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IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

QUESTIONS RELATING TO REINTRODUCTION OF BEARS

THE FEDERAL STATES OF ARCTOS

APPLICANT

V.

THE REPUBLIC OF RANVICORA

RESPONDENT

MEMORIAL FOR THE RESPONDENT

THE 2020 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

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Convention on the Conservation of Migratory Species of Wild Animals, 1651 UNTS 333 (1979)	<i>passim</i>
Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.....	8, 9
Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.....	8, 9
United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107.....	9
Statute of the International Court of Justice, art. 36(1), art. 40, T.S. No. 993 (1945).....	ix
Vienna Convention on the Law of Treaties, art. 60, 1155 U.N.T.S. 331; 8 I.L.M. 679 (1969).....	22

U.N. DOCUMENTS

ILC Commentary on the Draft Articles on Responsibility of States, Yearbook of the International Law Commission, 2001, vol. II (Part Two).....	21
International Law Commission, Articles on the Responsibility of States for Internationally Wrongful Acts, General Assembly Doc. A/56/10 (2001).....	21
Noordwijk Declaration on the Conference on Atmospheric Pollution and Climate Change (1989).....	8
United Nations Conference on Environmental and Development, June 3-14, 1992, Rio Declaration on the Human Environment, UN Doc. A/CONF. 151/26 (1992).....	8
United Nations Environmental Programme Governing Council,	

Resolution 15/36 (1989).....	8
United Nations General Assembly on Global Climate Change, Resolution 43/53 (1988).....	8

JUDICIAL AND ARBITRAL DECISIONS

Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (2005) I.C.J. Rep 168.....	19
Gabcikovo-Nagymaros (Hungary v. Slovakia) (1997) I.C.J. 7.....	8, 20
Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (1984) I.C.J. Rep 392.....	19
Portugal v. Germany (The Naulilaa Arbitration) (1928) 2 RIAA 1013.....	19
Russian Indemnity (Russia v Turkey) (1913) 7 AJIL 178	20
Société Commerciale de Belgique (Belgium v Greece) [1939] PCIJ ser A/B No 78.....	20
S.S. Wimbledon [1923] PCIJ Rep A No 1.....	20

BOOKS

Alina Kaczorowska-Ireland, Public International Law (5th ed. 2015).....	21
Bin Cheng, General Principles of International Law as Applied by Courts and Tribunals (1953).....	21
Ian Stirling, Polar Bears: The Natural History of a Threatened Species, Fitzhenry & Whiteside (rev. ed. 2011).....	4
IUCN Species Survival Commission, IUCN Red List categories and criteria, ver. 3.1, 14 IUCN Gland/Cambridge (2nd ed. Jan 2012).....	15
J. Catalan <i>et al.</i> (eds.), High Mountain Conservation in a Changing World, Advances in Global Change Research 62, <i>Chapter 10: The Importance of Reintroducing Large Carnivores: The Brown Bear in the Pyrenees</i> (2017).....	5
P. Birnie, A. Boyle, C. Redgwell, International Law & the Environment (3rd ed, 2009).....	8
Nicolas De Sadeleer, Environmental Principles: From Political Slogans to Legal Rules, OUP (2002).....	8

Richard Burnett-Hall, Brian Jones, Burnett-Hall on Environmental Law (2nd Ed. 2009).....	<i>passim</i>
Sands, Principles of International Environmental Law (2003).....	13
Stephen Herrero, Bear attacks: Their causes and avoidance, Nick Lyons Books New York (2nd Ed. 2002).....	12

ARTICLES

Adrian C. Stier <i>et al.</i> , <i>Ecosystem context and historical contingency in apex predator recoveries</i> , 2(5) <i>Sci Adv.</i> (May 2016).....	9
Arie Trouwborst, <i>Global Large Carnivore Conservation and International Law</i> , 24 <i>Biodiver and Conserv</i> 1567 (2015).....	<i>passim</i>
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C. Wolf, WJ. Ripple, <i>Rewilding the world’s large carnivores</i> , 5 <i>R. Soc. open sci.</i> (2018).....	15
E.G. Ritchie <i>et al.</i> , <i>Ecosystem restoration with teeth: what role for predators?</i> 27 <i>Trends Ecol Evol</i> at 265–271 (2012).....	5
E. Vulla <i>et al.</i> , <i>Carnivory is positively correlated with latitude among omnivorous mammals: evidence from brown bears, badgers and pine martens</i> , 46 <i>Ann Zool Fen</i> at 395–415 (2009).....	5
Federica I. Paddeu, <i>A Genealogy of Force Majeure in International Law</i> , 82 <i>Brit. Y. B. Int’l L</i> 381 (2012).....	21
I.C. MacGibbon, <i>Estoppel in International Law</i> , 7 <i>I.C.L.Q.</i> 468 (1958).....	18
JDC Linnell, Arie Trouwborst and F.M. Fleurke, <i>When is it Acceptable to Kill a Strictly Protected Carnivore? Exploring the Legal Constraints on Wildlife Management within Europe’s Bern Convention</i> 21 <i>Nat. Conserv.</i> 129 (2017).....	7
J.E. Swenson <i>et al.</i> , <i>Predation on moose calves by European Brown bears</i> , 71 <i>J Wild Manag</i> at 1993–1997 (2007).....	5

