

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 APPLICANT

**THE 24TH ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL
MOOT COURT COMPETITION 2019-2020**

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QUESTIONS PRESENTED

I.

WHETHER RANVICORA VIOLATED INTERNATIONAL LAW IN IMPLEMENTING ITS
PROJECT

II.

WHETHER ARCTOS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS
RESPONSES TO RANVICORA'S PROJECT

STATEMENT OF JURISDICTION

The Federal States of Arctos and the Republic of Ranvicora have submitted to the International Court of Justice (“Court”) questions relating to responses to reintroduction of bears. Arctos and Ranvicora transmitted their Special Agreement to the Registrar of the Court. Therefore, Arctos and Ranvicora submitted to the jurisdiction of the Court in accordance with Article 36(1) of the Statute of the International Court of Justice.

STATEMENT OF FACTS

The Federal States of Arctos (“Arctos”) and the Republic of Ranvicora (“Ranvicora”) are neighboring developed States in Suredia in the northern hemisphere(R¶1). Arctos lies north of and shares a border only with Ranvicora(R¶1). The area along the seventy-five-kilometer border primarily consists of forests and private farms(R¶1).

The grey bear is endemic only to Ranvicora, Paddington, and Aloysius(R¶9,10). In contrast, Arctos and other Suredian countries never had large carnivores in their ecosystems(R¶10). The Ranvicoran grey bears migrated exclusively within Ranvicora prior to being driven to extinction by overhunting and habitat destruction(R¶10).

Fifty years after the Ranvicoran grey bears’ extinction, Ranvicora implemented the grey bear reintroduction project (“project”)(R¶14). Ranvicora released grey bears from Paddington and Aloysius in northern Ranvicora as near as fifty kilometers from Arctos(R¶14). Despite the grey bears’ release in a region doubted to be part of their historic range and in such close proximity with Arctos(R¶¶13,14), Ranvicora neither notified nor consulted Arctos(R¶12). Worse, Ranvicora enforced the project without assessing its potential impact on Arctos(R¶1,13).

The grey bears started crossing the border into Arctos on September 19, 2017(R¶16). Five months later, the grey bears began killing as many as seven horses and fifty sheep on different farms in Arctos near the border(R¶17). The grey bears grew progressively hostile as they damaged orchards and beehives, and even killed endangered Trouwborst terns(R¶17). Defiantly, Ranvicora refused to remedy or compensate for the crisis caused by their project(R¶19). The repeated attacks constrained Arctos to set out poisoned animal carcasses to protect its citizens, their property, and the environment(R¶20).

The crisis escalated further on April 22, 2019, when the grey bears mauled two children in Arctos(R¶21). One died, while the other sustained significant permanent injuries(R¶21). Ranvicora's continued refusal to cooperate(R¶19) forced Arctos to implement emergency measures(R¶21) for the protection of its citizens(R¶23).

Without intervention, Ranvicora will aggravate the crisis by releasing more grey bears from 2021 to 2026(R¶15).

SUMMARY OF THE ARGUMENTS

I.

Ranvicora violated international law with respect to its project. Ranvicora introduced the grey bears which became invasive alien species, violating its obligations under relevant treaties. Furthermore, Ranvicora violated its duty to inform and cooperate with Arctos regarding its project. Ranvicora likewise violated its obligation to conduct an environmental impact assessment when it excluded an assessment of the transboundary impacts of its project. Ranvicora also violated its duty to not cause transboundary harm as the project caused significant damage to the safety, livelihood, and environment of citizens in Arctos. Moreover, Ranvicora failed to compensate Arctos for the damage caused by its project.

II.

Arctos did not violate international law with respect to its responses to Ranvicora's project. Arctos was obliged to eradicate invasive alien species to conserve biodiversity. Furthermore, the prohibitions against deliberate killing and the use of certain means and methods for such are not applicable as the requisites for exceptions thereto are present. Arctos likewise coordinated its responses with Ranvicora despite the latter's repeated refusal to cooperate. In addition, Arctos complied with its duty not to cause transboundary harm, as Ranvicora failed to prove significant damage through clear and convincing evidence. Assuming without conceding that Arctos violated its obligations under conventional and customary international law, the wrongfulness of its acts is precluded as it acted under a state of necessity.

ARGUMENTS

I. RANVICORA VIOLATED INTERNATIONAL LAW IN IMPLEMENTING ITS PROJECT.

States are mandated to prevent the introduction of invasive alien species (“IAS”),¹ and to strictly control the introduction of alien species.² Through its project, Ranvicora introduced invasive alien grey bears, in violation of its international obligations.

A. Ranvicora violated its duty to prevent the introduction of IAS.

States must prevent the introduction of alien species which threaten ecosystems, habitats, or species,³ also referred to as *IAS*.⁴ *Introduction* is the direct or indirect movement by human agency of an alien species outside of its natural range.⁵ Here, Ranvicora violated this obligation by introducing grey bears which became IAS in Arctos.

¹ Convention on Biological Diversity art. 8(h), June 5, 1992, 1760 U.N.T.S. 79 [hereinafter *CBD*].

² Convention on the Conservation of European Wildlife and Natural Habitats art. 11(2)(b), Sept. 19, 1979, 1284 U.N.T.S. 209 [hereinafter *Bern Convention*].

³ *Id.*

⁴ CBD Subsidiary Body on Scientific and Technical and Technological Advice, *Invasive Alien Species: Status, Impacts and Trends of Alien Species that Threaten Ecosystems, Habitats and Species*, CBD 5 (Feb. 26, 2001), <https://www.cbd.int/doc/meetings/sbstta/sbstta-06/information/sbstta-06-inf-11-en.pdf> [hereinafter *CBD SBSTTA Note*].

