IN THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

QUESTIONS RELATING TO PRIOR INFORMED CONSENT AND BENEFIT SHARING IN THE CONTEXT OF DE-EXTINCTION

General List No. 303

ANECOYON
Applicant

v.

RIDUS
Respondent

MEMORIAL FOR THE APPLICANT

THE THIRTIETH ANNUAL
STETSON INTERNATIONAL ENVIRONMENTAL
MOOT COURT COMPETITION

2025-2026

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TABLE OF ABBREVIATIONS

¶	Paragraph
§	Section
Access and benefit-sharing	ABS
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Beth Shapiro, *Pathways to De-extinction: How Close Can We Get to Resurrection of an Extinct Species?,* FUNCTIONAL ECOLOGY (2016).	Shapiro
Claudia Annacker, *The Legal Régime of Erga Omnes Obligations in International Law*, 46 AUSTRIAN J. PUB. & INT'L L. 131 (1994)	Annacker
Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208	CPB
Convention on Biological Diversity, June 5, 1992, 1760 U.N.T.S. 79	CBD
CBD, Ad Hoc Open-Ended Working Group on Access and Benefit-Sharing, *Report of the Meeting of the Group of Legal and Technical Experts on Concepts, Terms, Working Definitions and Sectoral Approaches*, UNEP/CBD/WG-ABS/7/2 (2008)	CBD WG-ABS 7/2
CBD, Ad Hoc Tech Expert Group on DSI on GR, *Report*, CBD/DSI/AHTEG/2020/1/7 (2020)	DSI AHTEG Study 1/7
CBD, Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources, *Combined Study on Digital Sequence Information in Public and Private Databases and Traceability*, CBD/DSI/AHTEG/2020/1/4 (2020)	DSI AHTEG Study 1/4
CBD, Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources, *Digital Sequence Information on Genetic Resources: Concept, Scope, and Current Use*, CBD/DSI/AHTEG/2020/1/3 (2020)	DSI AHTEG Study 1/3
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CBD COP Dec. XIII/17, *Synthetic Biology*, annex I (2016).	CBD Dec. XIII/17
CBD COP Dec. 15/4, *Kunming–Montreal Global Biodiversity Framework,* annex, Goal C, Target 13 (2022).	CBD Dec. 15/4
CBD COP Dec. 15/9, *Digital Sequence Information on Genetic Resources* (2022).	CBD Dec. 15/9
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CBD, Multilateral Mechanism for the Fair and Equitable Sharing of Benefits from the Use of Digital Sequence Information on Genetic Resources, Including the Cali Fund, *Terms of reference of the Cali Fund*, MMDSI/SC/2025/1/2 (2025).	Cali Fund Terms of Reference
CBD, Open-ended Working Group on the Post-2020 Global Biodiversity Framework, *Information Document: Digital Sequence Information on Genetic Resources,* CBD/WG2020/4/INF/4 (2020).	CBD WG2020/4/INF/4
Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Res. Conf. 5.10 (2022).	CITES Res. 5.10
Convention on International Trade in Endangered Species of Wild Fauna and Flora	CITES
Customary International Law	CIL
D. N. Hutchinson, *Solidarity and Breaches of Multilateral Treaties*, 59 BRIT. Y.B. INT'L L. 151 (1988)	Hutchinson
Declaration of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc. A/CONF.48/14	Stockholm Declaration
Digital Sequence Information	DSI
ELISA MORGERA, MATTHIAS BUCK & ELSA TSIOUMANI, UNRAVELING THE NAGOYA PROTOCOL: A COMMENTARY ON THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING TO THE CONVENTION ON BIOLOGICAL DIVERSITY (2014).	Morgera Commentary

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Genetically Modified Organism	GMO
Gurdial Singh Nijar, *The Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing: What is New and What Are the Implications for Provider and User Countries and the Scientific Community?,* 6 LAW, ENV'T & DEV. J. 245 (2010)	Nijar
International Court of Justice	ICJ
International Union for Conservation of Nature	IUCN
Int'l Law Comm'n, *Conclusions on Subsequent Agreements and Subsequent Practice in Relation to the Interpretation of Treaties and Commentary* (2018)	ILC Conclusions on Subsequent Agreements
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IUCN SPECIES SURVIVAL COMMISSION, GUIDING PRINCIPLES ON CREATING PROXIES OF EXTINCT SPECIES FOR CONSERVATION BENEFIT (2016)	IUCN SSC Guiding Principles
Joseph R. Bennet et al., *Spending Limited Conservation Funds on De-extinction Could Lead to Net Biodiversity Loss*, 1 NATURE ECOLOGY & EVOLUTION 1 (2017)	Bennet et al.
K. Sachariew, *State Responsibility for Multilateral Treaty Violations: Identifying the 'Injured State' and Its Legal Status*, 35 NETH. INT'L L. REV. 273 (1988)	Sachariew
Kent Redford et al., *Synthetic Biology and the Conservation of Biodiversity*, 38 ORYX 330 (2014)	Redford et al.
Kunming-Montreal Global Biodiversity Framework, CBD/COP/16/INF/3 (Sept. 23, 2024)	GBF
League of Nations, Conference for the Codification of International Law, *Bases of Discussion*	LofN Bases of Discussion

Living Modified Organism	LMO
M. N. SHAW, INTERNATIONAL LAW (9th ed. 2021).	Shaw
Mutually Agreed Terms	MAT
Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity, Oct. 29, 2010, 3019 U.N.T.S. 151	NP
p.	Page
P. SANDS, J. PEEL, A. FABRA, & R. MACKENZIE, PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW (4th ed. 2018).	Sands and Peele, Principles
Prior Informed Consent	PIC
Research & Development	R&D
Rio Declaration on Environment and Development, June 14, 1992, U.N. Doc. A/CONF.151/26 (Vol. I), annex I	Rio Declaration
Secretariat of the Convention on Biological Diversity, *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* (2002)	Bonn Guidelines
Stuart Pimm, *The Case Against Species Revival,* NAT'L GEOGRAPHIC (Mar. 12, 2013), https://www.nationalgeographic.com/adventure/article/130312--deextinction-conservation-animals-science-extinction-biodiversity-habitat-environment	Pimm
Thomas Greiber et al., AN EXPLANATORY GUIDE TO THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING (IUCN Env't Pol'y & L. Paper No. 83, 2012)	IUCN Explanatory Guide
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United Nations Conference on Environment and Development, *Agenda 21*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. II) (1993)	Agenda 21

United Nations Department of Economic and Social Affairs	UNDESA
Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331	VCLT

QUESTIONS PRESENTED

[I.A.] Whether Ridus' conduct complied with or violated the prior informed consent provisions of the CBD and the NP.