J.E. Swenson <i>et al.</i> , <i>Interactions between brown bears and humans in Scandinavia</i> , 2 <i>Biosp Conserv</i> at 1-9 (1999).....	15
K. Jerina <i>et al.</i> , <i>Range and local population densities of brown bear <i>Ursus arctos</i> in Slovenia</i> , 59(4) <i>Eur J Wildl Res</i> at 1-9 (2013).....	4
Lyle Glowka <i>et al.</i> , <i>A Guide To The Convention On Biological Diversity</i> , IUCN Gland/Cambridge (1994).....	13, 19
Megan L. Wagner, <i>Jurisdiction by Estoppel in the International Court of Justice</i> , 74 <i>Calif L Rev</i> (1986).....	18
M. Elfström <i>et al.</i> , <i>Does despotic behavior or food search explain the occurrence of problem brown bears in Europe?</i> 78 <i>J. Wildl. Manag.</i> at 881–893 (2014b).....	12
Myanna Dellinger, <i>Rethinking Force Majeure in Public International Law</i> , 37 <i>Pace L. Rev.</i> 455 (2017).....	22
P. Zager P, J. Beecham, <i>The role of American black bears and brown bears as predators on ungulates in North America</i> , 17 <i>Ursus</i> at 95–108 (2006).....	5
Robert D. Sloane, <i>On the Use and Abuse of Necessity in the Law of State Responsibility</i> , <i>Am. J. Int’l L</i> 106 (2012).....	21
S. Herrero <i>et al.</i> , <i>Brown bear habituation to people-safety, risks, and benefits</i> , 33 <i>Wildl. Soc. Bull.</i> 1 at 362-373 (2005).....	3
Timothy Morris, <i>Removal of an apex predator initiates a trophic cascade that extends from herbivores to vegetation and the soil nutrient pool</i> , 284 <i>Proc. R. Soc. B</i> (2017).....	9
T.M. Gehring <i>et al.</i> <i>Livestock protection dogs in the 21st century: is an ancient tool relevant to modern conservation challenges?</i> 60 <i>Bio Science</i> at 299–308 (2010).....	18

MISCELLANEOUS

Aleksandra Majić Skrbinišek, Miha Krofel, Prepared for DG Environment, European Commission, <i>Final Report for the Pilot Action: Defining, preventing, and reacting to problem bear behaviour in Europe</i> (2015).....	18, 21
Decision VI/23 adopted by the Conference of the Parties to the Convention on Biological Diversity at its Sixth Meeting, U.N. DOC. UNEP/CBD/COP/DEC/6/20 (2002).....	6
JDC Linnell, V. Salvatori & L. Boitani, <i>Guidelines for Population Level Management Plans for Large Carnivores in Europe</i> , A Large Carnivore Initiative for Europe report prepared for the European Commission (2008).....	6

IUCN/SSC Re-introduction Specialist Group, <i>Guidelines for Re-introductions</i> , Gland/Cambridge (1998).....	<i>passim</i>
Resolution 10.19 adopted by the Conference of the Parties at its 10th Meeting, UNEP/CMS/Resolution 10.19 (Nov. 2011).....	6
Resolution 11.33 adopted by the Conference of the Parties at its 11th Meeting, UNEP/CMS/Resolution 11.33 (Nov. 2014).....	1, 15
Resolution 12.21 adopted by the Conference of the Parties at its 12th Meeting, UNEP/CMS/Resolution 12.21 (Oct. 2017).....	10
Revised Resolution No. 2 (1993) adopted by the Bern Convention Standing Committee at its 31st Meeting (Dec. 2 2011).....	17
SM Wilson, <i>Community-supported conservation of grizzly bears on private agricultural lands. Final close-out report for conservation innovation grant</i> , U.S. Dept of Agriculture – Natural Resources Conservation Service, Portland, OR (2007).....	4, 16
Recommendation 115 of the Bern Convention Standing Committee, (Dec. 1 2005).....	16
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STATEMENT OF JURISDICTION

On 15 July 2019, the Federal States of Arctos and the Republic of Ranvicora submitted the following dispute to the International Court of Justice (“the Court”), in accordance with Article 40 of the Statute of the International Court of Justice. The Registrar of the Court addressed notification to the parties on 22 July 2019. Arctos and Ranvicora have accepted jurisdiction of the Court pursuant to Article 36(1) of the Statute.

QUESTIONS PRESENTED

- I. **WHETHER RANVICORA VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROJECT.**

- II. **WHETHER ARCTOS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO THE REINTRODUCTION OF GREY BEARS.**

STATEMENT OF FACTS

Arctos and Ranvicora are neighbouring states located on the continent of Suredia. Arctos is situated north of Ranvicora, sharing a border of 75-km, Arctos' only shared border (R.1), consisting of forests.

The *Ursus smokeysius* is the only large carnivore species endemic to Suredia (R.1). It is similar to the brown bear (R.9) and is listed as 'Endangered' on the IUCN Red List of Threatened Species, on Appendix II of the Bern Convention and on Appendix I of CMS (R.9). The grey bear's range has recently shifted poleward in Paddington and Aloysius due to climate change (R.13).

The species became extinct in 1963 (R.10). This was a national tragedy, given its significant cultural importance for Ranvicora (R.11).

Over five years, scientists worked on the reintroduction project, spearheaded by Ranvicora (R.11). An environmental impact assessment (EIA) was made pursuant to national laws on planning (R.12). There is no historic evidence of grey bear presence in Arctos (R.10). The reintroduction project was therefore assessed on a national level only. Multiple reintroduction phases were considered until 2026.

The first release occurred in March 2013 (R.14). 20 grey bears were reintroduced over a five-year period in the region, with the nearest release to Arctos being about 50km from the border (R.14). Half of the bears were fitted with GPS collars.

The first sighting of a grey bear in Arctos occurred in September 2017 and occasional sighting reports followed (R.16).

During 2018, reports from Arctos indicated unwitnessed attacks on 7 horses and 20 sheep (R.17).

Other allegations included damage to apple orchards, beehives and the Trouwborst tern, a nationally endangered species in Arctos. No attacks were registered in Ranvicora (C.Q/A12).

In August 2018, Arctos alleged that Ranvicora violated international law causing transboundary harm by reintroducing the grey bears, demanding compensation and cessation of the reintroduction project (R.18). Ranvicora denied these accusations and asserted the species' endangered status and need of conservation for its ecological and cultural significance (R.19).

Arctos set poisoned animal carcasses near their citizens' farms. In January 2019, four grey bears died because of the poisoned carcasses. In April 2019, a bear regrettably attacked two Ranvicora children who were trying to play with her bear cub (R.21). Two days later, Arctos passed emergency legislation granting permission to shoot any grey bear in Arctos. 2 female grey bears, one pregnant, were subsequently shot along with two cubs in the space of four weeks (R.21).

