

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



**QUESTIONS RELATING TO
REINTRODUCTION OF BEARS**

FEDERAL STATES OF ARCTOS

APPLICANT

V.

REPUBLIC OF RANVICORA

RESPONDENT

MEMORIAL FOR THE RESPONDENT

THE 24TH STETSON MOOT COURT COMPETITION 2019-2020

TABLE OF CONTENTS

TABLE OF CONTENTS 1

INDEX OF AUTHORITIES 3

STATEMENT OF JURISDICTION 6

QUESTIONS PRESENTED 7

STATEMENT OF FACTS 8

SUMMARY OF THE ARGUMENT 10

ARGUMENT 11

 I. RANVICORA’S REINTRODUCTION PROGRAM COMPLIED WITH INTERNATIONAL CUSTOMARY LAW AND TREATY LAW 11

 A. Ranvicora’s Reintroduction Program Complied with International Customary Law Regarding Transboundary Harms..... 11

 1. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because the International Community Recognizes Protections for the Grey Bear and Supports In-Situ Conservation Practices..... 12

 2. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because It Contemplated Reintroduction Exclusively Within Ranvicora Even After Accounting for the Grey Bear’s Poleward Range Shifts..... 13

 3. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because the First Incident of Grey Bears Crossing the Arctos Border Occurred More Than Four Years After the First Release When Only Some Grey Bears Intermittently Crossed the Arctos Border..... 14

 4. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because the Death of Some Livestock, the Trouwborst Tern, and the Damage to Apple Orchards and Bee Hives in Arctos Was Not Reasonably Foreseeable. 16

 B. Ranvicora’s Reintroduction Program Complied with Convention on Biological Diversity Articles 3, 5, and 8 and Relevant Decisions. 17

 1. Ranvicora’s Reintroduction Program Complied with CBD Article 3 Because Reintroduction is a Legal Action in International Law, Ranvicora Conducted an EIA, the Reintroduction Program was Intranational, and Arctos did Not Claim a Transboundary Harm Until More Than Five Years After the First Release of Grey Bears. 18

 2. Ranvicora’s Reintroduction Program Complied with CBD Article 5 Because the Program was Contained Within Ranvicora’s National Jurisdiction and Control,

Ranvicora Communicated with Arctos, and Ranvicora Agreed to Submission of this Case to the ICJ by Way of Special Agreement.	18
3. Ranvicora’s Reintroduction Program Complied with CBD Article 8 Because Grey Bears are not Alien Species Which Threaten Ecosystems, Habitats or Species.	20
a. The Grey Bear is Not an Invasive Alien Species Because it is Native to Ranvicora and the Grey Bear has Crossed Only Intermittently Between Ranvicora and Arctos.	20
C. Ranvicora Did Not Violate Article 11 of the Bern Convention Because it Conducted an EIA, Incorporated Poleward Shifts in Habitat Range Witnessed in Paddington and Aloysius, Some Grey Bears Were Outfitted with GPS Trackers, and the Grey Bear is an Endangered and Native Species to Ranvicora.	21
1. Recommendations No. 158 (2012) and No. 159 (2012) Do Not Apply.	22
II. ARCTOS’S RESPONSES TO RANVICORA’S REINTRODUCTION PROGRAM VIOLATED TREATY LAW AND INTERNATIONAL CUSTOMARY LAW	22
A. Arctos’s Responses to Ranvicora’s Reintroduction Program Violated the Convention on Biological Diversity	23
1. Arctos Violated CBD Articles 1 and 8 by Failing to Interpret the Objectives of the Convention in Good Faith.	23
B. Arctos’s Responses to Ranvicora’s Reintroduction Program Violated the Convention on Migratory Species	24
1. Arctos is in Violation of CMS Resolution 12.21.	24
2. Arctos is in Violation of Article III because it is a Range State.	24
3. Arctos’s Actions are Not Permissible Under CMS Article III(5)(d).	26
C. Arctos’s Responses to the Reintroduction Program Violated the Bern Convention. ...	27
1. Arctos Ignored the General Objectives of the Bern Convention.	27
2. Arctos Violated the Prohibitions Against Harm in Bern Convention Articles 6, 8 and 10.	28
3. The Article 9 Exception Does Not Apply to Arctos’s Authorization to Kill Grey Bears.	29
4. Arctos Violated the Intentions Set Out in the Guidance Document Published by the Standing Committee of the Bern Convention, titled <i>Guidelines for Population Level Management Plans for Large Carnivores in Europe</i>	30
D. Arctos Violated Customary International Law by Breaching the Duty Not to Cause Transboundary Harm.	31
CONCLUSION AND PRAYER FOR RELIEF	32

INDEX OF AUTHORITIES

TREATIES AND CONVENTIONS

Bern Convention on the Conservation of European Wildlife and Natural Habitats, Sept. 19, 1979, Council of Eur. No. 104.....	11, 14, 22, 23, 28, 29, 30
Convention on Biological Diversity, Jun. 5, 1992, 1760 U.N.T.S. 79...11, 13, 18, 19, 20, 23, 24	
Convention on the Conservation of Migratory Species of Wild Animals, Jun. 23, 1979, 1651 U.N.T.S. 333	11, 14, 24, 25, 26, 27
Revised Resolution No. 2 (1993) on the scope of Articles 8 and 9 of the Bern Convention, Standing Committee, Strasbourg, Dec. 2 2011.....	30, 31
Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 331..	23, 29, 30

U.N. DOCUMENTS AND OTHER INTERNATIONAL DOCUMENTS

Report of the International Law Commission, U.N. GAOR, 53rd Sess., at 148-170, U.N. Doc. No. A/56/10 (2001).....	12, 13, 14, 15, 17
<i>Squatina australis</i> ,” The IUCN Red List of Threatened Species (2016) https://www.iucnredlist.org/species/41862/68645631 (last visited Nov. 14, 2019).....	28
United Nations Environment Programme Dec. VI/23, U.N. Doc. No. UNEP/CBD/COP/6/20, at 257 fn. 57 (Apr. 2002).....	21

JUDICIAL DECISIONS

ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons at 242.....	32
--	----

ESSAYS, ARTICLES, AND JOURNALS

Tom Arup, <i>Greg Hunt grants WA exemption for Shark Cull Plan</i> , The Sydney Morning Herald, Jan. 21, 2014.....	21
--	----