[I.B.] Whether Anecoyon's refusal to consent to de-extinction based on its objections is consistent with or contrary to the objectives of the CBD.

[II.A.] Whether DSI used for de-extinction activities constitutes "biotechnology" for purposes of the CBD and NP.

[II.B.] Whether the SAP is a user of DSI on genetic resources for purposes of CBD Decision 16/2 and whether its activities amount to commercial activity covered by a sector listed in CBD Decision 16/2.

STATEMENT OF JURISDICTION

On 14 July 2025, Anecoyon and Ridus submitted to the ICJ, by Special Agreement, their differences concerning questions relating to prior informed consent and benefit sharing in the context of de-extinction pursuant to Article 40(1) of the Statute of the ICJ. The Registrar of the Court has acknowledged receipt of the joint notification on 28 July 2025, and entered the case on the Court's General List as No. 303. Anecoyon and Ridus expressly accepted the jurisdiction of the Court and agreed not to contest it in the written or oral proceedings. They further requested this Honorable Court to adjudge their dispute in accordance with the rules and principles of international law, including any applicable treaties.

The Parties have agreed that the Judgment of the Court shall be final and binding and shall be executed in its entirety and in good faith.

STATEMENT OF FACTS

Anecoyon is a lower-middle income country with a population of 10 million, while its neighbor, Ridus, is a high-income state with a population of 55 million. Both were once provinces of the Kingdom of Mammuthus until their independence under the 1914 Treaty of Separation. The Indigenous Panthera people historically lived across both territories but now remain only in small communities in Ridus.

The Royal panther (*Puma royali*) once inhabited the region but went extinct approximately 6,000 years ago. Fossils have been discovered in both countries, with the best-preserved specimen found in Anecoyon. In 2009, Anecoyon loaned this fossil to the National Museum of Ridus for scientific research. In September 2022, the Museum extracted DNA from the fossil to create a reference genome and DSI for a planned "de-extinction" and rewilding project.

Anecoyon objected, citing ecological and ethical risks, and asserted that its PIC was required under the CBD and NP. Ridus disagreed, arguing that extinct species are not covered and that the fossil was obtained before the Protocol entered into force. In December 2023, Anecoyon enacted legislation prohibiting de-extinction projects and demanded return of the fossil, which Ridus complied with while continuing to sequence the genome.

In December 2024, Ridus announced the production of two panthers, Ixchel and Itzamna, which it considers Royal panthers. They are housed at the SAP, where visitors pay to view them, generating substantial revenue. Ridus plans to reintroduce future generations into the wild as part of a rewilding program. Anecoyon maintains that it never consented to the use of its genetic resources. The Parties also disagree on whether benefit-sharing obligations under CBD Decision 16/2 apply to the SAP. Unable to resolve the dispute, Anecoyon and Ridus submitted the matter to the ICJ by Special Agreement.

SUMMARY OF ARGUMENTS

First, Ridus' de-extinction project violates Anecoyon's right to PIC under the CBD and NP. Ridus breached the temporal mandate of "prior" consent by utilizing the Royal Panther's DNA before securing proper authorization. Furthermore, the State's actions violated the substantive mandate of "informed" consent because the 2009 loan agreement did not provide authorization for a novel de-extinction program, and an EIA cannot substitute for substantive consent. This reliance of Ridus on the prior loan agreement deviates from the explicit, ad hoc consent required by the CBD and the NP, as de-extinction does not fall within the implicitly consented term "scientific research." Anecoyon's refusal to consent is a valid exercise of their sovereign rights over genetic resources, consistent with the CBD. This refusal is further justified by the precautionary principle against introducing novel LMOs, arguing that the project constitutes an internationally wrongful act attributable to Ridus.

Second, Ridus' actions relating to benefit-sharing are in violation of international law. The use of DSI for the de-extinction project is argued to constitute "biotechnology" as defined under the CBD and NP, encompassing modern techniques like CRISPR utilized in the project. The Royal Panther DSI is a derivative of genetic resources, subject to utilization. The SAP, which monetizes the biotechnological product through public viewing, is classified as a commercial DSI user in a covered sector, mandating benefit-sharing. Irrespective of its legal status, SAP's extensive revenue confirms its commercial nature under various economic principles, surpassing the financial thresholds that trigger benefit-sharing obligations under the CBD and NP. Ultimately, Ridus' failure to ensure benefit-sharing by not compelling SAP to contribute is an internationally wrongful act attributable to the State of Ridus under ARSIWA, making Anecoyon an individually injured State.

ARGUMENTS

I. RIDUS' CONDUCT VIOLATES THE PROVISIONS ON PIC UNDER THE AUSPICES OF INTERNATIONAL LAW.

Ridus' de-extinction project disregards the fundamental requirement of PIC, a cornerstone of international environmental law. By extracting and utilizing the Royal Panther's DNA without Anecoyon's authorization, Ridus violated Anecoyon's right to PIC under the CBD and NP **[A]**. Anecoyon's refusal to consent is not arbitrary but is entirely consistent with the CBD's objectives of conservation **[B]**.

A. RIDUS' DE-EXTINCTION EFFORTS VIOLATED ANECOYON'S RIGHT TO PIC UNDER THE CBD AND NP.

Preliminarily, Ridus flagrantly violated Anecoyon's sovereign right to PIC by willfully extracting and exploiting the Royal Panther's genetic material without authorization which is a direct contravention of the CBD and NP. Ridus' extraction of the Royal Panther's DNA requires PIC under the CBD and NP **[1]**, Ridus' reliance on the 2009 loan agreement deviates from the intent and requirements of the CBD and NP **[2]**, and in any event, Ridus's continuation of the project after Anecoyon's explicit October 2023 refusal constitutes a separate and willful violation **[3]**.