⁵ CBD Conference of Parties (“COP”), *Decision VI/23: Alien Species that Threaten Ecosystems, Habitats or Species*, CBD 257 n.57 (2002), <https://www.cbd.int/doc/decisions/cop-06-dec-23-en.pdf> [hereinafter *CBD Decision VI/23*]; Bern Convention Standing Committee (“SC”), *Recommendation No. 142 Interpreting the CBD Definition of Invasive*

1. The grey bear is an alien species.

Alien species are species found outside their natural past or present distribution⁶ while *native species* are those found within the same.⁷ *Distribution* refers to the indigenous range where species occur based on historical records or physical evidence.⁸ As distribution refers to an ecological area, species that are native to specific areas become alien when introduced outside their indigenous range even within the same country.⁹

Ranvicora released the grey bears in its northern region although it is outside the species' established historic range.¹⁰ Subsequently, the grey bears spread into Arctos which has no historic or fossil records of grey bear presence.¹¹ Thus, the grey bears are alien species both in northern Ranvicora and in Arctos.

alien species to take into account climate change, COUNCIL EUR. (“COE”) (Nov. 26, 2009), https://search.coe.int/bern-convention/Pages/result_details.aspx?ObjectId=0900001680746184 [hereinafter *Bern Recommendation 142*].

⁶ CBD Decision VI/23, *supra* note 5.

⁷ INT’L UNION CONSERVATION NATURE (“IUCN”), *IUCN Guidelines for the Prevention of Biodiversity Loss Caused by Alien Invasive Species* 5 (Feb. 2000), <https://portals.iucn.org/library/efiles/documents/Rep-2000-052.pdf> [hereinafter *IUCN Prevention Guidelines*].

⁸ IUCN, *Guidelines for Reintroductions and Other Conservative Translocations* 2 (June 2013), <https://portals.iucn.org/library/efiles/documents/2013-009.pdf> [hereinafter *IUCN Reintroduction Guidelines*].

⁹ CBD SBSTTA Note, *supra* note 4.

¹⁰ R¶13.

¹¹ R¶10.

2. The grey bears are invasive.

Alien species become *invasive* when their introduction or spread threatens biological diversity (“biodiversity”).¹² *Biodiversity* is the variability among living organisms within species, between species, and of ecosystems.¹³

Here, the grey bears repeatedly attacked various fauna and property in Arctos which collectively contribute to its biodiversity.¹⁴ First, the grey bears pushed the endangered Trouwborst terns closer to extinction by preying on their eggs and nestlings.¹⁵ The potential loss of this species threatens not only local but also global biodiversity, as the terns naturally occur only in Arctos.¹⁶ Second, by damaging beehives,¹⁷ the grey bears disrupted the bees’ pollination work which is crucial for plant reproduction in ecosystems.¹⁸ Third, the grey bears destroyed orchards,¹⁹ which enhance environmental pest control.²⁰ Thus, the grey bears are invasive in Arctos because they caused damage to and continue to threaten biodiversity therein.

¹² CBD Decision VI/23, *supra* note 5.

¹³ CBD, *supra* note 1, art. 2.

¹⁴ R¶¶17,20.

¹⁵ R¶¶17,20.

¹⁶ R¶17; IUCN Prevention Guidelines, *supra* note 7, at 3.

¹⁷ R¶¶17,20.

¹⁸ NICOLA BRADBPEAR, BEES AND THEIR ROLE IN FOREST LIVELIHOODS: A GUIDE TO THE SERVICES PROVIDED BY BEES AND THE SUSTAINABLE HARVESTING, PROCESSING AND MARKETING OF THEIR PRODUCTS 15 (FAO, 2009).

¹⁹ R¶¶17,20.

²⁰ Constance Demestihhas et al., *Ecosystem services in orchards: A review*, 37 AGRONOMY FOR SUSTAINABLE DEV. 1, 11 (2017).

3. Ranvicora cannot invoke the recommended interpretation of alien species.

Alien species excludes native species naturally extending their range due to climate change.²¹ Nevertheless, Ranvicora cannot invoke the exception due to the inapplicability of the interpretation to the grey bears, as well as Ranvicora's failure to prove that the range shift was climate-induced.

i. The grey bears did not migrate from their native range.

The interpretation applies only to species *native* to a territory prior to extending their range, or those species which are naturally occurring and self-sustaining in a given territory based on historical records.²²

Here, the grey bears were alien to and were merely introduced in northern Ranvicora.²³ As such, the interpretation is inapplicable.

ii. In any case, Ranvicora failed to prove that the range shift was climate-induced.

The State asserting certain facts bears the burden of proving their existence through direct evidence.²⁴ *Circumstantial evidence* or indirect evidence may be admitted only when: (1) the State's inability to furnish direct evidence is due to the opposing party's exclusive control of such

²¹ Bern Recommendation 142, *supra* note 5.

²² *Id.*; Bern Convention SC, *Recommendation No. 57 On the Introduction of Organisms Belonging to Non-native Species into the Environment*, COE (Dec. 5, 1997), https://search.coe.int/bern-convention/Pages/result_details.aspx?ObjectId=0900001680746bb9 [hereinafter *Bern Recommendation 57*].

²³ *See supra* Part I.A.1.

²⁴ *Pulp Mills on the River Uruguay (Arg. v. Uru.)*, Judgment, 2010 I.C.J. Rep. 14, ¶162 (Apr. 20) [hereinafter *Pulp Mills*].

evidence; and (2) the factual inference is based on a series of facts linked together and leading logically to a single conclusion.²⁵ Here, both conditions are absent.

First, data which may prove a climate-induced range shift is at Ranvicora's disposal since it assessed its own environment prior to the project.²⁶ Thus, as the alleging State with exclusive control of direct evidence to prove its claim, Ranvicora's presentation of circumstantial evidence is unjustified. Second, the Ranvicoran grey bears are exposed to threats specific to Ranvicora which may cause their migration, including overhunting, development, and habitat destruction.²⁷ Given the variance in factors affecting the grey bears in Paddington and Aloysius on the one hand,²⁸ and the grey bears in Ranvicora on the other hand, the claim that the Ranvicoran grey bear migration is similarly climate-induced is not based on facts leading to a single conclusion.