Brown Bears, Nat'l Park Serv. <https://www.nps.gov/subjects/bears/brown-bears.htm> (last visited Nov. 8, 2019).....16

Luigi Boitani et al, *Key Actions for Large Carnivore Populations in Europe*, Jan. 2015.....28, 31

Kerryn Anne Brent, *The Certain Activities Case: What Implications for the No-Harm Rule*, 20 ASIA PAC. J. ENVTL. L. 28, 53 (2017)..... 12, 16

George Coggins & Parthenia Evans, *Predators' Rights and American Wildlife Law*, 24 Ariz. L. Rev. 821, 824 (1982); University of Michigan Museum of Zoology, *Ursidae bears*, <https://animaldiversity.org/accounts/Ursidae/> (last visited Nov. 4, 2019)..... 24, 25

Victoria J. Dreitz, *Issues in Species Recovery: An Example Based on the Wyoming Toad*, 56 BioScience 756..... 24

Nele Matz, *Chaos or Coherence? - Implimenting and Enforcing the Conservation of Migratory Species through Various Legal Instruments, presented at the Expert Workshop Migratory Species: Linking Ecosystems and Disciplines* (held on behalf of the 25th Anniversary of the Bonn Convention), Berlin, Jun. 23, 2004, available at https://www.zaoerv.de/65_2005/65_2005_1_a_197_216.pdf.28

Brian Miller et al., *The Importance of Large Carnivores to Healthy Ecosystems*, 18 Endangered Species Update 1, 3 (2001).....32

Pulp Mills on River Uruguay (Arg. v. Uru.) 2010 I.C.J. 14, 76-77 ¶ 185 (Apr. 20).....12, 16

W.J. Ripple & R.L. Beschta, *Wolf Reintroduction, Predation Risk, and Cottonwood Recovery in Yellowstone National Park*, 184 FOREST ECOLOGY & MGMT. 299, 303 (2003)..... 18

M.A. Scrafford et al., *Beaver Habitat Selection for 24 Yr Since Reintroduction North of Yellowstone National Park*, 71 RANGELAND ECOLOGY & MGMT. 266, 267 (2018)..... 18

Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species*, 2 Cornell Int'l. L. Rev. 41, 44 (2014)..... .27

Arie Trouwborst, *Transboundary Wildlife Conservation in A Changing Climate: Adaptation of the Bonn Convention on Migratory Species and its Daughter Instruments to Climate Change*, 4 Diversity 257, 260 (2012).....26

STATEMENT OF JURISDICTION

Pursuant to Article 40, paragraph 1, of the Statute of the International Court of Justice (“ICJ”), this Court has jurisdiction to decide the matter contained in Annex A of this Special Agreement Between the Federal States of Arctos (“Arctos” or “Applicant”) and the Republic of Ranvicora (“Ranvicora” or “Respondent”). Thus, this Court has jurisdiction to determine the questions set forth in the Special Agreement regarding Ranvicora’s innovative grey bear Reintroduction Program.

QUESTIONS PRESENTED

1. WHETHER RANVICORA VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROGRAM.
2. WHETHER ARCTOS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO RANVICORA'S REINTRODUCTION OF GREY BEARS PROGRAM.

STATEMENT OF FACTS

A. The Parties and Disputes

The Republic of Ranvicora and the Federal States of Arctos are neighboring sovereign states located on the continent of Suredia, with Arctos lying north of Ranvicora.¹ Ranvicora and Arctos share a 75-km border, that is inhabited by forests and individually owned farms.² Both countries are considered to be developed and are parties to the major international conventions and treaties which govern wildlife and biodiversity issues.³

For centuries, Ranvicora was home to the grey bear (*Ursus smokeysius*), a species that holds great cultural importance in the state and is cherished by its citizens.⁴ Ranvicoran citizens considered the grey bear's disappearance in 1963 a national tragedy.⁵ The devastating loss of the grey bear, a detriment associated with climate change, led scientists and the Government of Ranvicora ("Government") to develop a plan to reintroduce the grey bear to its natural habitat inside the borders of Ranvicora.⁶

The Reintroduction Plan released the bears in phases into the regions of Ranvicora that were suitable for bear repopulation.⁷ In total, twenty grey bears were reintroduced in Ranvicora over five years.⁸ Ranvicora conducted an environmental impact assessment (EIA) before releasing the bears into its northern region.⁹ Based on the EIA's results, Ranvicora decided to

¹ R. ¶ 6.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ R. ¶ 7.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

move forward with the Program.¹⁰ Within a year of reintroduction, most female bears produced offspring and only a few bears died during the project.¹¹ Considering the Program's success, Ranvicora intends to move forward with a second 5-year period of releases beginning in 2021.¹²

The Program was designed for the bears to repopulate and live in their natural habitat inside the borders of Ranvicora.¹³ Due to the impacts of climate change, namely vegetation changes and the increased temperatures, the suitable habitat for the bears has shifted north.¹⁴ Although Ranvicora accounted for this when picking a suitable release site, some bears have been spotted along and inside the Arctos border.¹⁵ In response to the bear spotting, Arctos has allowed for open-hunting and poisoning of the endangered species and has accused Ranvicora of violating international law for allowing these bears to enter into Arctos.¹⁶ Ranvicora dutifully conducted an EIA and complied with all international treaties and laws prior to beginning this Program, which ultimately has had success in regenerating the grey bear population in Suredia.¹⁷ Ranvicora and Arctos could not come to a settlement regarding the Reintroduction Program, and therefore have submitted a Special Agreement to institute proceedings in the ICJ.¹⁸

¹⁰ *Id.*

¹¹ R. ¶ 7.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ R. ¶ 10.

¹⁷ R. ¶ 7.

¹⁸ R. ¶ 11.

SUMMARY OF THE ARGUMENT

- I. Ranvicora's Reintroduction Program complied with the Convention on Biological Diversity, the Bern Convention, and the Convention on the Conservation of Migratory Species of Wild Animals.

- II. Arctos's response to Ranvicora's Reintroduction Program is in violation of international customary and treaty law for failing to protect an endangered species and harming biological diversity.