1. Ridus' extraction of the Royal Panther's DNA requires PIC under the CBD and NP.

Ridus' conduct is a clear violation of Anecoyon's sovereign rights. The PIC regime is the foundational rule governing this dispute, as CBD Article 15.5 and NP Article 6.1 establish PIC as a non-derogable condition for access. Ridus violated both the temporal and substantive requirements of this regime.

a. Ridus' conduct violated the temporal mandate of "prior" under the CBD and NP.

Ridus conduct violated the temporal mandate embedded in the word "prior" under the CBD Article 15.5 and the NP Article 6.1. The phrase "PIC" is unambiguous: authorization must precede any access or utilization of genetic resources. By acting first and seeking consent later, Ridus subverted the very temporal safeguard designed to uphold State sovereignty over biological resources.

i. Ridus' conduct violated the temporal mandate under CBD, Article 15.5 and NP, Article 6.1 by virtue of the word "prior."

Article 15.5 of the CBD provides that access to genetic resources "shall be subject to PIC" of the provider State. Similarly, Article 6.1 of the NP mandates that such access shall occur only upon obtaining the PIC of the provider country. The Bonn Guidelines confirm that permission must be obtained before research commences.[1] The Protocol further defines "utilization of genetic resources" to include "R&D on the genetic or biochemical composition" of a resource, covering activities such as sequencing and DSI analysis.[2]

ii. Ridus violated this requirement by conducting utilization before authorization, depriving Anecoyon of its sovereign decision space.

Ridus extracted and sequenced the Royal Panther's DNA without first securing Anecoyon's consent (R.16), thereby nullifying Anecoyon's sovereign right to determine the terms of access.[3] The NP's requirement for MAT presupposes that such negotiation occurs *ex ante*.[4] By acting unilaterally, Ridus eliminated the provider State's opportunity to set conditions and exercise control over its genetic resources, constituting a direct breach of the temporal requirement

[1] *Bonn Guidelines*, ¶¶26-31.
[2] NP, art. 2(c).
[3] CBD, arts. 3, 15.1, .4–.5; MORGERA COMMENTARY, p.141.
[4] NP, arts. 6.1, 6.3(g); IUCN EXPLANATORY GUIDE, pp.83-85.

embodied in "prior."[5] As this utilization occurred after the Protocol's entry into force, it triggers mandatory compliance with PIC and MAT obligations regardless of when the fossil was acquired.[6]

iii. Ridus' defiance persisted even after Anecoyon's express warning, confirming a willful temporal breach.

Anecoyon explicitly instructed Ridus that "no further action regarding the DNA of the Royal Panther fossil and any derivative thereof should be taken without such consent" (R.18). Despite this clear directive, Ridus proceeded with genome sequencing (R.27), demonstrating not mere oversight but deliberate disregard of the temporal command of prior.[7] This continued utilization, in defiance of express notice, constitutes a willful and aggravated breach of the CBD and NP's temporal mandate.[8]

b. Ridus' conduct violated the substantive mandate of "informed" under CBD and NP.

Ridus' conduct violated the substantive mandate embedded in the word "informed" under the CBD Article 15.5, and the NP Article 6.1, as interpreted consistently with Article 31.1 of the VCLT. The "informed" standard establishes a substantive requirement of quality, disclosure, and good-faith transparency. Interpreted in light of the object and purpose of the CBD—to ensure the conservation and sustainable use of biodiversity—"informed" entails full and meaningful disclosure before authorization is granted.[9]

i. Disclosure must cover purpose, scope, methods, and ABS terms.

[5] MORGERA COMMENTARY, pp.164-68.
[6] NP, art. 15.1; Nijar, pp.245, 253-54.
[7] CBD, arts. 6.1, 15.1; MORGERA COMMENTARY, pp.165-67.
[8] IUCN EXPLANATORY GUIDE, pp.86-87.
[9] MORGERA COMMENTARY, pp.171-74.

The "informed" component of PIC requires that applicants disclose the intended purpose, scope, and methods of utilization, including potential research or commercial applications.[10] This encompasses disclosure of the specific purpose (de-extinction), the novel methods (genome editing and DSI), foreseeable environmental and ethical risks, and the proposed ABS terms consistent with the CBD and NP.[11] The Bonn Guidelines reinforce that PIC entails providing all relevant information so the provider State can make an informed decision before authorizing access.[12]

ii. <u>The 2009 loan agreement does not constitute informed authorization for a novel, high-risk de-extinction program.</u>

The 2009 loan's context—limited to "the opening of a museum wing devoted to the history of the *Panthera*" (C.A11)—demonstrates that Anecoyon's consent covered only a museum exhibition purpose, not unforeseen genetic R&D or de-extinction.[13] Under the VCLT, treaty terms and related instruments must be interpreted in good faith and in light of their context and object and purpose.[14] Similarly, the ICJ has held that a State cannot rely on "scientific research" as a pretext to evade treaty obligations; the good-faith character of such activities must be assessed objectively.[15] Hence, Ridus' unilateral repurposing of the 2009 loan into a de-extinction project constitutes an abuse of rights and a breach of the substantive "informed" requirement.

iii. <u>The conduct of an EIA, as a procedural tool, cannot substitute for the substantive consent required under PIC.</u>

[10] NP, art. 6.3(a)-(b); IUCN EXPLANATORY GUIDE, pp.89-90.
[11] *Bonn Guidelines*, ¶¶26-31.
[12] IUCN EXPLANATORY GUIDE, pp.88-91.
[13] MORGERA COMMENTARY, pp.168-70.
[14] VCLT, art. 31.1.
[15] Whaling in the Antarctic (Austl. v. Japan: N.Z. intervening), Judgment, 2014 I.C.J. Rep. 226.

Anecoyon's right to demand PIC is heightened by the precautionary principle,[16] given the "unknown ecological consequences" (R.18). The EIA is merely a procedural obligation arising from the duty of due diligence, not a grant of rights,[17] and Ridus' EIA was insufficient to satisfy the substantive requirements of PIC, a fact confirmed by Anecoyon's explicit rejection of its conclusions (C.A1).

2. Ridus' reliance on the 2009 loan agreement deviates from the intent and requirements of the CBD and NP.

Ridus' claim that the 2009 loan agreement satisfied the PIC requirement failed because the access it facilitated was neither prior nor informed.[18] Any limitation upon a State's sovereign authority must be clearly established and strictly construed, as restrictions on sovereignty cannot be presumed and must be proven by a valid legal basis.[19]

a. Both the CBD and NP require explicit, ad hoc consent, which an implicit inference from a prior agreement cannot satisfy.

