

Team No. 2045

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**INTERNATIONAL COURT OF JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, NETHERLANDS**



THE CASE CONCERNING  
QUESTIONS RELATING TO  
**REINTRODUCTION OF BEARS**

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**THE FEDERAL STATES OF ARCTOS**

*APPLICANT*

v.

**THE REPUBLIC OF RANVICORA**

*RESPONDENT*

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**MEMORIAL ON BEHALF OF THE APPLICANT**

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**THE 2019-2020 STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT  
COMPETITION NOVEMBER 2019**

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## **STATEMENT OF JURISDICTION**

Arctos and Ranvicora entered into a Special Agreement to institute proceedings in the International Court of Justice (ICJ). On 15 July 2019, the case of Questions Relating to Reintroduction of Bears (Federal States of Arctos v. Republic of Ranvicora) has been entered as 2019 General List No. 24. *See* notification, dated 22 July 2019 and joint notification, dated 15 July 2019. Pursuant to Article I of the special agreement between the federal states of Arctos and the republic of Ranvicora for submission to the International Court of Justice of differences between them concerning questions relating to reintroduction of bears, this Court has jurisdiction.

## **QUESTIONS PRESENTED**

1. WHETHER THE RESPONDENT (REPUBLIC OF RANVICORA) VIOLATED INTERNATIONAL LAW BY CAUSING TRANSBOUNDARY HARM THROUGH THE REINTRODUCTION OF GREY BEARS.
2. WHETHER THE APPLICANT (FEDERAL STATE OF ARCTOS) VIOLATED INTERNATIONAL LAW IN RESPONDING TO RANVICORA'S REINTRODUCTION OF GREY BEARS.

## STATEMENT OF FACTS

### **A. The Parties and Dispute**

On the continent of Suredia in the northern hemisphere, the Federal States of Arctos and the Republic of Ranvicora share a 75-kilometer border of mostly forests and private farms, with Arctos to the north.<sup>1</sup>

The grey bear (*Ursus smokeysius*) is native to Suredia, similar to the brown bear in size and appearance, and listed as Endangered on the IUCN Red List of Threatened Species, on Appendix II of the Bern Convention, and on Appendix I of CMS.<sup>2</sup> Grey bears used to inhabit Ranvicora but went extinct there in 1963.<sup>3</sup>

Since grey bears are culturally important in Ranvicora, in 2008 the Government of Ranvicora began planning to reintroduce grey bears there.<sup>4</sup> Ranvicora conducted a *national* environmental impact assessment (EIA); since grey bears historically migrated only within Ranvicora, Ranvicora neither assessed its project's potential impact on other countries nor informed or consulted with other countries about its project.<sup>5</sup>

Ranvicora reintroduced grey bears over five years, beginning on 23 March 2013.<sup>6</sup> Based on the results of the EIA, Ranvicora released grey bears in its northern region, near Arctos's border, though this may not have been a part of the bears' historic range.<sup>7</sup>

Since 19 September 2017, grey bears have repeatedly damaged Arctos's environment, property, and endemic species, including other endangered species. Within half a year, grey

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<sup>1</sup> Record, para. 1.

<sup>2</sup> Record, para. 9.

<sup>3</sup> Record, para. 10.

<sup>4</sup> Record, para. 11.

<sup>5</sup> Record, para. 12.

<sup>6</sup> Record, para. 14.

<sup>7</sup> Record, para. 13.

bears killed 8 horses and 20 sheep and destroyed orchards, beehives, and the nests, eggs, and nestlings of endangered Trouwborst terns (*Sterna ariensis*).<sup>8</sup>

On 9 August 2018, Arctos informed Ranvicora by diplomatic note of the situation, requesting compensation for the harm already caused and cooperation to stop future harm.<sup>9</sup> On 21 August 2018, Ranvicora responded to Arctos by diplomatic note, refusing to compensate or to cooperate in controlling the bears.<sup>10</sup>

After Ranvicora's refusal to cooperate, grey bears continued to destroy property and kill livestock and endangered birds. In response, Arctos set out poisoned carcasses, which killed several grey bears.<sup>11</sup>

On 22 April 2019 in Arctos, a grey bear killed one child and permanently injured another. Two days later, Arctos authorized its citizens to shoot grey bears, and several died as a result.<sup>12</sup>

Afterward, Arctos and Ranvicora further exchanged diplomatic notes discussing the situation and entered into negotiations to resolve their differences, but achieved no resolution. Now, the two countries entered into a Special Agreement to institute proceedings in the International Court of Justice (ICJ).