ARGUMENT

I. RANVICORA’S REINTRODUCTION PROGRAM COMPLIED WITH INTERNATIONAL CUSTOMARY LAW AND TREATY LAW

A. Ranvicora’s Reintroduction Program Complied with International Customary Law Regarding Transboundary Harms

The International Law Commission’s (“ILC”) Draft Articles on Prevention of Transboundary Harm from Hazardous Activities in conjunction with ICJ case law create significant hurdles to classifying the Reintroduction Program as a transboundary harm.¹⁹ The ILC examines whether an action is prohibited by international law, whether an action is within the territory and under the jurisdiction and control of the state of origin, whether an action risks causing a transboundary harm, and whether an action results in physical consequences.²⁰ In *Pulp Mills*, the ICJ read a due diligence requirement to continually evaluate the risk of a transboundary harm for an activity to ensure it was not in danger of causing a harm.²¹ In *Certain Activities*, the ICJ also created a new procedural obligation for states, making a predetermination on whether a proposed activity runs the risk of causing transboundary harm.²²

¹⁹ See Report of the International Law Commission, U.N. GAOR, 53rd Sess., at 148-170, U.N. Doc. No. A/56/10 (2001) [hereinafter ILC Report], http://legal.un.org/ilc/texts/instruments/english/commentaries/9_7_2001.pdf; *Pulp Mills on River Uruguay* (Arg. v. Uru.) 2010 I.C.J. 14, 76-77 ¶ 185 (Apr. 20) (“vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.”); Kerryn Anne Brent, *The Certain Activities Case: What Implications for the No-Harm Rule*, 20 ASIA PAC. J. ENVTL. L. 28, 53 (2017).

²⁰ See ILC Report, at 149-151.

²¹ See *Pulp Mills*, 76-77 ¶ 185.

²² See Kerryn Brent, *supra* note 19, at 53.

1. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because the International Community Recognizes Protections for the Grey Bear and Supports In-Situ Conservation Practices.

If a State action is not violative of international law, then the action is not likely a transboundary harm, and instead the question is of state responsibility.²³ Conversely, a state action that is valid under international law asks whether a State is responsible for any physical consequences of its actions.²⁴

Ranvicora’s Reintroduction Program is a valid legal action under international law because it promotes the objectives and complies with the requirements of the Convention on Biological Diversity²⁵ (“CBD”).²⁶ Article 1 encourages conservation of biological diversity as a primary objective.²⁷ Ranvicora’s Reintroduction Program supports this objective because reintroduction of grey bears can have positive ecological effects.²⁸ Moreover, the CBD also encourages parties to “promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings.”²⁹ Ranvicora’s Reintroduction Program sought to maintain a viable grey bear population from the outset.³⁰

²³ See ILC Report, at 150.

²⁴ See ILC Report, at 150 (discussing liability and responsibility in context of illegality of a State’s action).

²⁵ Convention on Biological Diversity, Jun. 5, 1992, 1760 U.N.T.S. 79, [hereinafter CBD].

²⁶ See CBD art. 1 (objectives); R. ¶¶ 11, 12, 14, 15 (grey bear reintroduction process and project).

²⁷ See CBD art. 1.

²⁸ See R. ¶ 10; *infra* note **Error! Bookmark not defined.** and accompanying text (arguing importance of a predator species to ecological balance).

²⁹ CBD art. 8(d).

³⁰ See R. ¶¶ 12-14.

Ranvicora’s Reintroduction Program is a valid action under international law because the international community recognizes the need to protect the grey bear.³¹ The grey bear is listed as an endangered species on the Bern Convention Appendix II,³² Convention on Migratory Species (“CMS”) Appendix I,³³ and the IUCN Red List.³⁴ Parties to the CMS agree, *inter alia*, to conserve species listed on CMS Appendix I.³⁵ Parties to the Bern Convention also agree to similar goals for species listed under Bern Convention Appendix II.³⁶ Under these agreements, the international community’s recognition of the grey bear as an endangered species validates the Program’s aims to conserve and maintain a viable population of the grey bear. Therefore, Ranvicora’s Reintroduction Program is a valid legal action under international law.

2. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because It Contemplated Reintroduction Exclusively Within Ranvicora Even After Accounting for the Grey Bear’s Poleward Range Shifts.

A territorial link is a necessary condition, but not a sufficient condition to imputing liability on a State for its actions.³⁷ The Reintroduction Program is within Ranvicora’s territory and is carried out under the Government’s jurisdiction and control.³⁸ However, the actual activities of the grey bears are not under the Government’s jurisdiction and control.³⁹ As

³¹ See R. ¶ 9.

³² Bern Convention on the Conservation of European Wildlife and Natural Habitats, Sept. 19, 1979, Council of Eur. No. 104 [hereinafter Bern Convention].

³³ Convention on the Conservation of Migratory Species of Wild Animals, Jun. 23, 1979, 1651 U.N.T.S. 333 [hereinafter CMS].

³⁴ R. ¶ 9.

³⁵ Appendix I & II of CMS, CMS, <https://www.cms.int/en/page/appendix-i-ii-cms>, (last visited Nov. 8, 2019).

³⁶ See Bern Convention, art. 6 (requiring appropriate measures to protect Appendix II species).

³⁷ See ILC Report, at 150-51 (discussing territory in context of transboundary harm analysis).

³⁸ See R. ¶¶ 12-14.

³⁹ See R. ¶¶ 15-17.

Ranvicora puts it: “the bears are wild, and Ranvicora cannot control where the bears migrate and is not responsible for what the bears do.”⁴⁰

Ranvicora controlled for potential migration when it sought to reintroduce grey bears only within Ranvicora⁴¹ and considered the bear’s poleward range shifts in Paddington and Aloysius in their planning.⁴² By reintroducing grey bears in the northern section of Ranvicora, Ranvicora hoped to keep the grey bears contained without further movement poleward.⁴³ Even still, the closest release was at least fifty kilometers from the Arctos border.⁴⁴ If the grey bears moved further poleward it was not because of Ranvicora’s actions, but due to their natural migration because of rising global temperatures.⁴⁵ Therefore, even though a territorial link to Ranvicora’s Reintroduction Program is evident, it is neither sufficient *per se* nor sufficient factually to impute liability onto Ranvicora.

3. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because the First Incident of Grey Bears Crossing the Arctos Border Occurred More Than Four Years After the First Release When Only Some Grey Bears Intermittently Crossed the Arctos Border.