The fundamental nature of PIC rules out any reliance on ambiguous, implied, or pre-existing consent. The phrase "PIC" inherently requires an explicit, clear, and unambiguous undertaking.[20] This standard demands clear, demonstrable approval rather than assumption.[21]

i. <u>CBD Article 15.5 and NP Article 6.1 contemplate an explicit undertaking of PIC, not an implicit one.</u>

[16] Rio Declaration, princ. 15.
[17] Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14, ¶204.
[18] CBD, art. 15.5; NP, arts. 6.1, 2(c); *Bonn Guidelines*, ¶36; IUCN EXPLANATORY GUIDE, pp.38-44.
[19] Asylum (Colom. v. Peru), Judgment, 1950 I.C.J. Rep. 266, 284; S.S. "Lotus" (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10.
[20] NP, art. 6.1.
[21] CBD, art. 15.5.

The PIC regime is designed to protect the sovereign right to determine access.[22] Therefore, limitations on a State's sovereign freedom of action must be clear.[23] Ridus' inference of consent from the 2009 loan is legally invalid under the ARSIWA, as consent must be valid and cannot be inferred if it was neither informed nor explicit.[24]

b. Under the principle of effectiveness, the 2009 loan agreement does not constitute "informed" consent for the 2022 de-extinction project.

Consent granted must be informed, meaning the providing Party must be made fully aware of the specific intended use.[25] The 2009 loan failed this test entirely. The VCLT mandates that the loan agreement must be interpreted in its context and in light of its object and purpose.[26] The principle of effectiveness, *ut res magis valeat quam pereat*, dictates that interpreting "informed" to include unknown technologies renders the term meaningless.[27]

i. **The term "scientific research" does not encompass a novel design such as de-extinction, making any implied consent uninformed**

The specific context of the loan was the opening of a museum wing devoted to "the history of the Panthera" (C.A11), proving the intended "scientific research" was historical, not genetic. The subsequent creation of a reference genome and genetic modification through CRISPR falls under "biotechnology."[28] The highly uncertain and potentially irreversible nature of de-extinction

[22] *Id.* art. 15.1, .4-.5.
[23] SHAW, ch.11-Jurisdiction.
[24] ARSIWA, art. 20.
[25] NP, art. 6.3(a)-(b).
[26] VCLT, art. 31.1.
[27] *Id.*; Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase), Advisory Opinion, 1950 I.C.J. Rep. pp.221, 229.
[28] CBD, art. 2.

means that PIC must be interpreted strictly in line with the precautionary principle.[29] The very existence of extensive modern guidelines on creating proxies of extinct species confirms that this is a novel, high-risk activity that could not have been foreseen or consented to under a general academic loan.[30]

In sum, Ridus' continued access and utilization of the Royal Panther DNA, despite Anecoyon's clear refusal, is conduct that is directly attributable to the State of Ridus through the National Museum's actions as an organ of the State (R.16, R.17),[31] thereby establishing an internationally wrongful act under CIL.[32] The breach of Anecoyon's right to PIC engages Ridus' international responsibility,[33] making Anecoyon an injured State entitled to invoke responsibility[34] and outlays solid grounds to warrant Anecoyon's refusal.

B. ANECOYON'S REFUSAL TO CONSENT IS ENTIRELY CONSISTENT WITH THE CBD'S OBJECTIVES.

Ridus' claim that Anecoyon's refusal is counter to the CBD's objectives (R.25) is baseless. Anecoyon's refusal is consistent with, and required by, its CBD obligations. This refusal is: a valid exercise of its sovereign rights as the country of origin **[1]**; a justified application of the precautionary principle based on scientific risks **[2]**; and upholds the CBD's core conservation objectives by preventing the introduction of a novel "alien species" under Article 8(h) **[3]**.

1. Anecoyon's refusal is a valid exercise of its sovereign rights as the country of origin.

[29] Rio Declaration, *supra* note 20, princ. 15; Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14, ¶164.
[30] IUCN SSC GUIDING PRINCIPLES, pp.1-2.
[31] ARSIWA, art. 4; *Id.*, cmts. 5-6 to art. 4.
[32] *Id.* cmt. 1 to art. 2; *Id.*, art. 2(a,b); Corfu Channel (United Kingdom v. Albania), Merits, 1949 ICJ 4.
[33] *Id.*, art. 12; cmt. 1 to art. 12.
[34] *Id.*, art. 42(a); Corfu Channel (United Kingdom v. Albania), Merits, 1949 ICJ 4.

Anecoyon's authority to refuse consent is grounded in the foundational principles of the CBD and international law. Anecoyon's sovereignty over its natural resources is affirmed by CBD Article 15.1 and is a settled principle of CIL **[a]**; the Royal Panther DNA is a "genetic resource" and Anecoyon is its "country of origin," as the fossil was recovered from *in-situ* conditions within Anecoyon's exclusive territory **[b]**; Anecoyon's national legislation is the lawful and controlling instrument for regulating access, which Ridus is treaty-bound to respect **[c]**.

a. CBD Article 15.1 affirms Anecoyon's sovereign authority to "determine access to genetic resources."

Anecoyon's authority to refuse consent is grounded in the CBD (R.10), which is built upon state sovereignty.[35] Article 15.1 states the "authority to determine access to genetic resources rests with the national governments and is subject to national legislation." This codifies the settled customary law principle of Permanent Sovereignty over Natural Resources.[36] This grants Anecoyon the substantive right to determine access through its "national legislation," which it did by prohibiting de-extinction (R.24). Under the principle of *onus probandi incumbit actori*, Ridus bears the burden of proving Anecoyon's refusal is counter to the CBD's objectives.[37]

b. The Royal Panther DNA is a genetic resource of which Anecoyon is the country of origin, as the fossil was recovered from Anecoyon's in-situ conditions.

[35] CBD, Preamble.
[36] G.A. Res. 1803, ¶1; G.A. Res. 3281, art. 2.1; Stockholm Declaration, princ. 21; Rio Declaration, princ. 2; Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶244.
[37] Pulp Mills on the River Uruguay (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14, ¶162; Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009 I.C.J. Rep. 86, ¶68; Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay./Sing.), Judgment, 2008 I.C.J. Rep. 12, ¶45; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Montenegro), Judgment, 2007 I.C.J. Rep. 43, ¶204; Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Jurisdiction and Admissibility, Judgment, 1984 I.C.J. Rep. 392, ¶101.