Ranvicora alleged that Arctos violated international law by poisoning and shooting grey bears and caused transboundary harm, demanding revocation of the emergency regulation causing serious harm to the endangered species. Arctos counter-alleged that the grey bear was an invasive alien species causing transboundary harm and that its actions were appropriate regarding the various treaties.

The Parties agreed to submit the matter to the International Court of Justice in July 2019.

SUMMARY OF ARGUMENTS

Ranvicora acted in accordance with international law when reintroducing the *Ursus smokeysius*, an internationally recognized endangered species in need of protection. Ranvicora advanced its conservation by reintroducing an extinct species on its territory and jointly furthered its international environmental obligations. Collaterally, it enriched the biodiversity and positively impacted issues related to climate change. It successfully followed treaty procedural requirements for its reintroduction project.

Arctos violated international law in relation to the magnitude of its responses to the reintroduction project. It violated its treaty obligations related to conservation and protection of the species. Arctos thwarted Ranvicora's conservation efforts. It acted disproportionately by culling and poisoning the bears crossing the border, where other more humane alternatives would be available as a response to the tragic loss of human life and property damage. Arctos' conduct was disproportionate, thus unjustifiable under international law and international customary law.

ARGUMENT

I. Ranvicora is in accordance with international law as to its grey bear reintroduction project

A. Ranvicora fulfilled its obligations under treaty law

1. Ranvicora advanced the conservation objectives under the Convention on the Conservation of Migratory Species of Wild Animals (“CMS”)

a. Ranvicora was mandated by Article II to protect the grey bear, a migratory species

Ranvicora fulfilled Article II(3) of the CMS, which compels parties to provide immediate protection for migratory species included in Appendix I, by providing for the adequate conservation of the only endangered, migratory large carnivore in Suredia¹. Furthermore, Ranvicora furthered Article II(1) by taking the “appropriate and necessary steps to conserve such species and their habitat”.

The grey bear is listed under CMS² Appendix I as a “migratory species which [is] endangered”. The Convention defines ‘migratory species’ as species “whose members cyclically and predictably cross one or more national jurisdictional boundaries”³. The Conference of the Parties (COP) has further interpreted the term “endangered” as “facing a very high risk of extinction in the wild in the near future”⁴. The grey bear faces extinction in the wild in Ranvicora. Its population dwindled to 0 in 1963 and it is only as a result of the reintroduction programme that the grey bear exists in Ranvicora at present.

¹ Record (10) [R].

² Convention on the Conservation of Migratory Species of Wild Animals, 1651 UNTS 333 (1979) [CMS].

³ CMS, art I(1)(a).

⁴ Resolution 11.33 adopted by the Conference of the Parties at its 11th Meeting, UNEP/CMS/Resolution 11.33 (Nov. 2014).

The range of the grey bear is that of a migratory species, which is defined as “all the areas of land or water that a migratory species inhabits, stays in temporarily, crosses or over flies at any time on its normal migration route”⁵. A shift northwards has recently been observed by grey bears in Paddington and Aloysius⁶. The CMS instruments⁷ requires parties to accommodate migratory species like the grey bear, whose normal behavior has been altered due to climate change.

The population is now regularly crossing the border between Ranvicora and Arctos. This shift is believed to be in response to ‘rising temperatures and shifting vegetation’ caused by climate change. The grey bear is thus an endangered migratory species that the parties “shall endeavor to provide immediate protection”⁸ for.

2. Ranvicora acted in accordance with the Convention on Biological Diversity (CBD)

a. Ranvicora championed the objectives of Article 1

The conservation of biological diversity is a key objective of Article 1⁹. Ranvicora fulfilled its obligation to conserve biological diversity by reintroducing the grey bear to its ecosystem.

The grey bear satisfies the definition of biological diversity as it is a living organism which formed part of the terrestrial ecosystem of Ranvicora¹⁰. Ranvicora sought to protect this

⁵ CMS, art. I(f).

⁶ R(13).

⁷ Arie Trouwborst, *Transboundary Wildlife Conservation in A Changing Climate: Adaptation of the Bonn Convention on Migratory Species and Its Daughter Instruments to Climate Change*, Diversity at 258-300 (2012).

⁸ CMS, art. II(3)(b).

⁹ Convention on Biological Diversity, 1760 U.N.T.S. 79 (1992) [CBD].

¹⁰ CBD, art.2.

biological diversity by way of its re-introduction programme and to preserve the grey bear from extinction in Ranvicora.

b. Ranvicora discharged its obligation under Article 6 by setting out a national strategy to protect the grey bear

Article 6 obliges States to “develop national strategies, plans or programmes for the conservation and sustainable use of biological diversity”. Ranvicora satisfied Article 6 by establishing a national strategy to conserve and protect the grey bear by undertaking a comprehensive five-year national environmental impact assessment (“EIA”)¹¹, also mandated by Article 14 – where possible and appropriate. The absence of any reported conflict with Ranvicora¹² indicates an efficient assessment on a national level. The risks associated with the reintroduction can be effectively managed and this is imperative to ensure the survival of this endangered species, which would be extinct in Ranvicora without this reintroduction programme.

An EIA identifies key preventative measures required to be undertaken to ensure the peaceful re-introduction of an apex predator into an ecosystem, such as public education on peaceful co-existence with the bears and the removal of anthropogenic food from an area which is the main cause of human-bear conflicts¹³. Bear conflict can therefore be reduced by 91%, as in Western

¹¹ R(11).

¹² Clarifications Q/A.12.

¹³ S. Herrero *et al.*, *Brown bear habituation to people-safety, risks, and benefits*, 33 Wildl. Soc. Bull. 1 at 362-373 (2005).

Montana¹⁴. It also ascertains the limitations of monitoring bears. Only female bears can be tracked by GPS collar trackers given the size of their neck¹⁵.