A transboundary environmental harm by a state may only occur if there was a significant risk of a transboundary harm at the inception of the action and an objective observer believed the state action to carry that risk.⁴⁶ The transboundary harm must also be significant.⁴⁷

⁴⁰ R. ¶ 19.

⁴¹ R. ¶¶ 12-13.

⁴² R. ¶ 13.

⁴³ *See id.*

⁴⁴ *Id.*

⁴⁵ *See id.*

⁴⁶ *See* ILC Report, at 151 (discussing criterion three in context of transboundary harm).

⁴⁷ *See id.*

Here, the risk of transboundary harm was low from the outset because Ranvicora sought only to reintroduce grey bears within Ranvicora and accounted for poleward shifts in habitat range.⁴⁸ Moreover, the risk of transboundary harm was low because grey bears did not cross the Arctos border until more than four years after the first release.⁴⁹ Even when grey bears did cross the Arctos border, they did so intermittently over a period of several months.⁵⁰ Given the life cycle of a bear, it would not have been initially clear to Ranvicora that grey bears would situate themselves or be active within Arctos.⁵¹ Moreover, Ranvicora, in conducting an EIA and monitoring the released grey bears, met its due diligence requirements and predetermination requirements under ICJ case law.⁵²

Reintroduction of grey bears is not significant enough to constitute a transboundary environmental harm. Over a five-and-a-half-month span, grey bears only killed seven horses and twenty sheep.⁵³ While grey bears also damaged apple orchards and beehives, and fed on the Trouwborst tern, the Trouwborst tern is not recognized by international law as a protected species, and the damage to apple orchards and beehives does not constitute significant transboundary harms.⁵⁴ These minor damages do not rise to such a critical level that they constitute transboundary harms.

⁴⁸ See *id.*; R. ¶¶ 13-14.

⁴⁹ R. ¶ 16.

⁵⁰ See *id.*

⁵¹ See *Brown Bears*, Nat'l Park Serv. <https://www.nps.gov/subjects/bears/brown-bears.htm> (last visited Nov. 8, 2019 (hibernation)).

⁵² See *Pulp Mills*, 76-77 ¶ 185.

⁵² See *id.*; Kerryn Brent, *supra* note 199, at 53.

⁵³ R. ¶ 17.

⁵⁴ See Brent, *supra* note 199, at 52 (noting ICJ holding that a two-percent change in sediment levels is not a significant harm because it was not “a sort of critical level in terms of its detrimental effects.”) (citing *Certain Activities and Construction of a Road* 2015 I.C.J. 665, 731 ¶ 192 (Dec. 16)); R. ¶ 17 (discussing status of Trouwborst tern in the international community).

4. Ranvicora’s Reintroduction Program is Not a Transboundary Harm Because the Death of Some Livestock, the Trouwborst Tern, and the Damage to Apple Orchards and Bee Hives in Arctos Was Not Reasonably Foreseeable.

There must be a physical link between the State action and the harm for there to be a transboundary environmental harm.⁵⁵ Monetary actions, socioeconomic actions, and other similar policies do not qualify as transboundary harm.⁵⁶ The ILC illustrates the necessary physical link by stating “[t]he stockpiling of weapons does not entail the consequence that the weapons stockpiled will be put to a belligerent use. Yet, this stockpiling may be characterized as an activity which, because of the explosive or incendiary properties of the materials stored, entails an inherent risk of disastrous misadventure.”⁵⁷

The physical link between grey bears and the damage in Arctos is not present within the meaning of the ILC Report. Under Arctos’s theory of transboundary environmental damage, if a Ranvicoran grey bear caused the death of a person in Arctos, Ranvicora’s Reintroduction Program would have caused a transboundary harm.⁵⁸ Yet the ILC Report does not use a but for causation standard, but rather a reasonably foreseeable standard.⁵⁹ It was not reasonably foreseeable that the grey bears would cross the Arctos border because Ranvicora had already accounted for poleward shifts, grey bears only intermittently crossed the Arctos border, and the nearest release to the Arctos border was at least fifty kilometers.⁶⁰ Moreover, more than four years passed before a single grey bear crossed the Arctos Border.⁶¹ Additionally, since the

⁵⁵ See ILC Report, at 151.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ See *id.*; R. ¶ 15.

⁵⁹ See ILC Report, at 151 (describing physical link as an inherent risk).

⁶⁰ See R. ¶¶ 13-14, 16.

⁶¹ See R. ¶¶ 14, 16.

Trouwborst tern is an endemic species to Arctos,⁶² it was not reasonably foreseeable that the Trouwborst tern would be a viable food source for the grey bear because no grey bear had previously fed on the Trouwborst tern.⁶³

B. Ranvicora’s Reintroduction Program Complied with Convention on Biological Diversity Articles 3, 5, and 8 and Relevant Decisions.

The Convention on Biological Diversity⁶⁴ (“CBD”) states three objectives: “the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.”⁶⁵ The CBD defines biological diversity as variability within and between all species and ecosystems, and places emphasis on the necessity of apex predators in balancing ecosystems.⁶⁶ If grey bear reintroduction in Ranvicora has similar effects to other reintroduction projects, then the CBD objectives will be met as biodiversity will benefit from the presence of a historically absent predator.⁶⁷

⁶² See R. ¶ 17.

⁶³ See R. ¶¶ 10, 17.

⁶⁴ Convention on Biological Diversity, Jun. 5, 1992, 1760 U.N.T.S. 79, [hereinafter CBD].

⁶⁵ CBD art. 1.

⁶⁶ See CBD arts. 1, 2 (defining biological diversity and stating objectives); W.J. Ripple & R.L. Beschta, *Wolf Reintroduction, Predation Risk, and Cottonwood Recovery in Yellowstone National Park*, 184 *FOREST ECOLOGY & MGMT.* 299, 303 (2003) (noting growth in woody riparian vegetation after reintroduction of wolves in Yellowstone National Park). This increase in woody riparian vegetation, e.g. willow, had positive impacts for growths in beaver colonies as well. See M.A. Scrafton et al., *Beaver Habitat Selection for 24 Yr Since Reintroduction North of Yellowstone National Park*, 71 *RANGELAND ECOLOGY & MGMT.* 266, 267 (2018) (explaining relationship between wolf populations and beaver populations).

⁶⁷ See *supra* note **Error! Bookmark not defined.**6 and accompanying text; R. ¶ 19.