Aneocyon's authority applies because the Royal Panther DNA is a "genetic resource" **[1]**, and Anecoyon is the "country of origin" **[2]**.

i. The Royal Panther DNA is a "genetic resource" under the CBD as it possesses clear "potential value."

The CBD defines "genetic resources" as "genetic material of actual or potential value."[38] This is not limited to extant species, as "genetic material" includes any material of other origin containing functional units of heredity.[39] This broad, technology-neutral scope was intentional.[40]

The CBD Preamble, NP, and DSI mechanism (R.12-13, R.37) all recognize the "potential value" of genetic resources. Ridus' own de-extinction project (R.16, R.29) is a clear admission of this value.

ii. Anecoyon is the "country of origin" as the fossil was recovered from "in-situ conditions" within its territory.

Aneocyon is the "country of origin,"[41] defined as possessing resources in "*in-situ* conditions."[42] The Royal Panther fossil and its DNA existed *in-situ* in Anecoyon's soil for 6,000 years (R.15). Ridus' transboundary claim (R.21-22) is a legal fallacy. Under *uti possidetis juris*,[43] Anecoyon inherited the territory—and all resources physically within it—upon independence (R.2). A state's sovereignty over its natural resources is a core component of its territorial sovereignty.[44] The DNA was extracted from a single fossil in Anecoyon (R.15); the resource was

[38] CBD, art. 2.
[39] *Id*.
[40] IUCN EXPLANATORY GUIDE, art. 2(c), p.64.
[41] CBD, art. 2.
[42] *Id.*
[43] Frontier Dispute (Burk. Faso/Mali), Judgment, 1986 I.C.J. Rep. 554, ¶20.
[44] Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Judgment, 2005 I.C.J. Rep. 168, ¶244.

not "shared." As the country providing genetic resources,[45] Anecoyon holds exclusive authority to grant consent.

c. Anecoyon's national legislation prohibiting de-extinction is the lawful expression of its sovereign right to regulate access.

Anecoyon's national law prohibiting de-extinction (R.24) is the lawful expression of its sovereignty, explicitly granted by CBD Article 15.1, which makes access "subject to national legislation." The NP (R.11) reinforces this; article 6.1 affirms access is subject to PIC, "unless otherwise determined by that Party." Anecoyon's law is such a determination.

Ridus is violating its obligations under NP Article 15.11, which binds it to ensure resources utilized in its jurisdiction (R.17, R.29) were accessed according to Anecoyon's domestic legislation. Ridus has failed this obligation, and its claim that Anecoyon's law is "counter to the objectives" (R.25) is a bare assertion it cannot prove.[46]

2. Anecoyon's refusal is justified by the precautionary principle and is not counter to the CBD's objectives.

Anecoyon's refusal is not arbitrary but a justified decision consistent with the CBD's conservation objectives and grounded in the precautionary principle. The refusal is: a lawful application of the precautionary principle **[a]**; based on legitimate, scientifically-backed concerns like "moral hazard" and "opportunity costs" **[b]**; and justified because Ridus' project is not an "environmentally sound use" and poses threats the CBD obligates Parties to prevent **[c]**.

a. Anecoyon's refusal is a lawful application of the precautionary principle, recognized in the CBD's Preamble.

[45] NP, art. 6.1.
[46] *Supra* note 37.

Anecoyon's refusal is a lawful application of the precautionary principle.[47] The CBD Preamble states that "lack of full scientific certainty should not be used as a reason for postponing measures" to avoid threats of biodiversity loss. The CPB establishes this as the binding standard for "LMOs resulting from modern biotechnology."[48] Ridus' project uses genome engineering (R.31), which the IUCN confirms produces a "LMO," placing it within this precautionary framework.[49]

Anecoyon's refusal is the exact measure the CBD demands. The "grave" and "unknown ecological consequences" cited (R.18, R.26) are the specific risks IUCN warns of, including "invasiveness" and "unacceptable ecological impacts."[50] Anecoyon thus correctly applied its precautionary duty.

b. The refusal is based on legitimate, scientifically-backed concerns.

Anecoyon's refusal is based on legitimate risks (R.18, R.26), namely the "moral hazard" threatening conservation **[i]**, and the "financial and opportunity costs" proving it is not an "environmentally sound use" **[ii]**.

i. <u>The de-extinction project creates an unethical "moral hazard" that directly undermines public and political support for the conservation of existing species.</u>

Anecoyon correctly identified the "moral hazard, undermining public and political support for conservation of existing species" (R.18, R.26). This reflects the IUCN's consensus, which

[47] Rio Declaration, princ. 15.
[48] CPB, Preamble, art. 1.
[49] IUCN SSC GUIDING PRINCIPLES, p.14.
[50] *Id.,* p.8.

warns that the prospect of "de-extinction" will result in reduced societal and political support for conservation.[51] This view is shared by leading scientists.[52]

ii. <u>The project is not an "environmentally sound use" as it creates unacceptable financial and opportunity costs, diverting scarce resources from the objective of conserving extant biodiversity.</u>

The CBD requires access for "environmentally sound uses."[53] Ridus' project fails this test. The IUCN warns de-extinction creates significant "financial and opportunity costs," diverting scarce resources from conserving extant species.[54] Scholars confirm this diversion, [55]and scientific analysis concludes such spending "is likely to lead to net biodiversity loss."[56] The IUCN's priority is preserving extant biodiversity.[57] Anecoyon's determination that a project threatening the CBD's financial and ethical foundations is not an "environmentally sound use" is a reasonable and justified exercise of its precautionary duties.[58]

3. Anecoyon's refusal upholds the CBD's conservation objectives as Ridus' project introduces a novel organism that threatens existing biodiversity.

Ridus' claim that its project furthers the CBD's objectives (R.25) is baseless. Anecoyon's refusal upholds the Convention's core conservation obligations. Ridus' argument fails because: its reliance on Articles 8 and 9 is misplaced, as these apply to extant species **[a]**; the panthers are not "Royal Panthers," but novel LMOs **[b]**; and as LMOs, they are high-risk "alien species" whose introduction Anecoyon is obligated to prevent under Article 8(h) **[c]**.