B. Ranvicora violated its duty to strictly control the introduction of alien species.

States are mandated to strictly control the introduction of *non-native species*, otherwise known as *alien species*.²⁹ Pursuant to relevant rules of treaty interpretation,³⁰ States may introduce non-native species only when: (1) it is justified by an ecological benefit; (2) alternative solutions are not more appropriate; (3) it is proven to have low risks; and (4) the causes of a previous

²⁵ Corfu Channel Case (U.K. v. Ir.), Judgment, 1949 I.C.J. Rep. 4, 18 (April 9) [hereinafter *Corfu Channel*].

²⁶ R¶12.

²⁷ R¶¶10,13.

²⁸ R¶13.

²⁹ Bern Convention, *supra* note 2, art. 11(2)(b); CBD SBSTTA Note, *supra* note 4.

³⁰ Vienna Convention on the Law of Treaties art. 31(3)(a), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter *VCLT*].

extinction have been removed or sufficiently reduced.³¹ Here, Ranvicora failed to strictly control the introduction of the grey bears which are alien in both northern Ranvicora and Arctos.³²

1. The introduction does not serve an ecological purpose.

Since the grey bears are alien to northern Ranvicora,³³ they have not served any prior function in the ecosystem therein. Thus, their introduction had no ecological purpose.

2. Alternative solutions are more appropriate.

Ranvicora did not implement alternative solutions that bear no risk of introducing IAS, such as restoring its other remaining grey bear habitats.³⁴ Instead, it immediately embarked on planning an introduction.³⁵

³¹ Bern Convention SC, *Recommendation No. 158 on Conservation translocations under changing climactic conditions*, COE ¶¶1-4,7 (Nov. 30, 2012), https://search.coe.int/bern-convention/Pages/result_details.aspx?ObjectId=090000168074647f [hereinafter *Bern Recommendation 158*]; IUCN Reintroduction Guidelines, *supra* note 8, at 4.

³² *See supra* Part I.A.1.

³³ R¶13.

³⁴ R¶13; C¶11; Bern Recommendation 158, *supra* note 31, ¶2.

³⁵ R¶11.

3. Ranvicora failed to prove that the introduction bears low risks.

Introducing alien species carries the risk that the alien species will reproduce, spread, and become invasive.³⁶ Thus, the proponent State must prove through a careful assessment that its planned introduction bears low risks.³⁷

Here, Ranvicora implemented its project without disproving such risks. It did not even anticipate the likelihood that the alien grey bears in northern Ranvicora will spread across the border.³⁸ Instead of assessing the risk based on the project itself, Ranvicora merely relied on past grey bear behavior³⁹ which did not involve an introduction.⁴⁰

4. The causes of the grey bears' previous extinction have neither been removed nor sufficiently reduced.

Although the grey bears went extinct in 1963 partly due to habitat destruction,⁴¹ Ranvicora did not address the continuing threat before implementing its project. Instead, Ranvicora circumvented the problem by introducing the bears in a region doubted to be part of its historic range.⁴²

³⁶ IUCN, *Module 1: Introduction to Invasive Alien Species*, IUCN INVASIVE SPECIES SPECIALIST GROUP 9 (2005), http://www.issg.org/pdf/publications/GISP/GISP_TrainingCourseMaterials/Management/ManaginginvasivesModule1.pdf [hereinafter *IAS Introductory Module*]; Bern Recommendation 57, *supra* note 22.

³⁷ Bern Recommendation 158, *supra* note 31, ¶¶3-4.

³⁸ R¶12.

³⁹ *Id.*

⁴⁰ R¶10.

⁴¹ *Id.*

⁴² R¶13.

C. Ranvicora violated its obligation to conduct an environmental impact assessment (“EIA”).

States must undertake an EIA where there is a risk that the proposed activity may cause significant transboundary harm.⁴³ Here, Ranvicora violated international law because its EIA was insufficient in scope and noncontinuous.

1. Ranvicora’s EIA was insufficient in scope.

The scope of the EIA must be determined based on circumstances specific to each case.⁴⁴ Here, the project necessitated including a transboundary impact assessment in the EIA. By unjustifiably excluding such, Ranvicora failed to sufficiently assess its project’s impact.

i. The EIA lacked an assessment of the project’s transboundary impact.

Introducing alien grey bears carries the risk of a subsequent spread.⁴⁵ The risk of spread into Arctos is increased by the bears’ migratory nature,⁴⁶ and the proximity of their release as near

⁴³ Pulp Mills, *supra* note 24, ¶204; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Construction of a Road in Costa Rica Along the San Juan River (Nicar. v. Costa Rica), Judgment, 2015 I.C.J. 665, ¶104 (Dec.16) [hereinafter *Certain Activities*].

⁴⁴ Certain Activities, *supra* note 43, ¶104.

⁴⁵ See *supra* Part I.B.3.

⁴⁶ CMS COP, *Future CMS Activities Related to Invasive Alien Species*, CMS ¶4 (Nov. 4-9, 2014), https://www.cms.int/sites/default/files/document/Res_11_28_Invasive_Alien_Species_Future_Activities_E.pdf [hereinafter *CMS Resolution 11.28*].

as fifty kilometers from the border⁴⁷ without any barrier.⁴⁸ Given these circumstances, Ranvicora should have included a transboundary impact assessment in the EIA.⁴⁹

ii. The limitation of the EIA's scope was unjustified.

Ranvicora refused to include such transboundary assessment since the grey bears historically migrated only within Ranvicora.⁵⁰ While this was the case when the bears still naturally occurred within their indigenous range, this inference is inapplicable now that their introduction outside their indigenous range heightens the risk of spread.⁵¹

Moreover, States cannot invoke their internal law to justify a breach of an international obligation.⁵² Thus, Ranvicora cannot cite compliance with its national laws⁵³ to justify omitting a transboundary impact assessment of its project.

⁴⁷ R¶14.

⁴⁸ C¶9.

⁴⁹ See Bern Recommendation 158, *supra* note 31, ¶3.

⁵⁰ R¶12.

⁵¹ See *supra* Part I.B.3.

⁵² VCLT, *supra* note 30, art. 27; Pulp Mills, *supra* note 24, ¶¶117,121.

⁵³ R¶12.

2. The EIA was noncontinuous.

The obligation to conduct an EIA is continuous.⁵⁴ Specifically, States must monitor its projects' impacts on the environment throughout its implementation, if necessary.⁵⁵ Here, two circumstances compel a continuous EIA.