1. Ranvicora’s Reintroduction Program Complied with CBD Article 3 Because Reintroduction is a Legal Action in International Law, Ranvicora Conducted an EIA, the Reintroduction Program was Intranational, and Arctos did Not Claim a Transboundary Harm Until More Than Five Years After the First Release of Grey Bears.

Article 3 only limits state sovereignty in the context of the CBD when a State’s activities would cause damage to the environment of other states.⁶⁸ Moreover, to fall within Article 3, an activity of one State has to seriously damage the environment of others.⁶⁹ State activities with entirely intranational effects are protected under state sovereignty. However, seemingly intranational activities can give rise to transboundary environmental harms.

The grey bear does not seriously damage Arctos’s environment because it has only killed some livestock and damaged some apple orchards and beehives.⁷⁰ This does not threaten biodiversity because these are minor economic harms and not transboundary environmental harms.

2. Ranvicora’s Reintroduction Program Complied with CBD Article 5 Because the Program was Contained Within Ranvicora’s National Jurisdiction and Control, Ranvicora Communicated with Arctos, and Ranvicora Agreed to Submission of this Case to the ICJ by Way of Special Agreement.

Ranvicora did not have to cooperate with Arctos with respect to Ranvicora’s Reintroduction Program because CBD Article 5 only requires cooperation “in respect of areas

⁶⁸ See CBD art. 3 (expressing tension between state sovereignty and obligation to prevent transboundary environmental damage).

⁶⁹ *Id.*

⁷⁰ See R. ¶ 8.

beyond national jurisdiction and on other matters of mutual interest.”⁷¹ Despite requiring Contracting Parties to cooperate “as far as possible,” Article 5 adds limiting instructions to when and how Contracting Parties should communicate.⁷² The CBD only required Ranvicora to communicate with Arctos if its Reintroduction Program was to take place, at least partially, in Arctos, or if the Reintroduction Program was a matter of mutual interest between Ranvicora and Arctos.⁷³ Moreover, the CBD leaves the method of cooperation to the discretion of the Contracting Parties.⁷⁴

Ranvicora did not have to cooperate with Arctos because the Reintroduction Program was confined within Ranvicora’s national jurisdiction.⁷⁵ Ranvicora’s Program never contemplated reintroduction of grey bears anywhere other than in Ranvicora.⁷⁶ Furthermore, records indicated that there was not a risk that grey bears would migrate into Arctos’s jurisdiction.⁷⁷ Although recent data showed grey bears in Aloysius and Paddington moving northward, Ranvicora accounted for this trend in its planning.⁷⁸ Therefore, Ranvicora had neither reason nor obligation to cooperate with Arctos under CBD Article 5.

⁷¹ CBD art. 5.

⁷² *See id.* (requiring cooperation only for “the conservation and sustainable use of biological diversity.”).

⁷³ *See id.* (requiring cooperation in limited circumstances).

⁷⁴ *See id.*

⁷⁵ *See id.*

⁷⁶ *See* R. ¶¶ 11, 12.

⁷⁷ *See* R. ¶¶ 10, 12 (noting historic grey bear migration trends within only Ranvicora, and fossil and observational records indicating grey bears had never migrated into Arctos).

⁷⁸ R. ¶ 13.

3. Ranvicora’s Reintroduction Program Complied with CBD Article 8 Because Grey Bears are not Alien Species Which Threaten Ecosystems, Habitats or Species.

a. The Grey Bear is Not an Invasive Alien Species Because it is Native to Ranvicora and the Grey Bear has Crossed Only Intermittently Between Ranvicora and Arctos.

At the Sixth Conference of the Parties (“COP”) the parties to the CBD detailed treatment of invasive alien species under the CBD and issued some guiding principles. Decision VI/23 defines “alien species” as “species, subspecies or lower taxon, introduced outside its natural past or present distribution; includes any part, gametes, seeds, eggs, or propagules of such species that might survive and subsequently reproduce.”⁷⁹ Decision VI/23 defines “invasive alien species” as “alien species whose introduction and/or spread threaten biological diversity.”⁸⁰ Therefore, to be an invasive alien species under the CBD, the grey bear must first be an alien species to Ranvicora, which it is not.⁸¹ Additionally, even if the grey bear is an alien species, either its introduction in Ranvicora or spread to Arctos, or both, the bear must threaten biological diversity.⁸²

The grey bear cannot be an alien species because it is a native species of Ranvicora.⁸³ “Alien species” under the CBD contemplates the grey bear as an alien species only if it is

⁷⁹ United Nations Environment Programme Dec. VI/23, U.N. Doc. No. UNEP/CBD/COP/6/20, at 257 (Apr. 2002) [hereinafter Dec. VI/23]

⁸⁰ *Id.*

⁸¹ *See id.* (applying guiding principles to treatment of invasive alien species).

⁸² *See* Dec. VI/23, at 257; R. ¶ 13 (questioning whether the area in which Ranvicora reintroduced grey bears was within their historic range).

⁸³ *See* R. ¶ 6.

introduced outside of its historic or present distribution.⁸⁴ The grey bear was present in Ranvicora until 1963, at which point it went extinct in Ranvicora.⁸⁵ While some biologists questioned whether the reintroduction site was within the historic range of the grey bear, the present distribution language of the CBD is informative.⁸⁶ Both Paddington and Aloysius noted that their grey bear ranges had extended poleward.⁸⁷ The principle hypothesis was that this shift was a result of climate change and habitat degradation, both of which are present in Ranvicora.⁸⁸ Had grey bears continued to exist in Ranvicora, a similar range shift poleward would likely have occurred.⁸⁹ Ranvicora ascertained the reintroduction site with both climate change and habitat degradation in mind, making the reintroduction site functionally within the present distribution of grey bears.⁹⁰ Decision VIII/27, detailing action against invasive alien species, is not applicable because the grey bear is not an invasive alien species.⁹¹

C. Ranvicora Did Not Violate Article 11 of the Bern Convention Because it Conducted an EIA, Incorporated Poleward Shifts in Habitat Range Witnessed in Paddington and Aloysius, Some Grey Bears Were Outfitted with GPS Trackers, and the Grey Bear is an Endangered and Native Species to Ranvicora.

Article 11 of the Bern Convention⁹² requires States to cooperate with respect to other provisions of the Bern Convention.⁹³ Article 11 also requires States “to encourage the

⁸⁴ See Dec. VI/23.