Ranvicora therefore satisfied Article 6 of the CBD¹⁶ along with Article 14 as it diligently implemented the reintroduction project on its territory, evidenced by the preservation of its human life as well as the grey bear population.

c. Ranvicora fulfilled its obligation to cooperate with regard to the EIA

Historically, the grey bear was only indigenous to Paddington, Aloysius and Ranvicora¹⁷. The average hunting-area of a brown bear is 50km¹⁸. Grey bears being very similar to brown bears¹⁹, it was reasonable to consider that it would only occupy the national territory along the 75km border shared with Arctos.

It was therefore reasonable for Ranvicora to consider the re-introduction programme on an exclusively national scope and that a national EIA would satisfy the due diligence requirements of Article 14.

Furthermore, under Article 3 of the CBD, Ranvicora had the sovereignty to use its natural resources as it saw fit to conduct an appropriate national EIA using the information available at

¹⁴ SM Wilson, *Community-supported conservation of grizzly bears on private agricultural lands. Final close-out report for conservation innovation grant*, U.S. Dept of Agriculture – Natural Resources Conservation Service, Portland, OR (2007).

¹⁵ Ian Stirling, *Polar Bears: The Natural History of a Threatened Species*, Fitzhenry & Whiteside, (rev. ed. 2011).

¹⁶ CBD, art.6(1)(a).

¹⁷ R(10).

¹⁸ K. Jerina *et al.*, *Range and local population densities of brown bear Ursus arctos in Slovenia*, 59(4) Eur J Wildl Res at 1-9 (2013).

¹⁹ R(9).

the time, prior to unpredictable and adverse effects of climate change. Ranvicora was therefore not under an obligation to co-operate with Arctos, as this was a national matter to conserve an endangered species.

d. Ranvicora is acting in accordance with Article 8

In-situ conservation is defined as (i) the conservation of ecosystems and natural habitats and (ii) the maintenance and recovery of viable populations of species in their natural surroundings²⁰.

Article 8 includes duties regarding such conservation, *inter alia* to adopt measures for recovery and rehabilitation of the threatened species or to develop and maintain appropriate statutory provisions.

Being large apex predators, grey bears are central to a healthy and balanced ecosystem²¹. They ensure biodiversity, being engineers of the ecosystem's dynamics and increasing habitat heterogeneity²². Similar to brown bears, they operate a form of biological control at the top of the trophic cascade and prevent the spread of diseases and invasive species²³. Brown bears prey on ungulates²⁴, especially neonatal ones in North America²⁵ or moose in Northern Europe²⁶. They also notably fertilise the soil and help the seeds dissemination.

²⁰ CBD, art.2.

²¹ J. Catalan *et al.* (eds.), *High Mountain Conservation in a Changing World, Advances in Global Change Research 62, Chapter 10: The Importance of Reintroducing Large Carnivores: The Brown Bear in the Pyrenees* (2017).

²² E.G. Ritchie *et al.*, *Ecosystem restoration with teeth: what role for predators?* 27 *Trends Ecol Evol* at 265–271 (2012).

²³ Catalan, *supra* note 21.

²⁴ E. Vulla *et al.*, *Carnivory is positively correlated with latitude among omnivorous mammals: evidence from brown bears, badgers and pine martens*, 46 *Ann Zool Fen* at 395–415 (2009).

²⁵ P. Zager P, J. Beecham, *The role of American black bears and brown bears as predators on ungulates in North America*, 17 *Ursus* at 95–108 (2006).

²⁶ J.E. Swenson *et al.*, *Predation on moose calves by European Brown bears*, 71 *J Wild Manag* at 1993–1997 (2007).

Ranvicora furthered the principle of in-situ conservation under Article 8, as the reintroduction programme sought to recover an endangered species in order to benefit its ecosystem and the species' conservation status.

e. The grey bear is not an 'alien species' and Article 8(h) is therefore inapplicable

Article 8(h) obliges parties to “[p]revent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species”. An ‘alien species’ is defined as a species ‘introduced outside its natural past or present distribution’²⁷ by the CBD Conference of Parties. The species is invasive if it poses a threat to native biodiversity²⁸.

The Standing Committee of the Bern Convention indicated that the term ‘alien species’ does not include ‘native species extending their range in response to climate change’²⁹. Equally, the Conference of the Parties for the CMS adopted interpretations of the Convention provisions that are ‘welcoming rather than deterring species naturally changing their distribution in apparent response to climate change’³⁰. The translocation method is considered as an appropriate conservation tool where it is part of a well-planned reintroduction³¹.

The grey bear is a species indigenous to the area where it was reintroduced, whose normal migration-route shifted northwards due to climate change. It is a culturally important species to

²⁷ Decision VI/23 adopted by the Conference of the Parties to the Convention on Biological Diversity at its Sixth Meeting, U.N. DOC. UNEP/CBD/COP/DEC/6/20 (2002).

²⁸ Arie Trouwborst et al., *Legal implications of range expansions in a terrestrial carnivore: the case of the golden jackal (Canis aureus) in Europe*, 24 *Biodivers Conserv* at 2593–2610 (2015).

²⁹ Recommendation 142 of the Bern Convention Standing Committee, (Nov. 26 2009).

³⁰ *Trouwborst, supra* note 28; Resolutions 10.19 and 11.26 adopted by the Conference of the Parties at its 10th and 11th Meetings, UNEP/CMS/Resolution 10.19 and 11.26 (Nov. 2011 and 2014).

³¹ JDC Linnell, V. Salvatori & L. Boitani, *Guidelines for Population Level Management Plans for Large Carnivores in Europe*, A Large Carnivore Initiative for Europe report prepared for the European Commission (2008).

Ranvicora. It therefore cannot be considered an alien species for the purposes of Article 8 and is entitled to protection under the Convention.

3. Ranvicora furthered the objectives of the Bern Convention

a. Ranvicora is protecting the grey bear, listed under Appendix II as a specially protected species

The Bern Convention imposes a duty on the parties to take appropriate and necessary legislative and administrative measures to afford special protection to the species listed in Appendix II³².

Appendix II lists strictly protected fauna species, all species of *Ursidae* are covered by the provision. The grey bear is part of the *Ursidae* family and is therefore an endangered species as per Appendix II³³, in need of protection. “Conservation” is one of the main goals of the Convention³⁴.