First, during the project's initial phases,⁵⁶ the grey bears spread into and repeatedly caused damage in Arctos.⁵⁷ As these were not foreseen at the time of the earlier assessment,⁵⁸ Ranvicora should have conducted another EIA.

Second, multiple phases are yet to be undertaken until 2026.⁵⁹ As the release of more grey bears near Arctos increases the risk of spread and invasiveness,⁶⁰ such increasing risk throughout the project's implementation necessitates a continuous EIA. However, Ranvicora no longer assessed the impacts of its project after releasing the grey bears.

D. Ranvicora violated its duty to notify Arctos of its project.

A State must immediately notify other States when actions under its jurisdiction or control pose imminent or grave danger, or actually cause damage to biodiversity within the jurisdiction of

⁵⁴ Certain Activities, *supra* note 43, ¶161.

⁵⁵ Pulp Mills, *supra* note 24, ¶ 205.

⁵⁶ R¶16.

⁵⁷ R¶¶16,17,20,21.

⁵⁸ R¶12.

⁵⁹ R¶12.

⁶⁰ IAS Introductory Module, *supra* note 36, at 11.

other States.⁶¹ A danger to biodiversity is *grave* when it threatens to seriously impair the same,⁶² and *imminent* when its realization is established as more than just a possibility.⁶³

Here, the danger that the project will introduce invasive alien grey bears to Arctos is both grave and imminent. It is grave since IAS cause significant and irreversible environmental impacts such as species extinction.⁶⁴ It is imminent since the threat that introduced alien species will spread and become invasive is established.⁶⁵ The threat to Arctos is increased by the proximity to Arctos of the release of the grey bears which are migratory by nature.⁶⁶ Thus, the project's danger triggered Ranvicora's duty to notify Arctos. However, Ranvicora never notified Arctos of its project before implementing the same.⁶⁷

E. Ranvicora violated its duty of international cooperation.

States must cooperate on matters of mutual interest for biodiversity conservation.⁶⁸ States must also cooperate in strictly controlling the introduction of IAS.⁶⁹ Interpreting this in light of

⁶¹ CBD, *supra* note 1, art. 14(1)(d).

⁶² Gabčíkovo-Nagymaros Project (Hung. v. Slov.), Judgment, 1997 I.C.J. Rep. 7, ¶55 [hereinafter *Gabčíkovo-Nagymaros*]; VCLT, *supra* note 30, art. 31(3)(c).

⁶³ Gabčíkovo-Nagymaros Project, *supra* note 62, ¶54.

⁶⁴ CBD SBSTTA Note, *supra* note 4.

⁶⁵ IAS Introductory Module, *supra* note 36; Bern Recommendation 57, *supra* note 22.

⁶⁶ CMS Resolution 11.28, *supra* note 46, ¶4.

⁶⁷ R¶12.

⁶⁸ CBD, *supra* note 1, art. 5.

⁶⁹ Bern Convention, *supra* note 2, art. 11(1)(a), (2)(b); Bern Recommendation 57, *supra* note 22, Appendix ¶6(b).

relevant rules of international law,⁷⁰ the duty of cooperation requires States to enter into consultation to adopt effective measures.⁷¹ The consultations must be genuine, and done in good faith.⁷² A systematic refusal to consider adverse proposals evinces bad faith.⁷³

Here, despite knowing that Arctos never had large carnivores in its territory,⁷⁴ and that the introduced grey bears attacked children and caused damage in Arctos, Ranvicora adamantly refused to cooperate with Arctos. In bad faith, Ranvicora refused to consider Arctos' proposal to remove the bears from the wild.⁷⁵

F. Ranvicora violated its duty not to cause transboundary harm.

Under conventional and customary international law, States must ensure that activities within their jurisdiction and control do not prejudice the rights or the environment of other States.⁷⁶ To constitute a breach, two requisites must concur. First, the transboundary damage must be

⁷⁰ VCLT, *supra* note 30, art. 31(3)(c).

⁷¹ MOX Plant Case (Ir. v. U.K.), Case No. 10, Order of Dec. 3, 2001, ¶89 https://www.itlos.org/fileadmin/itlos/documents/cases/case_no_10/Order.03.12.01.E.pdf; Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, Advisory Opinion of Apr. 2, 2015, ¶175 https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf.

⁷² Lake Lanoux Arbitration (Fr. v. Spain), 12 R.I.A.A. 281, 300 (1957) [hereinafter *Lake Lanoux*].

⁷³ *Id.*, at 307.

⁷⁴ R¶¶10,12.

⁷⁵ R¶¶19,22.

⁷⁶ CBD, *supra* note 1, art. 3; Corfu Channel, *supra* note 25, at 22; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Rep. 226, ¶29 (July 8) [hereinafter *Nuclear Weapons*].

significant, such that it must be more than merely detectable.⁷⁷ In particular, loss of life,⁷⁸ damage to the livelihood of farmers,⁷⁹ and harm to a particular ecosystem and its species⁸⁰ may be considered significant. Second, the damage must be proven by clear and convincing evidence.⁸¹ As such, claims of harm must be actual⁸² and not merely speculative.⁸³

Here, the grey bears endangered the safety of Arctos' citizens as evidenced by the unprovoked mauling of two children resulting in death and permanent injuries.⁸⁴ The grey bears also impaired the livelihood of Arctos' farmers by repeatedly killing livestock in different farms and damaging apple orchards.⁸⁵ Finally, the grey bears caused damage to Arctos' biodiversity by attacking the endangered Trouwborst terns which naturally occur only in Arctos, as well as beehives.⁸⁶ Thus, Ranvicora violated its duty not to cause transboundary harm.

⁷⁷ Pulp Mills, *supra* note 24, ¶101; Certain Activities, *supra* note 43, ¶192; Trail Smelter Arbitration (U.S. v. Can.), 3 R.I.A.A. 1905, 1965 [hereinafter *Trail Smelter*].

⁷⁸ See Corfu Channel, *supra* note 25.