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<sup>8</sup> Record, para. 17.

<sup>9</sup> Record, para. 18.

<sup>10</sup> Record, para. 19.

<sup>11</sup> Record, para. 20.

<sup>12</sup> Record, para. 21.



## **SUMMARY OF THE ARGUMENT**

- I.** By reintroducing grey bears without notification, cooperation, or assessing the potential impact on other states, Ranvicora caused transboundary harm, violating CBD articles 3, 5, and 8, CBD Decision VIII/27, and customary international law.
- II.** Arctos did not violate international law. Arctos did not violate CMS resolution 12.21 by failing to conserve grey bears moving into non-historic rang. Nor did Arctos violate the CBD, CMS, or Bern convention by poisoning and shooting grey bears that invaded its territory, killed and injured its citizens, and destroyed its property.

## ARGUMENT

### I. ARCTOS DID NOT VIOLATE INTERNATIONAL LAW

Arctos did not violate CMS resolution 12.21 because Arctos is not a range state for the grey bears introduced by Ranvicora.

CMS defines “Range” as “all the areas of land . . . that a migratory species inhabits, stays in temporarily, [or] crosses . . . at any time on its *normal* migration route.”<sup>13</sup> And it defines “‘Range State’ in relation to a particular migratory species [as] any State . . . that exercises jurisdiction over any part of the range of that migratory species.”<sup>14</sup>

Arctos cannot be a range state for grey bears. A species’ range is its *normal* migration route, but there are no historic or fossil records of grey bears in Arctos,<sup>15</sup> and biologists doubt that northern Ranvicora was ever a part of the grey bear’s historic range.<sup>16</sup> Thus, Arctos cannot be a part of the grey bear’s *normal* migration route or range, and thus not a range state for the species. Rather, *human agency* introduced the grey bear to northern Ranvicora.

CMS resolution 12.21 recognizes that climate change may shift a species’ range and that CMS instruments may need to adapt. The resolution seems to assume that if climate change shifts a normal migration route into non-historic ranges, states could *become* range states and *acquire* legal obligations to protect species.

“‘Climate change’ means a change of climate . . . attributed directly or indirectly to human activity that alters the composition of the global atmosphere . . . in addition to natural climate variability observed over comparable time periods.”<sup>17</sup>

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<sup>13</sup> 1651 UNTS 333; 19 ILM 15 (1980); ATS 1991/32; BTS 87 (1990), Cm. 1332. Art. I, para. 1(f). Emphasis added.

<sup>14</sup> Id. at art. I, para. 1(h).

<sup>15</sup> Record para. 10.

<sup>16</sup> Record para. 13.

<sup>17</sup> 1771 UNTS 107; S. Treaty Doc No. 102-38; U.N. Doc. A/AC.237/18 (Part II)/Add.1; 31 ILM 849 (1992). Art. 1, para. 2.

Here, resolution 12.21 does not apply, because the grey bear's movements into Arctos are not a product of climate change. Ranvicora artificially introduced the grey bear near the border of Arctos; the grey bear did not move there in response to climate change. Ranvicora believed that climate change was shifting the grey bears' range northward and thus settled the grey bears near Arctos's border. But Ranvicora placed the bears there; climate change did not. Thus, the grey bear's invasion of Arctos is unrelated to climate change, and Arctos has no obligation to conserve the grey bear under CMS resolution 12.21.