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[51] *Id.,* p.3.
[52] Redford et al., p.331; Pimm.
[53] CBD, art. 15.2.
[54] IUCN SSC GUIDING PRINCIPLES, p.8.
[55] Redford et al., p.333.
[56] Bennet et al., p.3.
[57] IUCN SSC GUIDING PRINCIPLES, p.2.
[58] CBD, art. 15.2

a. Ridus' reliance on CBD Articles 8 and 9 is misplaced, as these apply to the conservation of extant species.

Ridus' reliance on Articles 8, 9, and 12 (R.25) misapplies the Convention's text, which focuses on conserving extant biodiversity: Article 8 concerns "viable populations of species," which an extinct species lacks; Article 9 concerns "threatened species," not extinct ones (R.7). This focus is confirmed by the GBF.[59] The GBF's monitoring framework uses indicators like the "Red List Index" and the "Average population size of species," which are only applicable to extant biodiversity.[60]

b. The novel de-extinction proxies are not "Royal Panther," but are novel organisms.

Ridus' claim that its proxies are "Royal panthers" (R.32) is a legal and scientific mischaracterization. They are scientifically distinct "proxies" **[i]** and legally classified as LMOs **[ii]**.

i. **The panthers are not "faithful replicas" of the extinct species, but are scientifically and legally distinct "proxies."**

Ridus is misleading. IUCN confirms "de-extinction" is "misleading" and that "none of the current pathways will result in a faithful replica."[61] Even a clone will not be identical due to mitochondrial DNA and different developmental environments affecting its phenotype.[62] Such creations are "proxies."[63]

ii. **The panthers are "LMOs" as they are the product of "modern biotechnology."**

[59] GBF, pp.60, 74.
[60] *Id.*
[61] IUCN SSC GUIDING PRINCIPLES, p.1; Shapiro, p.1.
[62] Shapiro, p.5.
[63] IUCN SSC GUIDING PRINCIPLES, p.1.

The panthers are LMOs resulting from "modern biotechnology." Ridus admits using CRISPR (R.31) and making 20 edits to 15 genes (C.A8)—a process that CPB defines as modern biotechnology: application of *in vitro* nucleic acid techniques that overcome natural physiological reproductive barriers.[64] This is exactly what Ridus has done.

Consequently, the panthers are LMOs: any living organism that possesses a novel combination of genetic material obtained through modern biotechnology.[65] IUCN guidance confirms "genome engineering" results in a GMO, and "proxy species could be classified as LMOs."[66] Ridus' objection (R.39) is an irrelevant appeal to obscure this correct legal classification.[67]

c. As novel LMOs, the panthers are an "alien species" whose introduction Anecoyon is obligated to prevent under CBD Article 8(h).

Ridus' plan to introduce these LMOs (R.36) directly threatens CBD conservation objectives. As novel organisms, the panthers are legally an "alien species."[68] Ridus' claim they are "native" (R.21-22) ignores their novel genetics. IUCN confirms such proxies "might fit the definition of 'alien species' due to genetic differences"[69] and must be treated as non-native even where this lies inside the indigenous range.[70]

This classification triggers Anecoyon's mandatory obligation under CBD Article 8(h) to prevent the introduction of those alien species which threaten ecosystems, habitats or species. The

[64] CPB, art. 3(i); Redford et al, p.330.
[65] CPB, art. 3(g).
[66] IUCN SSC GUIDING PRINCIPLES, p.14.
[67] CBD, art. 2.
[68] CBD Dec. VI/23, Definition(i).
[69] IUCN SSC GUIDING PRINCIPLES, p.14.
[70] *Id.,* p.11.

panthers pose these exact threats, including "invasiveness" and "novel disease vectors."[71] Anecoyon is the only Party upholding this duty, consistent with *pacta sunt servanda*.[72]

II. RIDUS' ACTIONS RELATING TO BEENFIT SHARING ARE IN VIOLATION OF INTERNATIONAL LAW.

Ridus has committed an international law violation by failing to ensure benefit-sharing arising from the de-extinction project. This liability rests on the foundational claim that the use of DSI for the project constitutes "biotechnology" under the CBD and NP **[A]**. This biotechnological activity then establishes that SAP is a commercial DSI user operating in a covered sector, mandating benefit-sharing under CBD Decision 16/2 **[B]**. Ridus' subsequent omission to enforce this obligation, therefore, constitutes an internationally wrongful act under the ARSIWA **[C]**.

A. RIDUS' USE OF DSI FOR THE DE-EXTINCTION PROJECT CONSTITUTES "BIOTECHNOLOGY" DEFINED UNDER THE CBD AND NP.

Ridus' use of DSI for the de-extinction project meets the definition of "biotechnology" under the CBD and the NP, encompassing the modern techniques utilized in the de-extinction project, thereby bringing the entire process under the relevant international framework **[1]**.

1. The CBD and NP's definition of "biotechnology" under Article 2 encompasses modern techniques utilized in the de-extinction project.

The CBD and NP's definition of biotechnology is purposefully broad, ensuring it captures the advanced methods used in de-extinction. The techniques utilized meet this definition on two levels: first, the Royal Panther DSI is a "derivative" of genetic resources subject to utilization **[a]**. Second, the actual genetic manipulation involves CRISPR genetic engineering, which is a definitive "technological application" of biotechnology **[b]**.

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[71] IUCN SSC GUIDING PRINCIPLES, p.8.
[72] VCLT, art. 26.

a. The Royal Panther DSI is a "derivative" of genetic resources subject to utilization.

The NP defines a "derivative" as a naturally occurring biochemical compound resulting from the genetic expression or metabolism of biological or genetic resources, even if it does not contain functional units of heredity.[73] While DSI is often associated with biochemical derivatives, the term itself broadly covers various types of information linked to a genetic resource and its derivatives.[74] DSI, as technological data, scientifically flows from the genetic resource via DNA, RNA, proteins, culminating in derivatives.[75] Further, some countries like South Africa,[76] Colombia,[77] and Peru[78] have adopted domestic measures that interpret DSI or related terms like "genetic information" as being included in the scope of derivatives or genetic resources, thus subjecting them to utilization rules.