⁷⁹ See Trail Smelter, *supra* note 77.

⁸⁰ See Certain Activities, *supra* note 43, ¶¶211-213.

⁸¹ Pulp Mills, *supra* note 24, ¶101; Trail Smelter, *supra* note 77.

⁸² Certain Activities, *supra* note 43, ¶211.

⁸³ Certain Activities, *supra* note 43, ¶216.

⁸⁴ R¶21.

⁸⁵ R¶¶17,20.

⁸⁶ R¶¶17,20.

G. Ranvicora must pay Arctos compensation.

Under customary international law, a State which breached its international obligations is liable for compensation if another State suffers damage thereby.⁸⁷ *Compensation* involves the payment of a sum of money with the intention to wipe out all the consequences of the illegal act.⁸⁸ While a State's claim is limited to the damage it suffers, a State may put forward claims on behalf of its citizens.⁸⁹ Death and injury of individuals as well as damage to property and the environment are compensable under international law.⁹⁰

Ranvicora caused transboundary harm involving injury to the safety and livelihood of Arctos' citizens, as well as damage to Arctos' environment.⁹¹ Thus, Ranvicora is liable to Arctos for compensation.

⁸⁷ Certain Activities, *supra* note 43, ¶142; Gabčíkovo-Nagymaros, *supra* note 62, ¶152.

⁸⁸ Factory at Chorzow (Ger. v. Pol.), Judgment, 1928 P.C.I.J. (ser. A) No. 17, at 47 (Sept. 13).

⁸⁹ S.S. "Wimbledon" (Gr. Brit. v. Ger.), Judgment, 1923 P.C.I.J. (ser. A) No.1, at 30 (Aug. 17); Mavrommatis Palestine Concessions (Greece v. Gr. Brit.), Judgment, 1924 P.C.I.J. (ser. A) No. 2, at 12 (Aug. 30).

⁹⁰ Corfu Channel, *supra* note 25, at 23; S.S. "Wimbledon", *supra* note 89, at 31; Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicar.), Judgment, 2018 I.C.J. Rep. 1, ¶42 (Feb. 2).

⁹¹ R¶¶17,20,21; *See supra* Part I.F.

II. ARCTOS DID NOT VIOLATE INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO THE PROJECT.

Conventional and customary international law mandate the eradication of IAS.⁹² Arctos acted in accordance with its international obligations in eradicating the invasive alien grey bears in its territory.

A. Arctos is obliged to eradicate the invasive alien grey bears pursuant to its duty of in-situ conservation.

States have a duty of *in-situ conservation* which involves conserving ecosystems and natural habitats and maintaining and recovering viable populations of species in their natural surroundings.⁹³ One of its components is the eradication of IAS.⁹⁴ In interpreting this obligation, States must take into account both biodiversity conservation,⁹⁵ and the precautionary principle.⁹⁶ Consistent with its mandate, Arctos eradicated the bears.

⁹² CBD, *supra* note 1, art. 8(h); Bern Convention, *supra* note 2, arts. 9(1), 11(2)(b); Convention on the Conservation of Migratory Species of Wild Animals art. III(4)(a), June 23, 1979, 1651 U.N.T.S. 333 [hereinafter *CMS*]; U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1, Principle 15 (Aug. 12, 1992).

⁹³ CBD, *supra* note 1, arts. 2, 8.

⁹⁴ CBD, *supra* note 1, art. 8(h).

⁹⁵ CBD, *supra* note 1, art. 1; VCLT, *supra* note 30, art. 31(1); Pulp Mills, *supra* note 24, ¶173.

⁹⁶ CBD, *supra* note 1, Preamble; VCLT, *supra* note 30, art. 31(2).

1. Arctos had to eradicate the grey bears to conserve biodiversity.

Interpreting *conservation* in light of the object and purpose of the treaty,⁹⁷ the obligation implies preservation without precluding sustainable use.⁹⁸ Thus, consumption at a rate which does not cause the long-term decline of biodiversity is allowed.⁹⁹ Applying this to the duty to eradicate IAS, States may eradicate certain fauna if it preserves biodiversity in the long term.

The bears threaten the forest ecosystem near the border by attacking the bees and the endangered Trouwborst terns.¹⁰⁰ As IAS are direct drivers of global biodiversity loss,¹⁰¹ the protection of the forests and the recovery of the terns hinge on the eradication of the grey bears. Thus, the long-term conservation of biodiversity justified Arctos' responses.

2. The precautionary principle mandated Arctos not to delay its responses to the project.

The *precautionary principle* provides that mitigation measures cannot be postponed when: (1) there is a lack of full scientific certainty about the effects of an activity; (2) the activity poses a threat of biodiversity loss or reduction; and (3) such threat is significant.¹⁰² Thus, States cannot

⁹⁷ VCLT, *supra* note 30, art. 31(1); CBD, *supra* note 1, art. 1.

⁹⁸ LYLE GLOWKA ET AL., A GUIDE TO THE CONVENTION ON BIOLOGICAL DIVERSITY 25 (IUCN, 1994).

⁹⁹ CBD, *supra* note 1, art. 2.

¹⁰⁰ R¶¶1,17.

¹⁰¹ See CBD, *Invasive Alien Species* (n.d.), <https://www.cbd.int/invasive>; CBD, *Invasive Alien Species* (n.d.), <https://www.cbd.int/undb/media/factsheets/undb-factsheet-ias-en.pdf> [hereinafter *IAS Factsheet*]; CHRISTINE GIBB ET AL. (EDS.), THE YOUTH GUIDE TO BIODIVERSITY 17 (FAO, 1st ed., 2013).

¹⁰² CBD, *supra* note 1, Preamble.

delay or fail to pursue the eradication of IAS based on the uncertainty of their invasion's implications.¹⁰³ All requisites are present.

i. There is uncertainty regarding the effects of Ranvicora's project.

To date, there are no studies on the effects of the project on Arctos' environment. This is attributable to Ranvicora's failure to assess the impact of their own project on other States, contrary to its duty to conduct an EIA.¹⁰⁴

ii. There is a threat of reduction or loss of biodiversity.