**a. Arctos did not violate the CBD, CMS, or the Bern Convention by poisoning and shooting grey bears introduced by Ranvicora.**

**i. Arctos did not violate CBD article 1.**

The Convention on Biological Diversity (CBD) article 1 states the treaty's objectives: "the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources."<sup>18</sup>

It is difficult to imagine how Arctos's actions violated general objectives rather than specific legal obligations. But if Ranvicora claims that killing grey bears violates the objective to conserve biological diversity, then it is evident that the grey bears were destroying biological diversity by destroying the nests, eggs, and nestlings of the endangered tern. Nor does killing several bears endanger their survival.

Thus, Arctos did not violate CBD article 1.

**ii. Arctos did not violate CBD article 8.**

Ranvicora alleges that Arctos violated CBD articles 8(a) and 8(k). Article 8(a) requires states to "establish a system of protected areas or areas where special measures need to be taken

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<sup>18</sup> 1760 UNTS 79; 31 ILM 818 (1992), art. 1.

to conserve biological diversity.” Article 8(k) requires states to “develop or maintain necessary legislation . . . [to protect] threatened species and populations.”

Rather than violating article 8, Arctos was *implementing* articles 8(f) and 8(h). Article 8(f) requires states to “rehabilitate and restore degraded ecosystems and promote the recovery of threatened species.” Article 8(h) requires states to “prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.”

When grey bears kill endangered terns (protected by Arctos statute), they degrade the ecosystem and threaten the recovery of an endangered species (article 8(f)). When “alien species” grey bears kill humans, horses, sheep, and terns, and destroy orchards and beehives, they threatens Arctos’s ecosystems, habitats, and species (article 8(h)). Arctos’s responses were simply strategies to promote the recovery of threatened species and to protect the ecosystems, habitats, and species threatened by the invasive alien grey bears.

Thus, Arctos did not violate CBD article 8.

### iii. **Arctos did not violate CMS article III.**

The Convention on the Conservation of Migratory Species of Wild Animals (CMS) article III paragraph 5(d) requires “Parties that are Range States of a migratory species listed in Appendix I [to] prohibit the taking of animals belonging to such species [unless] . . . extraordinary circumstances so require; provided that such exceptions are precise as to content and limited in space and time. Such taking should not operate to the disadvantage of the species.”

First, as already seen, Arctos is not a range state to the grey bear.

Second, even if the Court finds that Arctos is a range state for the grey bear, extraordinary circumstances required killing grey bears, namely, grey bears destroying human life, livestock, and other property in Arctos. Given Ranvicora’s refusal to cooperate, Arctos’s response to the extraordinary circumstances could only be unilateral.

### Arctos implemented CMS article III.

CMS article III requires “Parties that are Range States of a migratory species listed in Appendix I [to] endeavor: . . . c) to the extent feasible and appropriate, to prevent, reduce or control factors that are endangering or are likely to further endanger the species, including strictly controlling the introduction of, or controlling or eliminating, already introduced exotic species.”<sup>19</sup>

Arctos is a range state for the Trowborst tern (*Sterna ariensis*), a native endangered species.<sup>20</sup> No international treaty protects the bird, but Arctos does so by statute.<sup>21</sup> Moreover, the tern are migratory species<sup>22</sup>—in fact, the arctic tern undertakes the longest migration of any animal on earth.<sup>23</sup>

The grey bear, an “exotic species,” ‘sniffs out the nests and consumes the eggs and nestlings of the tern.’<sup>24</sup> By killing the grey bear, Arctos is ‘eliminating already introduced exotic species’ that ‘endanger a threatened species.’

Thus, Arctos did not violate CMS article III but implemented it.

### **Arctos did not violate the Bern Convention (CETS) article 1, 2, 6, 8, or 10.**

#### **Arctos did not violate CETS article 1 or 2.**

The CETS aims “to conserve wild flora and fauna and their natural habitats” and to promote cooperation between states where conservation requires cooperation, especially for

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<sup>19</sup> Art. III, para. 4(c).