Benefit-sharing is triggered by the "utilization of genetic resources," which is defined as R&D on the genetic or biochemical composition, including through the application of biotechnology[79]. Ridus' activity involved using the Royal panther DSI for a de-extinction project which includes genetically engineering North American cougar cells with CRISPR technology (R.31), without such derivatives becoming the blueprint or roadmap for the gene-editing process, the same would not have been possible. Hence, the usage of derivatives in this manner clearly constitutes the intended definition under the instruments.[80]

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[73] NP, art. 2; IUCN EXPLANATORY GUIDE, 67 (Box 9); CBD WG-ABS 7/2, ¶19.
[74] DSI AHTEG Study 1/3, pp.132, 146.
[75] *Id.*, p.147.
[76] DSI AHTEG Study 1/5, pp.17, 35.
[77] *Id.,* pp.15, 35.
[78] *Id.*
[79] NP, art. 2(c).
[80] DSI AHTEG Study 1/3, p.13.

b. The application of CRISPR genetic engineering is a definitive "technological application" of biotechnology.

The CBD explicitly defines "biotechnology" as "any technological application that uses biological systems, living organisms, or derivatives thereof, to make or modify products or processes for specific use".[81] The NP repeats this same definition of biotechnology in its use of terms.[82] Further, CRISPR is a recently discovered form of gene editing technology.[83] This technique involves using RNA and DNA fragments to make targeted cuts in DNA sequences, which enables genetic modification and permanent changes to the genome.[84]

Genetic modification is considered a form of utilization of genetic resources.[85] The application of gene editing technologies like CRISPR constitutes genome engineering, which is widely considered a subset of synthetic biology.[86] Furthermore, CRISPR technology relies on DSI and is used in sectors such as healthcare and agriculture, which are heavily reliant on biotechnologies and genetic resources.[87] Hence, CRISPR being a process used to modify biological systems and genetic material to create specific products or processes, is unequivocally a technological application constituting biotechnology.[88]

B. SAP IS A COMMERCIAL DSI USER UTILIZING THE BIOTECHNOLOGICAL PRODUCT IN A COVERED SECTOR, MANDATING BENEFIT-SHARING UNDER CBD DECISION 16/2.

SAP is a commercial DSI user whose activities fall within the scope of mandatory benefit-sharing under CBD Decision 16/2. This obligation is activated because SAP's commercial

[81] CBD, art. 2; IUCN EXPLANATORY GUIDE, pp.381-82.
[82] NP, art. 2(d).
[83] DSI AHTEG Study 1/3, pp.21, 50.
[84] *Id.,* pp.21-22.
[85] IUCN EXPLANATORY GUIDE, p.375.
[86] IUCN SSC GUIDING PRINCIPLES, pp.4-5.
[87] DSI AHTEG Study 1/3, p.27.
[88] CBD, art. 2; IUCN EXPLANATORY GUIDE, p.4.

monetization of the biotechnological product—the panthers—fall within the covered sector classification **[1]**. Furthermore, SAP is a commercial entity, irrespective of its legal status, with a revenue exceeding the financial thresholds for benefit-sharing **[2]**.

1. SAP's commercial monetization of the biotechnological product falls within the covered sector classification.

The classification of SAP's activity as a covered sector rests on its use of the de-extinct species for profit. Specifically, the de-extinct species is part of the process of "biotechnology" as defined under the CBD and NP **[a]**. Consequently, SAP's panther-viewing is a direct monetization of the biotechnological product, thereby qualifying the activity for the sector classification provided under CBD Decision 16/2 **[b]**.

a. The de-extinct species is a part of the process of "biotechnology" as defined under CBD Article 2 and NP Article 2(d).

As established, the conception of the panthers utilizes "biotechnology" within the CBD and Nagoya framework.[89] The process of creating a de-extinct species, or "proxy," clearly constitutes a technological application that uses biological systems such as surrogate species or genetic material to make or modify an organism for a specific conservation use.[90] The specific de-extinction methodologies fall within the emerging field of synthetic biology, which has been defined as a "further development and new dimension of modern biotechnology, operating to confirm that the advanced techniques required to "design, redesign, manufacture and/or modify genetic materials" for proxy creation are captured under the broad legal interpretation of modern

[89] CBD, art. 2; NP, art. 2(d).
[90] CBD, art. 2; NP, art. 2(d); IUCN EXPLANATORY GUIDE, p.1, ¶¶1–2.

biotechnology.[91] Additionally, these aspects are integral to what the Convention regulates to protect biological diversity from potential risks.[92]

b. SAP's panther-viewing is a direct monetization of the biotechnological product, thereby qualifying the activity for the sector classification provided under CBD Decision 16/2.

CBD Decision 16/2 establishes a multilateral mechanism supported by the Cali Fund, intended for companies of a specific size that rely on DSI for their research and products to share benefits.[93] SAP meets the specified financial thresholds and generates revenue from the existence and display of the biotechnological product, as in this case the panthers (R.45). This indubitably makes it a high-revenue entity operating within the spirit of the decision's criteria for contributing entities.[94]

Moreover, CBD Decision 16/2 encourages monetary benefit sharing by entities active in listed sectors, including Biotechnology.[95] The utilization of DSI often leads to commercial applications such as the development of pharmaceuticals or the improvement of crop breeding.[96] The highly specialized, high-revenue activity of displaying a genetically engineered species resulting from DSI utilization can be classified as a product of the biotechnology sector, or is at least analogous to the listed commercial activities, qualifying the associated revenue for contribution.

2. In any case, SAP is a commercial entity irrespective of its legal status and its revenue exceeds the financial thresholds for benefit-sharing.

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[91] CBD Dec. XIII/17; SANDS AND PEELE, PRINCIPLES, p.407; IUCN SSC GUIDING PRINCIPLES, §VIII.
[92] Agenda 21, ch.16; SANDS AND PEELE, PRINCIPLES, p.396; IUCN SSC GUIDING PRINCIPLES, §VIII.
[93] Decision 16/2, ¶¶3-4; Cali Fund Terms of Reference, p.6.
[94] Cali Fund Terms of Reference, p.6.
[95] *Id.,* p.4.
[96] CBD Dec. 15/9, ¶13; DSI AHTEG Study 1/7, 11, ch.II ¶¶28, 30, 31.