IAS accounted for almost half of animal extinctions with known causes.¹⁰⁵ Here, the grey bears repeatedly attacked the young of the already endangered Trouwborst terns,¹⁰⁶ pushing the species closer to extinction.

iii. The threatened harm is significant.

To be *significant*, the threatened harm should be more than merely measurable.¹⁰⁷ As the terns are found only in Arctos,¹⁰⁸ their extinction will result in an irreversible reduction of not only local but also global biodiversity. Therefore, the threat exceeds the requisite threshold.

¹⁰³ CBD Decision VI/23, *supra* note 5, at 257.

¹⁰⁴ R¶12; *See supra* Part I.C.

¹⁰⁵ IAS Factsheet, *supra* note 101.

¹⁰⁶ R¶¶17,20.

¹⁰⁷ Certain Activities, *supra* note 43, ¶192.

¹⁰⁸ R¶17.

B. The prohibition of the deliberate killing of protected species is inapplicable.

While States must prohibit the deliberate killing of endangered migratory species and strictly protected fauna species,¹⁰⁹ an exception may be made if it is: (1) required by extraordinary circumstances;¹¹⁰ (2) precise as to content;¹¹¹ (3) limited in space and time;¹¹² (4) not disadvantageous to the species;¹¹³ and (5) done for authorized purposes.¹¹⁴ Pursuant to relevant rules of treaty interpretation,¹¹⁵ all requisites concur.

1. Extraordinary circumstances required the responses.

Extraordinary circumstances connote factors which are out of the ordinary and not usually associated with a particular event.¹¹⁶ These must preclude resort to other reasonable alternatives to justify an exception.¹¹⁷

¹⁰⁹ CMS, *supra* note 92, art III; Bern Convention, *supra* note 2, art. 6(a).

¹¹⁰ CMS, *supra* note 92, art. III(5)(d); Bern Convention, *supra* note 2, art. 9.

¹¹¹ CMS, *supra* note 92, art. III(5).

¹¹² *Id.*

¹¹³ *Id.*; Bern Convention, *supra* note 2, art. 9.

¹¹⁴ Bern Convention, *supra* note 2, art. 9.

¹¹⁵ VCLT, *supra* note 30, art. 31(1), (3)(a).

¹¹⁶ HENRY CAMPBELL BLACK ET AL., BLACK'S LAW DICTIONARY 586 (Springer 6th ed., 1994).

¹¹⁷ Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species*, 2 CORNELL INT'L L.J. ONLINE 41 (2014); *See* Bern Convention, *supra* note 2, art. 9.

This is the first time that Arctos had a large carnivore in its territory.¹¹⁸ Given the pattern of repeated grey bear attacks which escalated to causing a child's death,¹¹⁹ Arctos was constrained to act urgently to protect its citizens, their property, and the environment. Thus, Arctos could not implement time-consuming measures.¹²⁰ Additionally, zoning¹²¹ and diversionary feeding¹²² will only draw grey bears to a different ecosystem in Arctos where the species will still be invasive. Thus, extraordinary circumstances required the responses.

2. The responses were precise as to content.

The exceptional taking must have had determinate limitations.¹²³ Here, Arctos restricted the taking to cover only invasive grey bears which crossed the border to Arctos.¹²⁴ Thus, grey bears which did not threaten Arctos' citizens, economy, and environment were not subject to the regulation.

¹¹⁸ R¶10.

¹¹⁹ R¶¶17,21.

¹²⁰ JORDI CATALAN ET AL. (EDS.), *HIGH MOUNTAIN CONSERVATION IN A CHANGING WORLD* 240 (Springer, 2017).

¹²¹ John D.C. Linnell et al., *Zoning As A Means of Mitigating Conflicts with Large Carnivores: Principles and Reality*, in ROSIE WOODROFFE ET AL. (EDS.), *PEOPLE AND WILDLIFE: CONFLICT OR CONSERVATION?* (2009).

¹²² Bern Convention SC, *Recommendation No. 198 on the use of artificial feeding as a management tool of large carnivore populations and their prey, with a particular emphasis on the brown bear*, COE 3 (Nov. 30, 2018), <https://rm.coe.int/recommendation-on-the-use-of-artificial-feeding-as-a-management-tool-o/16808e4cad>.

¹²³ BLACK ET AL., *supra* note 116, at 1177.

¹²⁴ R¶¶20,21; *See supra* Part I.A.2.

3. The responses were limited in space and time.

Restrictions must be imposed on the location and duration of the taking.¹²⁵ First, Arctos set out poisoned animal carcasses only in sites near previous attacks.¹²⁶ Furthermore, the emergency regulation can only apply to the border area as this is the only point of entry for the grey bears.¹²⁷ In fact, the only grey bears affected by the measures were found near the border.¹²⁸ Second, while the first grey bear sighting was recorded in 2017, it was only two years later and after repeated attacks that the responses were resorted to.¹²⁹ This shows that the responses are mere emergency measures implemented only while prevailing exigencies exist.¹³⁰ Therefore, the taking was limited in both space and time.

4. The responses were not disadvantageous to the grey bears.

In determining whether the activity is detrimental, the population's size and distribution must be considered.¹³¹ The Ranvicoran grey bears merely comprise a limited portion of the global grey bear population which can also be found in other Suredian countries.¹³² Ranvicora released only twenty grey bears, mostly composed of females which successfully reproduced within a

¹²⁵ BLACK ET AL., *supra* note 116, at 927.

¹²⁶ R¶20.

¹²⁷ R¶¶1,16,17,20.

¹²⁸ R¶21.

¹²⁹ R¶¶16,20,21.

¹³⁰ R¶21.

¹³¹ Bern Convention SC, *Revised Resolution No. 2 on the scope of Articles 8 and 9 of the Bern Convention*, COE ¶7 (Dec. 2, 2011), <https://rm.coe.int/16807461dd> [hereinafter *Bern Resolution 2*].