Article 6 places a “strict protection” duty³⁵ on the Parties to facilitate the wild fauna species protected under the Convention. This comprises a positive duty to pass appropriate legislative instruments to preserve the specified fauna and a negative duty to not cause harm to it through the legislation.

³² Convention on the Conservation of European Wildlife and Natural Habitats, 1284 U.N.T.S. 209 (1982) [Bern Convention], art.6.

³³ R(9).

³⁴ Bern Convention, arts.1-3.

³⁵ JDC Linnell, Arie Trouwborst and F.M. Fleurke, *When is it Acceptable to Kill a Strictly Protected Carnivore? Exploring the Legal Constraints on Wildlife Management within Europe's Bern Convention* 21 Nat. Conserv. 129 (2017).

As such, Ranvicora acted in accordance with its duty to protect the wild fauna species by conducting a five-year EIA before choosing the most appropriate reintroduction environment for release and conservation.

B. Ranvicora acted in accordance with customary international law by furthering the *erga omnes* principle of global environmental responsibility

Customary international law obligations that concern the protection of the global environment have an *erga omnes* character³⁶. These international *erga omnes* principles have been recognised by the International Court of Justice (ICJ)³⁷. De Sadeleer stated that the preventative principle should be imposed in an environmental context regardless of possible global or transboundary effects³⁸.

Biological diversity and climate change were named areas of “common concern of mankind” by subsequent Rio Treaties³⁹ whilst multiple international treaties also impose restrictions on signatories regarding the management of the domestic environments⁴⁰. Biodiversity and climate change are therefore issues of global concern which extend to the management of a state’s domestic environment and have an *erga omnes* character.

³⁶ P. Birnie, A. Boyle, C. Redgwell, *International Law & the Environment* (3rd ed, 2009) 131.

³⁷ *Gabcikovo-Nagymaros (Hungary v. Slovakia)* (1997) I.C.J. 7.

³⁸ Nicolas De Sadeleer, *Environmental Principles: From Political Slogans to Legal Rules*, OUP (2002) 64.

³⁹ United Nations General Assembly on Global Climate Change, Resolution 43/53 (1988); Noordwijk Declaration on the Conference on Atmospheric Pollution and Climate Change, art.7 (1989); United Nations Environmental Programme Governing Council, Resolution 15/36 (1989).

⁴⁰ CBD, art.6(a); Bern Convention.

The importance of global environmental responsibility and the duty of each country to fight climate change is specified in the Kyoto Protocol, Paris Climate Agreement and the United Nations Framework Convention on Climate Change. These agreements oblige Ranvicora and Arctos to fight climate change by reducing anthropogenic emissions⁴¹. They are obliged to protect and maintain carbon sinks⁴².

As evidenced by the reintroduction of wolves in Yellowstone, apex predators have a positive impact on the ecosystem, improving its health and balance⁴³. Their presence encourages nutrient cycling, improves the soil nutrient pool⁴⁴, allows for healthier flora and improves the capacity of the region to act as a carbon sink.

Ranvicora is adhering to its duty of global environmental responsibility by reintroducing the grey bear and consequently enhancing the carbon sink along the Ranvicoran border with Arctos.

⁴¹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162 [Kyoto Protocol].

Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 [Paris Agreement].

United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 [UNFCCC].

⁴² UNFCCC, art.3(2), art.4(1)A/B, art.4(2)A; Paris Agreement, art.5(1); Kyoto Protocol, art.2.

⁴³ Adrian C. Stier *et al.*, *Ecosystem context and historical contingency in apex predator recoveries*, 2(5) *Sci Adv.* (May 2016).

⁴⁴ Timothy Morris, *Removal of an apex predator initiates a trophic cascade that extends from herbivores to vegetation and the soil nutrient pool*, 284 *Proc. R. Soc. B* (2017).

II. Arctos violated its international obligations with respect to its responses to the reintroduction of grey bears

A. Arctos violated its treaty obligations

1. Arctos failed in its obligations to conserve the grey bear under the CMS

Arctos violated the CMS by denying its responsibility as a Range State and by harming the conservation project of Ranvicora, reintroducing the threatened migratory species on its territory.

a. Arctos is a Range State within the meaning of Article I(1)(h) CMS and thus has obligations towards the grey bear, a migratory species

Article I(1)(h) defines a Range State in relation to a particular migratory species as any State exercising jurisdiction over any part of the range of that migratory species.

Whilst the internal observations did not lead Ranvicora to conclude that the reintroduced population would cross the Arctos' border, as historical data was lacking, it is accepted that in recent years, the natural range of species can expand – especially in response to climate change⁴⁵. Resolution 12.21 confirms the position that action beyond the historic range of species may be required due to the climate-induced range-shifts⁴⁶. Parties must therefore accommodate such shift in the migration route and take their responsibilities of Range States. Range States are notably under the stringent obligation to prohibit the taking of the protected species, except under strictly defined conditions⁴⁷.

⁴⁵ *Trouwborst, supra* note 28.

⁴⁶ Resolution 12.21 adopted by the Conference of the Parties at its 12th Meeting, UNEP/CMS/Resolution 12.21 (Oct. 2017).

⁴⁷ CMS, art.III(5).

Arctos therefore falls under the definition of a ‘Range State’ and cannot deny its international law obligations concerning the endangered migratory species that is the reintroduced grey bear population.

b. Arctos breached its Range State obligations under Articles II and III(4) of the CMS

Article II(1) recognizes the importance of Range States taking steps towards the conservation of migratory species, individually or in co-operation with other States, and specifically those whose conservation status “is unfavourable”⁴⁸. It acknowledges the need for action for species conservation.

Arctos is in breach of the fundamental principles of Article II of the CMS by not protecting the grey bear on its territory and killing a significant amount of the species on its grounds.

Range States have the duty to conserve and, if feasible and appropriate, restore habitats of the species important to its survival. They must also reduce or control factors that are endangering or are likely to further endanger the species, as well as compensate for the adverse effects of activities or obstacles seriously impeding or preventing the migration of the species⁴⁹.