⁸⁵ See R. ¶ 6.

⁸⁶ See R. ¶ 7; see Dec. VI/23.

⁸⁷ See R. ¶ 7.

⁸⁸ R. ¶ 13.

⁸⁹ See R. ¶¶ 10, 13.

⁹⁰ See R. at ¶ 13.

⁹¹ See *supra* discussion at I(B)(3)(a).

⁹² Bern Convention on the Conservation of European Wildlife and Natural Habitats, Sept. 19, 1979, Council of Eur. No. 104 [hereinafter Bern Convention].

⁹³ Bern Convention, art 11(1).

reintroduction of native species of wild flora and fauna when this would contribute to the conservation of an endangered species, provided that a study is first made in the light of the experiences of other Contracting Parties to establish that such reintroduction would be effective and acceptable.”⁹⁴

Ranvicora complied with Article 11. The grey bear is an endangered species that is native to Ranvicora. Therefore, Article 11 requires Ranvicora to encourage the grey bear’s reintroduction. However, Ranvicora must also conduct a study before reintroducing the grey bear.⁹⁵ Ranvicora did so through its EIA, which also accounted for the poleward shifts in the grey bear’s range. Ranvicora still met its burden to strictly control introduction of species even though the grey bear is a native species because it fitted half of the grey bears in the first release with GPS trackers and released them at least fifty kilometers from the Arctos border.⁹⁶

1. Recommendations No. 158 (2012) and No. 159 (2012) Do Not Apply.

Recommendations No. 158 and No. 159 do not apply to Ranvicora’s Reintroduction Program because the grey bear is not a translocated species.

II. ARCTOS’S RESPONSES TO RANVICORA’S REINTRODUCTION PROGRAM VIOLATED TREATY LAW AND INTERNATIONAL CUSTOMARY LAW

Arctos has a duty to comply with all of its treaty obligations in good faith pursuant to Article 26 of the Vienna Convention, or the *Pacta sunt servanda*.⁹⁷ Arctos failed to do so by intentionally poisoning and shooting the grey bears introduced back into the environment by

⁹⁴ *Id.* art. 11(2).

⁹⁵ *See id.* 11(2)(a).

⁹⁶ *See* Bern Convention art. 11(2)(b); R. ¶ 14.

⁹⁷ Vienna Convention on the Law of Treaties, art. 26, May 23, 1969, 1155 U.N.T.S. 331 [herein after VCLT].

Ranvicora, and subsequently violated their obligations as a Party to the CBD, the Bern Convention, and the CMS.⁹⁸

A. Arctos’s Responses to Ranvicora’s Reintroduction Program Violated the Convention on Biological Diversity.

1. Arctos Violated CBD Articles 1 and 8 by Failing to Interpret the Objectives of the Convention in Good Faith.

All CBD provisions should be construed to prioritize the conservation of biological diversity.⁹⁹ Grey bears play a critical role in maintaining a balanced ecosystem, and Arctos must work to encourage their reintroduction pursuant to Article 1.¹⁰⁰ Arctos violated Article 8 because it breached its duty to promote the recovery of threatened species. Article 8 mandates that “Contracting Parties shall . . . promote the recovery of threatened species . . . through the development and implementation of plans or other management strategies.”¹⁰¹ The grey bear is listed on the IUCN Red List of Threatened Species, on Appendix II of the Bern Convention, and on CMS Appendix 1.¹⁰² As an endangered species that only recently recovered from extinction in Suredia, the promotion of the grey bear’s recovery after its reintroduction is crucial to restore them to a viable population.¹⁰³ Instead of encouraging their repopulation, Arctos tried to inhibit

⁹⁸ R. ¶ 22

⁹⁹ CBD art. 1.

¹⁰⁰ George Coggins & Parthenia Evans, *Predators’ Rights and American Wildlife Law*, 24 Ariz. L. Rev. 821, 824 (1982); University of Michigan Museum of Zoology, *Ursidae bears*, <https://animaldiversity.org/accounts/Ursidae/> (last visited Nov. 4, 2019) (explaining how bears encourage biodiversity by regulating herbivore populations).

¹⁰¹ CBD art. 8(a).

¹⁰² R. ¶ 9.

¹⁰³ See Victoria J. Dreitz, *Issues in Species Recovery: An Example Based on the Wyoming Toad*, 56 *BioScience* 756 (discussing the importance of addressing the factors that put a species at risk in the first place when reintroducing them).

the bears' recovery by poisoning them and giving citizens permission to shoot the grey bears and their cubs.¹⁰⁴

B. Arctos's Responses to Ranvicora's Reintroduction Program Violated the Convention on Migratory Species.

1. Arctos is in Violation of CMS Resolution 12.21.

As a Party to the CMS, Arctos must comply with CMS Resolution 12.21 and assess how it can help migratory species cope with climate change and human development.¹⁰⁵ Arctos also must "promote timely conservation measures where migration patterns have changed due to climate change."¹⁰⁶ Arctos ignored this responsibility, and instead harmed the grey bears by poisoning them and allowing citizens to shoot them.¹⁰⁷

CMS Resolution 12.21 states that compliance with the CMS is an obligation "beyond the historic range of species...particularly with a view to climate-induced range shifts."¹⁰⁸ In light of the climate-changed induced migration of the grey bears, Arctos has become a Range State and as such, to comply with the CMS they must protect the grey bear.

2. Arctos is in Violation of Article III because it is a Range State.

A Range State is defined as "any State...that exercises jurisdiction over any part of the range of that migratory species¹⁰⁹", with "Range" including "all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or overflies at any time on its normal migration route."¹¹⁰ Article III(4) of the CMS requires signatory parties who are Range States to

¹⁰⁴ R. ¶ 21.

¹⁰⁵ CMS Resolution 12.21 art. 4 (2017).

¹⁰⁶ *Id.* at art. 8.

¹⁰⁷ R. ¶ 21.

¹⁰⁸ CMS Resolution 12.21 art. 9.

¹⁰⁹ CMS art. I(1)(h).

¹¹⁰ *Id.* art. I(1)(f).