¹³² R¶10.

year.¹³³ The grey bears were further noted to have a high survival rate in the wild.¹³⁴ Merely half of these bears were tracked,¹³⁵ and of this subset, only some crossed the border.¹³⁶ As the responses only covered a minority of the thriving grey bear population in Ranvicora, the responses did not operate to their disadvantage.¹³⁷

5. The responses were executed for authorized purposes.

The authorized purposes include: (1) the protection of public safety; (2) the prevention of serious damage to crops, livestock, and other forms of property; and (3) the protection of flora and fauna.¹³⁸ Regarding the second purpose, damage even in a limited area may be considered *serious* depending on the prejudicial action's intensity and duration.¹³⁹

First, Arctos removed the grey bears to ensure the safety of its citizens, as the grey bears have killed and severely injured children in its territory.¹⁴⁰ Second, Arctos needed to secure the livestock and apple orchards in farms along the seventy-five-kilometer border which were seriously damaged through repeated grey bear attacks.¹⁴¹ Third, Arctos' response was required for

¹³³ R¶15.

¹³⁴ *Id.*

¹³⁵ R¶14.

¹³⁶ R¶16.

¹³⁷ R¶15.

¹³⁸ Bern Convention, *supra* note 2, art. 9(1).

¹³⁹ Bern Resolution 2, *supra* note 131, ¶ 16; *See* VCLT, *supra* note 30, art. 31(3)(a).

¹⁴⁰ R¶21.

¹⁴¹ R¶¶17,20.

the protection of the bees and the endangered Trouwborst terns.¹⁴² Thus, the grey bears were eradicated for authorized purposes.

6. In any case, Arctos was not prohibited from implementing the emergency measures as it is not a Range State of the species.

Only Range States of endangered migratory species must prohibit the deliberate killing of said species.¹⁴³ A *Range State* exercises jurisdiction over any part of the migratory species' *range*,¹⁴⁴ which includes all areas that the species inhabits, stays in temporarily, crosses, or overflies during its normal migration route.¹⁴⁵ While range shifts may be climate-induced,¹⁴⁶ migratory species may become invasive if introduced outside their natural range.¹⁴⁷

The Ranvicoran grey bears' spread was caused not by natural factors but by their introduction outside their historic range.¹⁴⁸ This facilitated their spread into Arctos where they became invasive.¹⁴⁹ Not being a Range State of the grey bears, Arctos may implement its responses.

¹⁴² R¶¶17,20.

¹⁴³ CMS, *supra* note 92, art. III(5).

¹⁴⁴ CMS, *supra* note 92, art. I(1)(h).

¹⁴⁵ CMS, *supra* note 92, art. I(1)(f).

¹⁴⁶ CMS COP, *Climate Change and Migratory Species*, CMS ¶9 (Oct. 2017), https://www.cms.int/sites/default/files/document/cms_cop12_res.12.21_climate-change_e.pdf.

¹⁴⁷ CMS Resolution 11.28, *supra* note 46, ¶4.

¹⁴⁸ R¶13; *See supra* Part I.B.3.

¹⁴⁹ *See supra* Part I.A.2.

C. The prohibition of the means *Arctos* employed in eradicating the invasive alien grey bears is likewise inapplicable.

In cases where the deliberate killing of strictly protected fauna species is allowed, States cannot use any of the prohibited means and methods of killing, capture, and other forms of exploitation.¹⁵⁰ These include using firearms and poisoned baits.¹⁵¹ However, exceptions are allowed, provided that: (1) no other satisfactory solution is available; (2) it is not detrimental to the population's survival; and (3) it is used for authorized purposes.¹⁵² Authorized purposes include: (1) the protection of public safety; (2) the protection of flora and fauna; and (3) the prevention of serious damage to crops, livestock, forests, and property.¹⁵³ All requisites are present.

First, as the grey bears attack by mauling,¹⁵⁴ only means which do not necessitate close encounters such as using poison and firearms can be safely implemented. Second, these methods do not imperil the introduced grey bear population as most still remain in northern Ranvicora and do not cross the border.¹⁵⁵ Third, *Arctos* must prevent further loss of life, predation on endangered terns and agricultural livestock, as well as damage to orchards resulting from recurring grey bear

¹⁵⁰ Bern Convention, *supra* note 2, art. 8

¹⁵¹ Bern Convention, *supra* note 2, Appendix IV.

¹⁵² Bern Convention, *supra* note 2, art. 9(1).

¹⁵³ *Id.*

¹⁵⁴ R¶21.

¹⁵⁵ R¶¶14,15,16.

attacks.¹⁵⁶ Therefore, the prohibition against the means and methods of eradication used by Arctos does not apply.

D. Arctos considered ecological, economic, and locally at-risk species' requirements in maintaining populations of wild flora and fauna.

States must maintain or adapt populations of wild flora and fauna according to ecological and economic requirements, as well as the needs of sub-species at risk locally.¹⁵⁷ Here, Arctos implemented its responses after considering the loss of property by its farmers as well as the predation of the endangered terns in its territory, both due to grey bear attacks.¹⁵⁸

E. Arctos coordinated with Ranvicora in its responses to the project.

States are mandated to coordinate in conserving strictly protected fauna species whose range extends into their territories.¹⁵⁹ This obligation precludes either State from acting on its own.¹⁶⁰ Interpreting the obligation in light of the applicable rules of international law,¹⁶¹ the duty must be genuinely and meaningfully carried out in good faith.¹⁶² The process must not be a mere

¹⁵⁶ R¶¶17,20,21.

¹⁵⁷ Bern Convention, *supra* note 2, art. 2.

¹⁵⁸ R¶¶17,20.

¹⁵⁹ Bern Convention, *supra* note 2, art. 10(1).

¹⁶⁰ Pulp Mills, *supra* note 24, ¶¶184,187.

¹⁶¹ VCLT, *supra* note 30, art. 31(3)(c).

¹⁶² Lake Lanoux, *supra* note 72, at 300; North Sea Continental Shelf Cases (Ger. v. Den.), Judgment, 1969 I.C.J. Rep. 3, ¶85 (February 20) [hereinafter *North Sea*].

formality and must be entered into with a view to arriving at an agreement.¹⁶³ No State can insist its position without contemplating any modification of it.¹⁶⁴

Arctos did not insist on eradication. Rather, Arctos initially suggested that Ranvicora simply capture and remove the grey bears from the wild.¹⁶⁵ However, Ranvicora forced the continued implementation of its project and refused to compromise.¹⁶⁶ Without Ranvicora's assistance, Arctos was constrained to eradicate the grey bears.