<sup>20</sup> Record para. 17.

<sup>21</sup> Ibid.

<sup>22</sup> Cf. Wikipedia “Tern” (<https://en.wikipedia.org/wiki/Tern>) and the 15 species of tern listed in the Birds of North America (<https://birdsna.org/Species-Account/bna/home>).

<sup>23</sup> Cf. Mason Inman, for National Geographic News, “World's Longest Migration Found—2X Longer Than Thought” (<https://www.nationalgeographic.com/news/2010/1/100111-worlds-longest-migration-arctic-tern-bird/>).

<sup>24</sup> Record para. 17.

“endangered and vulnerable migratory species.”<sup>25</sup> Article 2 requires states to “take requisite measures to maintain the population of wild flora and fauna at . . . a level [corresponding] to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements.”

Arctos did not violate article 1 or 2. Article 1 states the aims of the convention without imposing legal obligations. Article 2 restricts legal obligations to maintain wild fauna in favor of economic and recreational needs. The invasion of the grey bear caused not only economic destruction but also the loss of human life. This vastly outweighs “recreational needs” and thus frees Arctos to respond to the invasion of grey bears.

**Arctos did not violate CETS article 6.**

Article 6 requires states to “take *appropriate* and necessary legislative and administrative measures to [protect] the wild fauna species specified in Appendix II. The following will in particular be prohibited for these species: . . . all forms of . . . deliberate killing” (emphasis added). Appendix II lists the grey bear as Endangered.<sup>26</sup>

Arctos did not violate article 6, which requires states only to take *appropriate* measures to protect wild fauna. It is inappropriate to protect a species that invades a state, kills its citizens, and destroys their property.

Yet, even if the Court finds that it is appropriate to protect such a species, article 9 exempts Arctos from the requirements of article 6.

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<sup>25</sup> ETS 104 – Conservation of wildlife and natural habitats, 19.IX.1979, art. 1.

<sup>26</sup> Record para. 9.

**CETS article 9 applies.**

Article 9 excepts states “from the provisions of Articles 4, 5, 6, 7 and . . . 8 [if] no other satisfactory solution [exists, and] the exception will not be detrimental to the survival of the population concerned: for the protection of flora and fauna; to prevent serious damage to crops, livestock, forests, fisheries, water and other forms of property; [and] in the interests of public health and safety.”

The article 9 exception applies to Arctos for the three reasons mentioned above. Invasive grey bears threaten public safety by killing human beings;<sup>27</sup> threaten property by destroying horses, sheep, orchards, and beehives;<sup>28</sup> and threaten fauna by destroying endangered tern nestlings, their eggs, and nests.<sup>29</sup>

Thus, CETS article 9 exempts Arctos from the provisions of articles 4 through 8.

**Arctos did not violate CETS article 8.**

In accordance with article 9 and Appendix II, article 8 prohibits “all indiscriminate means of capture and killing and the use of all means capable of causing local disappearance of, or serious disturbance to, populations of a species, and in particular, the means specified in Appendix IV.” Appendix IV prohibits 16 methods of capture or killing, including “poison and poisoned . . . bait.”

Arctos used two methods to limit the grey bears’ destruction of Arctos’s citizens, property, and environment: Arctos laid out poisoned carcasses<sup>30</sup> and authorized citizens to shoot grey bears.<sup>31</sup>

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<sup>27</sup> Record para. 21.

<sup>28</sup> Record paras. 17, 20.

<sup>29</sup> Ibid.

<sup>30</sup> Record para. 20.

<sup>31</sup> Record para. 21.

Laying out poisoned carcasses did not violate article 8. Appendix IV bans those methods of capture and kill in part because they risk collateral damage. Using poisoned bait could kill a variety of species in a brief time without allowing quantitative control. It kills indiscriminately, in that no particular species can be targeted. Any animal might swallow the poison, including man.<sup>32</sup>

Here, however, the poisoned carcasses successfully targeted grey bears, causing no collateral damage. Thus, the measure was precise as to content and limited in space and time. Then, it complies with CMS article III paragraph 5(d) and is permissible.