Arctos repeatedly failed to undertake measures to conserve the species on its territory. Measures for the restoration of habitat could have included, for example, ranger forces for bear-tracking. The range of female bears reduces during mating season because of dominant males, leaving food in solitary areas would prevent the female bears roaming further in search for food and

⁴⁸ CMS, art.II(1).

⁴⁹ CMS, art.III(4).

coming into conflict with humans⁵⁰. Educational measures could have achieved an awareness of citizens on how to deal with different bear encounters, rather than being encouraged to shoot them through legislation.

Arctos thus violated Article III(4) not only by its failure to conserve the species on its territory, but also by its positive actions endangering the species by poisoning and culling grey bears. Its actions of leaving poisoned carcasses near inhabited areas resulted factually in an incitement for bear-human conflicts⁵¹. Arctos actively took legislative steps to ensure the population of the grey bear would be culled.

c. Arctos cannot rely on Article III(5)

Arctos, as a Range State, is obligated to prohibit the taking (meaning including *inter alia* hunting or deliberate killing⁵²) of the grey bear. Article III(5)(d) presents the exception of “extraordinary circumstances”, provided they are precise in content, limited in space and time and do not operate to the disadvantage of the species. This three-fold test cannot be satisfied by Arctos in the circumstances.

The means of terminating the grey bears by placing poisoned carcasses began around January 2019⁵³, at least three months before the unfortunate incident concerning the mauling of two children by a female grey bear with a bear cub. The deployment of emergency regulation enabling citizens to cull grey bears with no situational or behavioral limitation was grossly

⁵⁰ M. Elfström *et al.*, *Does despotic behavior or food search explain the occurrence of problem brown bears in Europe?* 78 *J. Wildl. Manag.* at 881–893 (2014b).

⁵¹ Stephen Herrero, *Bear attacks: Their causes and avoidance*, Nick Lyons Books New York (2nd Ed. 2002); J.E. Swenson *et al.*, *Interactions between brown bears and humans in Scandinavia*, 2 *Biosp Conserv* at 1-9 (1999).

⁵² CMS, art.I(1)(i).

⁵³ R(20).

disproportionate. More humane ways could have been put in place to deal with the bears in the vicinity.

The actions of Arctos were thus unrestricted, disproportionate and had as a consequence the killing of at least 8 members of the species, reducing significantly its numbers and threatening the survival of the entire reintroduction project⁵⁴. In particular, the taking of female bears is seriously damaging to the grey bear reintroduction program. The exception thus cannot apply.

In consequence, Arctos cannot rely on the exceptions of Article III and is in violation of international law under the CMS.

2. Arctos breached CBD principles of cooperation for conservation of threatened species

a. Arctos breached Article 5 by not cooperating with Ranvicora for the conservation of the threatened species

The principle of preventive action under CBD mandates States to adopt measures to avoid or minimize adverse impacts on biological diversity⁵⁵, limiting through regulation activities which might cause such damage⁵⁶.

Article 5 urges the Parties, amongst other things, to cooperate for the conservation in respect of areas beyond national jurisdiction and on other matters of mutual interest. Such matters of mutual interest can include issues associated with migratory species⁵⁷.

⁵⁴ R(20,21).

⁵⁵ Sands, Principles of International Environmental Law at 246–47 (2003).

⁵⁶ *Id.*

⁵⁷ Lyle Glowka *et al.*, *A Guide To The Convention On Biological Diversity*, IUCN Gland/Cambridge (1994).

Arctos failed to cooperate with Ranvicora to conserve the migrating grey bear population, and instead intentionally poisoned and shot them⁵⁸. This goes against the objectives of the CBD⁵⁹ to conserve biological diversity.

b. Arctos breached the in-situ conservation principles of Article 8

Article 8 imposes duties on States regarding the primary conservation strategy – in-situ, meaning the preservation of the species and its viability in its natural surroundings⁶⁰. Arctos breached those duties.

*i. **Arctos breached Article 8(k) by developing harmful statutory provisions for the threatened species***

Article 8(k) imposes an obligation on Parties to “develop or maintain necessary legislation and/or other regulatory provisions for the protection of threatened species and populations”.

Arctos allowed indiscriminate culling through the emergency legislation by the local population after a period of legislative inaction of five years, since the moment it became first aware of the bears crossing the border occasionally⁶¹.

Arctos’ citizens are permitted by law and indeed encouraged by the State to significantly endanger the reintroduced population and therefore cause uncontrollable and potentially irreversible damage to the bears’ ecosystem with impunity. This constitutes a violation of Arctos’ obligation to avoid or minimize adverse impact on biological diversity under the CBD.

⁵⁸ R(20,21).

⁵⁹ CBD, art.1.

⁶⁰ CBD, art.2.

⁶¹ R(16).

ii. Arctos failed to adopt measures for the recovery and rehabilitation of the threatened species in violation of Article 8(f)

The CBD mandates States to adopt measures for the recovery and rehabilitation of threatened species⁶². The grey bear is IUCN listed as ‘Endangered’⁶³. It is at a very high risk of extinction in the wild⁶⁴ in the near future⁶⁵.

As an endangered species, recovery and rehabilitation measures are imperative to restore their viable population. Among the recognized conservation methods for large carnivores is the rewilding process, which includes reintroducing species into portions of their former ranges⁶⁶.

The reintroduction project was diligently elaborated by a team of professionals and scientists in Ranvicora over five years⁶⁷. The releases occurred in the largest-remaining habitat suitable in Ranvicora, in proximity of Arctos’ border. Whilst not expected, a range-shift occurred due to climate change, imposing on Arctos the obligation to promote the recovery of the threatened species once they became aware of them in 2017⁶⁸.

Arctos sought to terminate the recovery of the threatened endangered species and acted in breach of Article 8(f) of the Convention.

⁶² CBD, art.8(f).

⁶³ R(9).

⁶⁴ IUCN Species Survival Commission, IUCN Red List categories and criteria, ver. 3.1, 14 IUCN Gland/Cambridge (2nd ed. Jan 2012).