F. Arctos complied with its duty not to cause transboundary harm.

Under conventional and customary international law, States must ensure that activities within their jurisdiction and control do not prejudice the rights or the environment of other States¹⁶⁷ To constitute a breach, damage must be: (1) proven by clear and convincing evidence; and (2) significant.¹⁶⁸ Both conditions are absent.

1. Ranvicora failed to prove the damage with clear and convincing evidence.

States cannot prove the happening of an event in an area through evidence of its occurrence in another if the factors affecting the two areas are variable.¹⁶⁹ Here, only grey bears in Arctos are

¹⁶³ *Id.*

¹⁶⁴ North Sea, *supra* note 162, ¶85.

¹⁶⁵ R¶18; C¶15.

¹⁶⁶ R¶¶19,22.

¹⁶⁷ CBD, *supra* note 1, art. 3; Corfu Channel, *supra* note 25, 22; Nuclear Weapons, *supra* note 76, ¶29.

¹⁶⁸ Pulp Mills, *supra* note 24, ¶101; Trail Smelter, *supra* note 77, at 1965.

¹⁶⁹ Pulp Mills, *supra* note 24, ¶212.

subject to its responses.¹⁷⁰ In contrast, the Ranvicoran grey bears are specifically threatened by overhunting, development, and habitat destruction.¹⁷¹ Thus, Ranvicora cannot prove damage to its territory based solely on grey bear deaths in Arctos.

2. In any case, the damage was not significant.

Damage must be more than merely measurable to be *significant*.¹⁷² However, only a minority of the introduced grey bears were exposed to Arctos' emergency regulations.¹⁷³ Thus, the damage to the Ranvicoran population of grey bears was not significant.

G. Alternatively, Arctos acted under a state of necessity.

The *state of necessity* justifies non-performance of an obligation of lesser weight or urgency to protect a threatened essential interest.¹⁷⁴ This provision codifies a rule of customary international law.¹⁷⁵ To apply, the State must show that: (1) the non-performance was occasioned by its essential interests; (2) said interest is threatened by a grave and imminent peril; (3) it was the only means of safeguarding the interest; (4) it did not seriously impair other States' essential

¹⁷⁰ R¶20,21.

¹⁷¹ R¶10,13.

¹⁷² Certain Activities, *supra* note 43, ¶192.

¹⁷³ *See supra* Part II.B.4.

¹⁷⁴ G.A. Res. 56/83, Responsibility of States for internationally wrongful acts, annex, art. 25 (Jan. 28, 2002) [hereinafter *ARSIWA*]; Int'l Law Comm'n Rep. on the Work of Its Fifty-Third Session, U.N. Doc. A/56/10, at 80 [hereinafter *ARSIWA Commentaries*].

¹⁷⁵ Gabčíkovo-Nagymaros, *supra* note 62, ¶51.

interests; (5) invoking necessity is not prohibited; and (6) the invoking State did not aggravate the situation.¹⁷⁶

Assuming without conceding that Arctos' responses violated international law, Arctos acted under a state of necessity. As the satisfaction of the third requisite has been demonstrated¹⁷⁷ and the fifth requisite is not disputed, only compliance with the remaining elements will be discussed hereunder.

1. The act was occasioned by Arctos' essential interests.

The determination of what interest is essential depends on the circumstances.¹⁷⁸ It may be particular to the invoking State or shared by the international community.¹⁷⁹ The Court declared that environmental protection constitutes an essential interest.¹⁸⁰ Here, Arctos issued the subject regulations to protect its citizens, their property, and the environment.¹⁸¹

¹⁷⁶ ARSIWA, *supra* note 174, art. 25(a), (b); Gabčíkovo-Nagymaros, *supra* note 62, ¶52.

¹⁷⁷ *See supra* Parts II.B.1 and II.C.

¹⁷⁸ ARSIWA Commentaries, *supra* note 174, at 83.

¹⁷⁹ *Id.*

¹⁸⁰ Gabčíkovo-Nagymaros, *supra* note 62, ¶53.

¹⁸¹ R¶20.

2. Arctos' interests were threatened by a grave and imminent peril.

The peril contemplated must be grave, proximate, and objectively established.¹⁸² Here, the threat to the citizens, property, and environment of Arctos is evidenced by repeated grey bear attacks on children, livestock, apple orchards, endangered species, and bee habitats.¹⁸³

3. The responses did not seriously impair an essential interest of Ranvicora.

The interest relied on must outweigh other considerations.¹⁸⁴ As there remain other grey bear habitats in Ranvicoran territory which it can restore,¹⁸⁵ Ranvicora may still pursue the project elsewhere without causing damage in Arctos. On the other hand, Arctos is the only habitat of the Trouwborst terns.¹⁸⁶

4. Arctos did not contribute to the state of necessity.

The contribution must be substantial, and not merely incidental or peripheral.¹⁸⁷ Ranvicora unilaterally initiated and implemented the project without informing or consulting Arctos.¹⁸⁸ Not being involved, Arctos did not contribute to the state of necessity.

¹⁸² ARSIWA, *supra* note 174, art. 25(a); ARSIWA Commentaries, *supra* note 174, at 83; *See supra* Part I.D.

¹⁸³ R¶¶17,20,21.

¹⁸⁴ ARSIWA Commentaries, *supra* note 174, at 84.

¹⁸⁵ R¶13; C¶11.

¹⁸⁶ R¶17.

¹⁸⁷ ARSIWA Commentaries, *supra* note 174, at 84.

¹⁸⁸ R¶12.

CONCLUSION AND PRAYER FOR RELIEF

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

1. The Republic of Ranvicora violated international law by implementing its grey bear reintroduction project; and
2. The Federal States of Arctos did not violate international law through its responses to the grey bear reintroduction project.

RESPECTFULLY SUBMITTED,
AGENTS OF THE APPLICANT