL DES COURS 9, 207 (1991).

¹⁸⁷ DAPTHHA Commentary, *supra* note 46, para 4.

¹⁸⁸ Construction of Road, *supra* note 50, ¶190.

¹⁸⁹ Construction of Road, *supra* note 50, ¶192.

¹⁹⁰ Franck Chourchamp et al., *Mammal invaders on islands: impact, control and control impact*, 78 Biological Reviews, 347, 383 (2003); Piero Genovesi, *Eradications of invasive alien species in Europe: a review*, 7 Biological Invasions, 127, 133 (2005).

¹⁹¹ CMS, art. III (4)(c); CBD, art. 8(h); Bern Convention, art. 11(2)(b).

¹⁹² Hanqin, *supra* note 46, at 5.

C. IN ANY CASE, ARCTOS'S RESPONSES QUALIFY AS COUNTERMEASURES
UNDER INTERNATIONAL LAW.

Arctos's responses, are to be precluded from any wrongfulness, as such responses qualify as countermeasures taken in response to the international wrongful act of Ranvicora.¹⁹³ For a countermeasure to be justifiable, it must be:

1. Taken in response to a previous international wrongful act of another state¹⁹⁴

The aforementioned treaty and CIL violations of Ranvicora serve the existence of a prior wrongful act, which is a prerequisite for the adoption of countermeasures.¹⁹⁵

2. Directed against that state¹⁹⁶

Arctos can direct its countermeasure against Ranvicora¹⁹⁷ as long as Ranvicora has not ceased¹⁹⁸ its wrongful activity and not made reparation of the injury caused.¹⁹⁹ The Reintroduction is yet to be ceased and compensation yet to be paid as of now.²⁰⁰

¹⁹³ ILC, Articles on Responsibility of States for Internationally Wrongful Acts, GA Res 56/83, UN Doc A/RES/56/83, art. 22 (2002), ('ARSIWA'); J. Combacau and D. Alland (1985), "'Primary" and "Secondary" Rules in the Law of State Responsibility: Categorizing International Obligations', Netherlands Yearbook of International Law in Rene Provost (ed), State Responsibility in International Law, Routledge Publications, 2016, New York, USA, at 86.

¹⁹⁴ Gabčíkovo–Nagymaros, *supra* note 50, ¶83.

¹⁹⁵ Portuguese Colonies (Naulilaa incident), II RIAA, 1057 ['Naulilaa Case']; Special Arbitral Tribunal, Cysne (Portugal v. Germany), II RIAA, 1057 (1930) ['Cysne Case'].

¹⁹⁶ Gabčíkovo–Nagymaros, *supra* note 50, ¶83.

¹⁹⁷ ILC, Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, UN Doc A/56/10, II.2 YILC 31, 130 para 4 (2001) ('DARSIWA Commentary').

¹⁹⁸ ARSIWA, *supra* note 193, art. 30(a).

¹⁹⁹ *Ibid.* art. 34.

²⁰⁰ Record ¶¶22, 26.

3. Proportionate²⁰¹

Proportionality is to be equated by means of some degree of equivalence with the alleged breach²⁰² and the ICJ also recognizes that the effects of a countermeasure must be commensurate²⁰³ with the injury suffered.²⁰⁴ Proportionality must rather be assessed in light of 'qualitative' factors such as the interest protected by the measure taken and the seriousness of the breach²⁰⁵ i.e. the violation of multiple international environmental treaties and customs by Ranvicora in our case.

4. Reversible²⁰⁶

Reversibility of the countermeasure is possible²⁰⁷ here as Arctos's regulation mandating the killing of bears, can be repealed once Ranvicora ensures the cessation and restitution of the wrongful act.

²⁰¹ Gabčíkovo–Nagymaros, *supra* note 50, ¶87.

²⁰² Cysne Case, *supra* note 195, ¶83.

²⁰³ Christian J. Tams, Law-making in complex process: the World Court and the modern law of State responsibility, in *Sovereignty, Statehood and State Responsibility, Essays in Honour of James Crawford*, 300 (Christine Chinkin ed., CUP, 2015).

²⁰⁴ Gabčíkovo–Nagymaros, *supra* note 50, ¶¶85, 87.

²⁰⁵ DARSIVA Commentary, *supra* note 197, at 135 ¶6.

²⁰⁶ Gabčíkovo–Nagymaros, *supra* note 50, ¶87.

²⁰⁷ DARSIVA Commentary, *supra* note 197, at 131 ¶9.

CONCLUSION AND PRAYERS

The Federal States of Arctos respectfully the Court to adjudge and declare that:

- I. The Republic of Ranvicora violated international law with respect to the Reintroduction.
- II. The Federal States of Arctos did not violate international law with respect to its responses to the Reintroduction.