⁶⁵ Resolution 11.33 adopted by the Conference of the Parties at its 11th Meeting, UNEP/CMS/Resolution 11.33 (Nov. 2014).

⁶⁶ C. Wolf, W.J. Ripple, *Rewilding the world’s large carnivores*, 5 R. Soc. open sci. (2018).

⁶⁷ R(11).

⁶⁸ R(16).

3. Arctos breached the Bern Convention principles of strict protection of species

a. Arctos breached Articles 6 and 10 of the Bern Convention

As mentioned above, Article 6 places a strict duty on the Parties to ensure the special protection of the wild fauna species in Appendix II. Article 6 *inter alia* prohibits all forms of deliberate killing of such species⁶⁹.

Arctos failed to educate citizens on how to peacefully co-exist with and avoid conflict with the bear, which has been shown to significantly reduce bear conflicts by 91% over a three-year period without the removal of a single bear⁷⁰. Such methods are not onerous, especially in comparison with the protection it would afford to the endangered species.

Arctos violated Article 6 by its failure to protect the grey bear. Furthermore, it effectively permitted the killing of this endangered species through its emergency legislation, prohibited under the Bern Convention.

Furthermore, Article 10 provides an additional requirement of co-ordination between the Parties where the protected species is a migratory one and whose range extends into their territories⁷¹.

The Standing Committee has also underlined the need of cooperation between Parties regarding the conservation of transboundary large carnivore populations⁷².

Arctos set out poisoned animal carcasses as part of a State-sanctioned policy which killed at least four grey bears⁷³. Furthermore, another two bears and two cubs were killed as a result of the

⁶⁹ Bern Convention, art.6(a).

⁷⁰ *Wilson, supra* note 14.

⁷¹ Bern Convention, art.10(1).

⁷² Recommendations 115 and 148 of the Bern Convention Standing Committee, (Dec. 1 2005 and Dec. 9 2010).

⁷³ R(20).

emergency regulation giving express permission to cull any grey bear on the Arctos' territory⁷⁴, whether manifesting dangerous behavior or not. This significantly reduced the protected grey bear population⁷⁵, highly endangering its chances of survival.

Arctos thus actively breached the provisions of Article 6 and 10 of the Convention through its legislation, coordinated poisoning actions and connected failure to conserve the reintroduced protected population along with a lack of cooperation to conserve the wild protected migratory fauna.

b. Arctos does not qualify for an exception under Article 9 of the Bern Convention

Article 9 caters for exceptions from the strict obligation of protection of the specified species, in exceptional circumstances. To qualify for such exemption, two preconditions need to be satisfied: there must be no other satisfactory solution and it must not be detrimental to the survival of the population concerned⁷⁶. Arctos alleges damages to livestock, property and its fauna⁷⁷.

The Parties must “choose, among possible alternatives, the most appropriate one that will have the least adverse effects on the species while solving the problem,” the choice of method should be “objective and verifiable”⁷⁸. Arctos did not meet the two preconditions of Article 9. The response was clearly disproportionate and other more measured solutions could have been brought forward by Arctos, taking into account risk-assessment and thus applying appropriate

⁷⁴ R(21).

⁷⁵ R(14,15,20,21).

⁷⁶ Bern Convention, art.9(1).

⁷⁷ R(17).

⁷⁸ Revised Resolution No. 2 (1993) adopted by the Bern Convention Standing Committee at its 31st Meeting (Dec. 2 2011) Appendix, 3.

management actions – such as providing targeted information on human-bear encounters, effecting damage-prevention or aversive conditioning⁷⁹. Electric fences could have been put up to protect property as a less-oppressive measure⁸⁰. Livestock guardian animals would also be a viable option for maintaining predator functions while minimizing stock-loss⁸¹.

By indiscriminately terminating the bears, Arctos threatened the very survival of this endangered species which Arctos was obligated to protect.

In conclusion, Arctos' response failed to act proportionately to the alleged threats caused by the protected species. Arctos cannot invoke Article 9 exceptions to defend its actions as lawful.

B. Arctos violated customary international law

1. Arctos is prevented from claiming harm to its biological diversity and general environment due to the principle of estoppel

The actions of Arctos have demonstrated a complete disregard for biological diversity and environmental harm. Arctos adopted a national culling policy, using prohibited means of taking⁸², targeting a listed endangered species prior to any substantiated evidence linking the grey bear to damage⁸³. Furthermore, the subsequent emergency legislation allowed any Arctos citizen shoot any grey bear in Arctos territory – free of any limitations, restrictions or

⁷⁹ Aleksandra Majić Skrbinšek, Miha Krofel, Prepared for DG Environment, European Commission, *Final Report for the Pilot Action: Defining, preventing, and reacting to problem bear behaviour in Europe* (2015) 48-51.

⁸⁰ *Revised Resolution*, *supra* note 80, 4.

⁸¹ T.M. Gehring *et al.* *Livestock protection dogs in the 21st century: is an ancient tool relevant to modern conservation challenges?* 60 *Bio Science* at 299–308 (2010).

⁸² Bern Convention, Appendix IV.

⁸³ R(21).

regulations. The actions of Arctos demonstrate a blatant disregard for biological diversity and Arctos may be estopped from making an assertive biodiversity or environmental harm argument.

2. Arctos failed to implement the precautionary principle

Arctos cannot successfully argue that Ranvicora failed to implement the precautionary principle. This principle states parties must act on scientific findings or in the light of knowledge available at the time to prevent environmental harm⁸⁴.

Arctos failed to implement the precautionary principle during the year-long window between the first sighting of a grey bear in Arctos and the occurrence of the damage supposedly caused by the grey bear in Arctos⁸⁵. The failure to mitigate the apparent danger posed by the grey bear tragically led to the death and serious injury of two young children. Arctos shall not make an assertive precautionary principle argument due to the fundamental failure to exercise the precautionary principle at any stage.