The authorization to shoot grey bears did not violate article 8. First, shooting a grey bear that enters a farm<sup>33</sup> is not “indiscriminate” and could not ‘seriously disturb the population’ of grey bears. Furthermore, the citizens of Arctos seem not to use any prohibited methods, like “sighting devices for night shooting” or “semi-automatic or automatic weapons,” to shoot bears. In the absence of such evidence, there is no violation of Appendix IV.

Thus, Arctos did not violate article 8.

### **Arctos did not violate CETS article 10.**

Article 10 requires states to co-ordinate efforts to protect “the migratory species specified in [Appendix] II . . . whose range extends into their territories.”

Through diplomatic notes, Arctos tried to enlist Ranvicora’s aid to prevent further harm to Arctos’s citizens and their property.<sup>34</sup> However, Ranvicora refused to cooperate. Given Ranvicora’s refusal to cooperate, Arctos could only respond unilaterally. Thus, not only did Arctos not violate article 10, but Ranvicora’s allegation is hypocritical.

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<sup>32</sup> Bodega Zugasti, D. de la (Ed.). 2014, Illegal use of poisoned-baits. Legal analysis and investigation. SEO/BirdLife-Proyecto Life+ VENENO project. Madrid

<sup>33</sup> Record para. 21.

<sup>34</sup> Record paras. 18, 23.



**Even if the Court finds that Arctos’s conduct conflicts with its international obligations, the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (“Draft Articles”) preclude wrongfulness under Articles 22 and 24.**

The Draft Articles Chapter V specifies six circumstances precluding wrongfulness when a state’s conduct would otherwise violate its international obligations.<sup>35</sup> Article 22 covers “countermeasures in respect of an internationally wrongful act” and article 24 covers distress.

Though the International Law Commission’s (“ILC”) Draft Articles are not binding law, states throughout the world esteem the ILC’s work in general and the Draft Articles in particular. Moreover, the International Court of Justice itself often invokes the Draft Articles.<sup>36</sup>

### **Article 22**

Article 22 states that “the wrongfulness of an act of a State not in conformity with an international obligation towards another State is precluded if and to the extent that the act constitutes a countermeasure taken against the latter State in accordance with chapter II of Part Three.” Chapter II covers “attribution of conduct to a state.” That is, one state may take countermeasures against the international wrongdoing of another state without itself incurring wrongdoing.

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<sup>35</sup> Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries, 2001, Chapter V, commentary (1).

<sup>36</sup> *See, e.g.*, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion of 9 July 2004); Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda) (Judgment of 19 December 2005), paras. 160, 293; Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) (Judgment of 26 February 2007), para. 173.

Chapter II, article 4<sup>37</sup> covers “conduct of organs of a state.” The record states that the Government of Ranvicora is reintroducing the bears. Since the Government of Ranvicora is an organ of the Republic of Ranvicora, article 4 applies.

Supra, Arctos has shown that Ranvicora’s conduct violates both international treaty obligations and international customary law. Arctos has responded to Ranvicora’s violations uniformly to protect its citizens’ lives and property and its own endangered birds.<sup>38</sup> As the initial wrongdoer, Ranvicora may not complain that Arctos’s responses violate international treaty violations, as Arctos has only conducted countermeasures to limit the transboundary harm caused by Ranvicora’s reintroduction of bears.

#### Article 24

Article 24 precludes the wrongfulness of a state’s act “if the author of the act in question has no other reasonable way, in a situation of distress, of saving the author’s life or the lives of other persons entrusted to the author’s care.” That is, (1) a person finds himself in distress, and (2) the state’s act is the only reasonable means to save the person’s life.

Here, citizens of Arctos repeatedly find themselves a situation of distress: massive, powerful bears are threatening their lives. Thus, Arctos authorizes the persons to defend themselves with deadly force. The action saves the lives of the citizens and is the only

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<sup>37</sup> “1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.  
2. An organ includes any person or entity which has that status in accordance with the internal law of the State.”