Even if the covered sector classification is disputed, SAP is a commercial entity exceeding the financial thresholds for benefit-sharing. This is established because Ridus' concession of the financial thresholds substantiates a benchmark figure triggering benefit-sharing under the CBD and NP, which SAP easily surpasses **[a]**; furthermore, analysis under both the UNDESA ISIC and the SANP confirms SAP's commercial nature **[b, c]**. Finally, under the economic reality principle, SAP's extensive revenue qualifies its activity as commercial **[d]**.

a. Ridus' concession of the financial thresholds substantiates a benchmark figure triggering benefit-sharing under Article 5 of both CBD and NP.

The CBD and NP establish the foundational obligation for the fair and equitable sharing of benefits arising from the commercial or other utilization of genetic resources.[97] Even then, such benefit-sharing obligations redound to CBD Decision 16/2, granting a multilateral shift of imposing ABS obligations coordinated globally.[98] By conceding that SAP satisfies these figures, Ridus accepts the specific numerical standard for identifying financially liable users primarily identified under Enclosure I of the said CBD decision and ultimately triggering its benefit-sharing obligations under both instruments.

b. Under the UNDESA ISIC, SAP's extensive revenue confirms its commercial nature using the "top-down" method.

The ISIC classification system is primarily production-oriented, grouping statistical units based on their main economic activity, which is determined by the activity that contributes the most to the unit's value added.[99] The large annual sales figure conceded by Ridus (R.45)

[97] CBD, art. 15.7; NP, art. 5.1.
[98] CBD WG2020/4/INF/4, ¶¶12(c), 23(a); DSI AHTEG Study 1/4, ¶26.
[99] ISIC, ¶¶39, 105.

demonstrates that SAP is a financially significant producer of economic activity, requiring classification based on this production value rather than solely on its non-profit legal status.[100]

The "top-down" method is the hierarchical principle used in ISIC to classify a multi-activity unit by determining which activity accounts for the largest share of value added, proceeding from the highest level down to the lowest.[101] Given SAP's substantial revenue, it can fall primarily under Wholesale and Retail Trade, Entertainment and Recreation for the sale of food, gifts and tickets, and Real Estate Activities for hosting a safari park using the method, and contrary to its assertions of falling under the Botanical and Zoological Gardens and Nature Reserves Activities classification.[102]

Hence, this confirms the park's commercial nature, as critically confirmed by its revenue scale, irrespective of its non-profit legal status.

c. Under the UNDESA SANP Handbook, SAP's revenue generation fails the "limited profit distribution" test.

The core criterion for classifying non-profit institutions is a complete prohibition on profit distribution, meaning they cannot distribute any surplus to stakeholders.[103] Although SAP is legally a non-profit corporation, its annual revenue alone suggests a scale of financial activity exceeding the strict non-distribution threshold expected of a true non-profit institution.[104] The "limited profit distribution" test requires that a unit be significantly limited in its distribution of surplus, meaning it is prohibited from distributing more than half of any surplus it generates.[105]

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[100] *Id.,* ¶105.
[101] *Id.,* ¶¶123, 124 (Box 1).
[102] *Id.,* ¶¶07, 123, 130.
[103] SANP HANDBOOK, ¶3.23.
[104] *Id.,* ¶3.24.
[105] *Id.,* ¶¶3.11, 3.12.

Moreover, while the park claims the revenue generated from the panther viewing is used for the care of the panthers and the captive breeding program, this application of funds does not necessarily satisfy the structural "capital lock" requirement of the limited-profit distribution test.[106] The "capital lock" requires that the entity be legally bound to transfer retained earnings or assets to a similar social-purpose organization in the event of dissolution, thereby ensuring the permanent non-commercial dedication of its accumulated capital.[107]

Here, both aspects of limited profit distribution and the capital lock requirement is ultimately negated by SAP's stifling profits and the streams for which it is allocated to.

d. In any case, under the economic reality principle, SAP's revenue qualifies it as engaged in commercial activities.

An activity is generally deemed "commercial" if its purpose is to obtain an economic benefit, whether cash or otherwise, and is directed toward the provision of a service or any other form of economic use or benefit.[108] Further highlighted under the CITES standard such that if non-commercial aspects do not clearly predominate, the use is considered primarily commercial.[109] And the same is further enunciated in one of the goals of CBD where benefit sharing is designed to compel those profiting from nature to contribute to its protection and restoration, which is strongly linked to activities generating commercial gains.[110]

Summarily, Ridus' subsequent failure to compel SAP to contribute the mandated benefits constitutes an internationally wrongful act by omission that is attributable to the State under ARSIWA Article 5, as SAP's primordial obligation consigned under Ridus shows color of

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[106] *Id.,* ¶¶3.13, 3.14.
[107] *Id.,* ¶¶3.33(b), 3.33(c).
[108] CITES Res. 5.10, ¶1(b).
[109] *Id.,* ¶1(c).
[110] Decision 16/2, ¶¶3-4; CBD Dec. 15/4, annex, Goal C, Target 13.

exercising delegated governmental authority.[111] Having established that Anecoyon is the provider of the genetic resources to which the benefit-sharing obligations are owed,[112] and taking into consideration Ridus' unilateral declaration of commitment to the Cali Fund (R.13), this further bolsters the position of Anecoyon as an individually injured State entitled to invoke responsibility.[113]

[111] ARSIWA, cmt. 3-5 to art. 5; Hyatt International Corporation v. The Government of the Islamic Republic of Iran, Iran-U.S. C.T.R., vol. 9, 72, 88-94 (1985); LofN Bases of Discussion, 90; ILC Conclusions on Subsequent Agreements, ¶2.
[112] CBD, art. 15.7; NP, art. 5.1.
[113] ARSIWA, art. 42; ARSIWA, cmt. 8-10 to art. 42; Sachariew, ¶¶273, 277-78; Simma, ¶¶821, 823; Annacker, ¶¶131, 136; Hutchinson, ¶¶151, 154-55.

CONCLUSION AND PRAYER FOR RELIEF

The Applicant respectfully prays that this Honorable Court adjudge and declare that:

a. Ridus' conduct violated the PIC provisions of the CBD and the NP, to the extent they are applicable, and Anecoyon's refusal to consent based on its objections to de-extinction is not counter to the CBD's objectives; and

b. The DSI used for de-extinction activities is "biotechnology" for purposes of the CBD and NP, and the SAP is a user of DSI on genetic resources engaged in commercial activity covered by a sector currently listed in CBD Decision 16/2.

Respectfully submitted,

AGENTS FOR THE APPLICANT