“a) conserve and, . . . restore those habitats of the species which are of importance in removing the species from danger of extinction, and b) to the extent feasible...prevent, reduce, or control factors that are endangering or are likely to further endanger the species”¹¹¹ Arctos claims not to be a Range State,¹¹² but given the expanded definition of “range” in light of climate change, Arctos clearly qualifies as a range state for the grey bear.¹¹³

Arctos also believes that since there is no historic record of grey bear presence in their country¹¹⁴ that it is not part of the bear’s “normal migration route”, and consequently is not a range state. However, CMS Resolution 10.19 clearly urges Parties to CMS to take measures to conserve species where “migration patterns have changed due to climate change¹¹⁵” and encourages parties to take measures needed to “assist migratory species adapt to climate change.¹¹⁶” Article 7 of this resolution also requires Parties to monitor transboundary range shifts, indicating an awareness that a species’ “range” must be updated as the species adapts to climate change.¹¹⁷ Finally, Article 22 of this resolution acknowledges that the original text of the CMS in 1979 did not define the terms “range” and “historic coverage” with climate change impacts in mind, and that these definitions would benefit from re-interpretation in light of climate change.¹¹⁸

Scientists in Suredia believe that the grey bear’s migratory patterns have shifted due to rising temperatures and shifting vegetation caused by climate change.¹¹⁹ In light of this, it is

¹¹¹ *Id.* art. III(4).

¹¹² R. ¶ 23.

¹¹³ *See* CMS Resolution 12.21.

¹¹⁴ R. ¶ 10.

¹¹⁵ CMS Resolution 10.19 art. 1 (2017).

¹¹⁶ *Id.* art. 3.

¹¹⁷ *Id.* art. 7.

¹¹⁸ *Id.* art. 22.

¹¹⁹ R. ¶ 13.

irrelevant that Arctos historically was not in the migratory range of the grey bears, because as the CMS resolutions above repeatedly clarify, a species “range” may vary due to climate change and Parties must respond accordingly.¹²⁰

3. Arctos’s Actions are Not Permissible Under CMS Article III(5)(d).

Arctos then claims that even if it is a range state, its responses to the Reintroduction Program are permissible under the CMS Article III(5)(d) exception. Article III(5)(d) of the CMS requires Range States to prohibit the taking of migratory species, unless “extraordinary circumstances so require.”¹²¹ This exception should be construed narrowly and in conjunction with the object and purpose of the CMS.¹²²

The “extraordinary circumstance” must be so dire that it impacts an entire country’s economy, such as with the culling of sharks in Australia.¹²³ In that case, frequent shark attacks impacted public safety and the nation’s economy, since it is so dependent on aquatic tourism. The “extraordinary circumstances” exception was satisfied because of the massive scope of the issue and its potential to have continental impact.¹²⁴

These economic and public safety problems are not at issue in Arctos. The only human injuries in Arctos were to two children who had provoked a mother bear by trying to play with a bear cub.¹²⁵ The citizens of Arctos are also upset that there was minor damage to local farms, but

¹²⁰ Arie Trouwborst, *Transboundary Wildlife Conservation in A Changing Climate: Adaptation of the Bonn Convention on Migratory Species and its Daughter Instruments to Climate Change*, 4 *Diversity* 257, 260 (2012).

¹²¹ CMS art. III(5).

¹²² Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species*, 2 *Cornell Int’l. L. Rev.* 41, 44 (2014).

¹²³ Tom Arup, *Greg Hunt grants WA exemption for Shark Cull Plan*, *The Sydney Morning Herald*, Jan. 21, 2014.

¹²⁴ *Id.*

¹²⁵ R. ¶ 22.

this damage is also insufficient to justify an “extraordinary circumstances” exception.¹²⁶ This damage did not cause widespread economic uncertainty (as in Australia), and there were a plethora of ways that farmers could work to stop bears from entering their farms that do not involve poisoning them.¹²⁷

The sharks in Australia were also classified as “vulnerable” under Australian environmental law and the IUCN Red List, rather than “endangered” as the grey bears are.¹²⁸ The more endangered status of the grey bears necessitates an even greater “extraordinary circumstance” in order for Arctos to justify takings.¹²⁹

C. Arctos’s Responses to the Reintroduction Program Violated the Bern Convention.

The Bern Convention seeks to conserve the habitats of migratory species, and as stressed in Article 1 specifically requires international cooperation.¹³⁰ The Bern Convention also has specific expert groups that support its mission through workshops and other implementing programs, including the Expert Group on the Conservation of Large Carnivores.¹³¹

1. Arctos Ignored the General Objectives of the Bern Convention.

Bern Convention Articles 1 and 2 detail the objectives of the Convention. Article 1 encourages states to cooperate to conserve wildlife.¹³² Emphasis should be placed on protecting

¹²⁶ R. ¶ 17.

¹²⁷ Luigi Boitani et al, *Key Actions for Large Carnivore Populations in Europe*, Jan. 2015 (describing how states should work with citizens to safely conserve large predators).

¹²⁸ “*Squatina australis*,” The IUCN Red List of Threatened Species (2016) <https://www.iucnredlist.org/species/41862/68645631> (last visited Nov. 14, 2019).

¹²⁹ R. ¶ 21.

¹³⁰ Bern Convention art. 1 (stating that conservation requires the cooperation of several states).

¹³¹ Nele Matz, *Chaos or Coherence? - Implimenting and Enforcing the Conservation of Migratory Species through Various Legal Instruments, presented at the Expert Workshop Migratory Species: Linking Ecosystems and Disciplines* (held on behalf of the 25th Anniversary of the Bonn Convention), Berlin, Jun. 23, 2004, available at https://www.zaoerv.de/65_2005/65_2005_1_a_197_216.pdf.

¹³² See Bern Convention art 1.

“endangered and vulnerable migratory species.”¹³³ Article 2 requires Arctos to “maintain the population of wild flora and fauna at, or adapt it to, a level which corresponds in particular to ecological, scientific and cultural requirements.”¹³⁴ These two articles prioritize protecting vulnerable species, specifically at border areas of states. Based on these two articles, Arctos must preserve endangered migratory species like the grey bear. By ignoring the intentions of the Bern Convention, Arctos did not interpret the Convention in good faith as required by the Vienna Convention.¹³⁵

2. Arctos Violated the Prohibitions Against Harm in Bern Convention Articles 6, 8 and 10.

Article 6 prohibits states from taking specific actions in regard to Appendix II species such as the grey bear, including “(a) all forms of deliberate capture and keeping and deliberate killing, b) deliberate damage to or destruction of breeding or resting sites, and c) the deliberate disturbance of wild fauna, particularly during the period of breeding, rearing and hibernation”¹³⁶

Article 8 prohibits all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species.¹³⁷

Article 10 requires “Contracting Parties undertake...to co-ordinate their efforts for the protection of the migratory species specified in Appendices II and III whose range extends into

¹³³ Bern Convention art. 1(2).