3. Arctos violated the proportionality principle

The tribunal in the *Naulilaa Arbitration* stated that reprisals are considered excessive and therefore unlawful when they are out of all proportion to the act that motivates them⁸⁶. This recognition of proportionality was subsequently supported by the ICJ⁸⁷.

⁸⁴ *Glowka supra* note 57, 218.

⁸⁵ R(16,17).

⁸⁶ Portugal v. Germany (The Naulilaa Arbitration) (1928) 2 RIAA 1013.

⁸⁷ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (1984) I.C.J. Rep 392; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (2005) I.C.J. Rep 168.

Arctos has violated the principle of proportionality. The national culling strategy targeting the grey bear was implemented prior to substantiated evidence linking the bear to the damage. This was a disproportionate reaction. Alternative measures should have been implemented to mitigate the harm posed by the grey bear. These measures include educating locals, confining the bears to an area with fencing or catch-and-release tactics. Arctos acted disproportionately when addressing the grey bear situation, killing an endangered species before any other tactics were effectively tried, and where alternative methods could have succeeded to contain mutual harm.

C. Arctos cannot invoke any defences or exceptions to justify its actions under international law

Arctos is responsible for its own acts and for the acts committed by its citizens as their actions flowed from the adopted State legislation⁸⁸. Arctos does not qualify for any justification of unlawful acts it is responsible for.

1. The defence of necessity cannot be relied upon by Arctos

Arctos failed to satisfy the two conditions required to avail of the defence of necessity, an established principle under customary international law⁸⁹. It is only available where the State had no other way to safeguard an essential interest against a grave and imminent peril, and where it

⁸⁸ R(20,21).

⁸⁹ *Inter alia*, the Russian Fur Seals controversy of 1893; Russian Indemnity (Russia v Turkey) (1913) 7 AJIL 178; S.S. Wimbledon [1923] PCIJ Rep A No 1; Société Commerciale de Belgique (Belgium v Greece) [1939] PCIJ ser A/B No 78; *Gabcikovo-Nagymaros*, *supra* note 36.

does not seriously impair an essential interest of other States towards which the obligation exists⁹⁰.

Arctos failed to meet these requirements. Arctos did not exhaust every possible legal means of self-preservation⁹¹ whilst the indiscriminate shooting and poisoning of bears disproportionately impairs Ranvicora's essential interest of conservation of the endangered species. Farm animals could be protected by proportionate, humane ways, such as aversive conditioning⁹². Electric fencing, removal of attractants and educating citizens on the avoidance of human-bear conflicts⁹³ could also mitigate environmental harm in Arctos.

2. The grey bear reintroduction programme was not a force majeure event capable of justifying Arctos' excessive and unlawful actions

Force majeure is a general principle of international law⁹⁴. The wrongfulness of an act may be precluded⁹⁵ if it is attributable to "the occurrence of an irresistible force or of an unforeseen event, beyond the control of the State, making it materially impossible in the circumstances to perform the obligation"⁹⁶. Force majeure should not apply when it is due to the conduct of the State invoking it⁹⁷. The bears' presence on Arctos' territory has been observed since September

⁹⁰ U.N. International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, art.1, U.N. Doc. A/56/10 (2001) and *Articles on the Responsibility of States for Internationally Wrongful Acts*, ILC Yearbook Part Two (2001) II [ARSIWA], art.25.

⁹¹ Robert D. Sloane, *On the Use and Abuse of Necessity in the Law of State Responsibility*, Am. J. Int'l L 106 (2012): 447, quoting Bin Cheng, *General Principles of Law as Applied by International Courts and Tribunals* (1953) 69 –77.

⁹² *Majić Skrbinšek*, *supra* note 81, at 50.

⁹³ *Id.*

⁹⁴ Federica I. Paddeu, *A Genealogy of Force Majeure in International Law*, 82 Brit. Y. B. Int'l L 381 (2012).

⁹⁵ Alina Kaczorowska-Ireland, *Public International Law* (5th ed. 2015) 453.

⁹⁶ ARSIWA, art.23.

⁹⁷ ARSIWA, art.23.2(a); Myanna Dellinger, *Rethinking Force Majeure in Public International Law*, 37 Pace L. Rev. 455 (2017).

2017⁹⁸ and cannot be qualified as an ‘unforeseen event’ beyond the control of the State.

Similarly, the situation was not “irresistible” nor lied beyond Arctos’ control. Arctos cannot argue the defence of force majeure in this case.

3. Arctos cannot suspend its international treaty obligations under The Vienna Convention

Law of Treaties (VCLT)

Article 60 of the VCLT provides that if a material breach of a treaty occurs by one of the parties, it entitles a party specially affected by the breach to invoke it as a ground of suspension of the operation of the treaty as a whole or in part, against the defaulting State.

A material breach is “the violation of a provision essential to the accomplishment of the object or purpose of the treaty”⁹⁹. Ranvicora did not materially breach any treaty when pursuing its reintroduction project. Ranvicora did not, *inter alia*, violate any binding commitments of the CBD¹⁰⁰. It exercised due diligence in releasing the endangered protected species in the most suitable habitat, after conducting a national EIA, the scope which was appropriate considering the historical data about the traditional migration route of the species available in the State at the time¹⁰¹.

Ranvicora would like to express its sincere condolences for the loss of an Actros citizen. Nevertheless, there were proportionate, effective measures available to Arctos which it failed to take. Arctos could have acted to preserve the endangered species as well as safeguard Arctos’

⁹⁸ R(16).

⁹⁹ *Id.*, art.60.3.

¹⁰⁰ CBD, arts.6-20.

¹⁰¹ R(12,13).

citizens. Instead Arctos materially breached its obligations under international law by indiscriminately targeting the endangered *Ursus smokeysius* bringing it to the brink of extinction once again.

CONCLUSION AND PRAYER

For the foregoing reasons, Ranvicora respectfully requests that this Court:

1. Declare that the Republic of Ranvicora did not violate international law regarding its grey bear reintroduction project.

2. Declare that the Federal States of Arctos did violate international law with respect to its responses to the reintroduction of grey bears.

Respectfully submitted

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