¹³⁴ *Id.* art. 2.

¹³⁵ VCLT art. 26.

¹³⁶ Bern Convention art. 6(a)(b)(c).

¹³⁷ *Id.* art. 8.

their territories.¹³⁸ Poisoning and shooting the grey bears clearly constitutes “deliberate killing” as prohibited by Article 6, as well as “indiscriminate killing” as prohibited by Article 8, and an unwillingness to co-ordinate with Ranvicora as required by Article 10. Arctos is in violation of their obligations under the Bern Convention.

3. The Article 9 Exception Does Not Apply to Arctos’s Authorization to Kill Grey Bears.

Article 9 allows Contracting Parties to make exceptions for Articles 6 and 8, if the exceptions are “1) for the protection of flora and fauna, 2) to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property, 3) for public health and safety”¹³⁹ However, before a taking is allowed, a state must prove that the exception is the “only satisfactory solution to the issue, and that the exception will not be detrimental to the survival of the population concerned.”¹⁴⁰ The state must interpret the treaty in good faith.¹⁴¹ If an exception applies, Arctos must provide detailed reports describing the circumstances of the exception every two years to the Standing Committee.¹⁴² There is no evidence on the record that Arctos made any attempt to get an exception for killing grey bears approved by the Standing Committee.

Revised Resolution No. 2 further clarifies the scope of the exceptions allowed in Article 9.¹⁴³ First, the provisions mandating that there be “no other satisfactory solution” and that there be no detriment to the survival of the concerned population are both mandatory and cumulative;

¹³⁸ *Id.* art. 10(1).

¹³⁹ *Id.* art. 9(1).

¹⁴⁰ Bern Convention art. 9.

¹⁴¹ *See* VCLT. art. 26.

¹⁴² Bern Convention art. 9(2).

¹⁴³ Revised Resolution No. 2 (1993) on the scope of Articles 8 and 9 of the Bern Convention, Standing Committee, Strasbourg, Dec. 2 2011.

to qualify, a state must meet both of the conditions.¹⁴⁴ Arctos’s programs to poison and shoot grey bears is detrimental to the survival of the population, particularly since Arctos’s actions have resulted in eight grey bear deaths, including two bear cubs and at least one pregnant bear.¹⁴⁵ Arctos also did not consider any other solutions that may have had “the least adverse effects on the species whilst ensuring the survival of the population is not threatened”, failing to meet both required conditions necessary to be exempt.¹⁴⁶

4. Arctos Violated the Intentions Set Out in the Guidance Document Published by the Standing Committee of the Bern Convention, titled *Guidelines for Population Level Management Plans for Large Carnivores in Europe*.¹⁴⁷

This document calls for all countries in areas likely to be inhabited by large carnivore populations (specifically referencing bears, wolves, lynx and wolverines)¹⁴⁸ to work together to improve conservation efforts. It provides approaches for countries to prevent large carnivores from disrupting farms, and encourages states to view large carnivores as an asset rather than a threat.¹⁴⁹ It also emphasizes that large carnivore conservation requires coordination and cooperation between border states.¹⁵⁰ Upon realizing grey bears had entered Arctos, Arctos should have managed potential disruptions for citizens, pursuant to the management plans for carnivore populations.

¹⁴⁴ *Id.* at II(7).

¹⁴⁵ R. ¶¶ 20-21.

¹⁴⁶ Revised Resolution No. 2 (1993) on the scope of Articles 8 and 9 of the Bern Convention, Standing Committee, Strasbourg, Dec. 2 2011 at 3.

¹⁴⁷ Luigi Boitani et al, *Key Actions for Large Carnivore Populations in Europe*, Jan. 2015.

¹⁴⁸ *Id.* at 8.

¹⁴⁹ *Id.* at 11-12 (describing how states should work with livestock owners to implement strategies decreasing depredation).

¹⁵⁰ *Id.* at 13 (recommending population level management plans, regional stakeholder dialogue forums, and coordination between member states).

D. Arctos Violated Customary International Law by Breaching the Duty Not to Cause Transboundary Harm.

ICJ has ruled that states have an obligation to “ensure that activities within their jurisdiction and control respect the environment of other states or areas beyond national control.¹⁵¹” In giving its citizens full license to kill grey bears, Arctos disregarded the cultural importance of the grey bear to Ranvicora,¹⁵² and also endangered the ecosystem of all of Suredia. As discussed above, predators play a vital role in ecosystems; they directly impact environments by reducing numbers of prey and by influencing the behaviors of prey so that they choose different habitats and food sources.¹⁵³ When this threat of predation no longer influences ecosystems, the quantity and behavior of species in lower trophic levels are affected, which in turn affects surrounding ecosystems by changing seedling establishment, soil nutrient dynamics, and growth rates of trees and plants.¹⁵⁴ These risks regarding habitat quality and species diversity must be considered before taking direct action against carnivores, otherwise ecosystems may be irrevocably altered.¹⁵⁵ By authorizing the unjustified killing of the endangered grey bears throughout Arctos,¹⁵⁶ Arctos is contributing to the possibility that grey bears go extinct throughout Suredia once again, which will inevitably impact biodiversity throughout Suredia. Taking these actions without an adequate justification is a clear violation of the obligation not to cause transboundary harm.

¹⁵¹ ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons at 242 (recognizing that a healthy environment is vital for high quality of life, particularly for future generations).

¹⁵² R. ¶¶ 10-11.

¹⁵³ Brian Miller et al., *The Importance of Large Carnivores to Healthy Ecosystems*, 18 *Endangered Species Update* 1, 3 (2001).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 6.

¹⁵⁶ R. ¶ 21.

CONCLUSION AND PRAYER FOR RELIEF

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

(1) the Republic of Ranvicora did not violate international law with respect to its grey bear reintroduction project, and

(2) the Federal States of Arctos violated international law with respect to its responses to Ranvicora's reintroduction of grey bears.

RESPECTFULLY SUBMITTED,
AGENTS OF RESPONDENT