<sup>38</sup> *Cf.* Record para. 17: killing 8 horses and 20 sheep, damaging apple orchards and beehives, destroying the eggs of the endangered Trouwborst tern. *Cf.* Record para. 20: more of the same. *Cf.* Record para. 21: killing one child and significantly permanently injuring another.

reasonable means available at that time and place. Many of the farms are remote, and time and distance make it impossible to call for help from government authorities.

Thus, even if the Court finds that Arctos's conduct conflicts with its international obligations, articles 22 and 24 of the Draft Articles preclude the Court from attributing wrongfulness to Arctos's actions.

## **II. Ranvicora violated international law**

**By reintroducing grey bears, Ranvicora caused transboundary harm, which violates customary international law.**

- a. Ranvicora violated international law according to the prohibition against transboundary harm is customary international law.**

In accordance with the Charter of the United Nations and the principles of international law, states have “the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.”

In the Trail Smelter Case,<sup>39</sup> the Court stated that the principles of international law prohibit a state to “use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another.” In the Gabčíkovo-Nagymaros case, the court stated that, “in the field of environmental protection, vigilance and prevention are required on account of the often irreversible character of damage to the environment and of the limitations inherent in the very mechanism of reparation of this type of damage.” Most recently, in the Pulp Mills judgment, the Court importantly pronounced that a state must use every “means at its

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<sup>39</sup> Reports of international arbitral awards, VOLUME III pp. 1905-1982.

disposal . . . to avoid activities which take place in its territory . . . causing significant damage to the environment of another State.”<sup>40</sup>

**b. Ranvicora violated the Articles on Prevention article 3.**

The Articles of Prevention article 3 requires states to “prevent significant transboundary harm and to minimize the risk thereof”, and in the commentaries to the Articles, it is stated that Article 3 is based on the fundamental principle *sic utere tuo alienum non leadas* which is reflected in Principle 21/2 of the Stockholm and Rio Declarations.<sup>260</sup> The expression “at any event” shows that the duty to prevent is first priority, but if prevention is not possible, states are obliged to “minimize the risk of transboundary harm.”

**2. Ranvicora caused transboundary harm**

**a. Defining transboundary harm**

Transboundary harm has four elements: (1) the harm must result from human activity; (2) the harm must be a physical consequence of the human activity; (3) there must be a physical effect crossing national boundaries; (4) the harm in question must reach a level of severity that calls for legal action.<sup>41</sup>

**B. According to CMS Resolution 11.28, grey bears are an invasive species.**

An “invasive species” is a species that is: (1) not native to the ecosystem under consideration and (2) whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

An invasive species lives “outside its native distributional range, [having] arrived there by human activity.” In this case, there is no historical record of grey bears in Arctos. And the

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<sup>40</sup> Pulp Mills Case: A commentary, Alan Byle, p.3

<sup>41</sup> CBD Decision 8/27, standing committee to the Bern Convention Recommendations Nos.158 (2012) and 159 (2012).

grey bears should be distinguished as a non-native species, given that the species is crossed by artificial reintroduction projects of Ranvicora, or human activity.

Second, the grey bear damaged the property of Arctos's citizens and the endangered endemic species protected under national law in Arctos, and even caused direct harm to humans, including killing children. Thus, with those facts, It is clear that grey bears caused economic and environmental damage and damage of human life in the Arctos.

As a result, considering the fact that it is a non-native species and caused economic and environmental damage and damage of human life in the Arctos, the grey bear is an invasive species in Arctos.

**By reintroducing grey bears, Ranvicora violated CBD articles 3, 5, and 8.**

**i. Ranvicora violated CBD article 3.**

CBD article 3 requires states to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Here, however, Ranvicora took no measures to avoid causing damage beyond its borders when it reintroduced grey bears. The EIA was national only, giving no concern for neighboring states. As a result of Ranvicora's lack of concern, grey bears destroyed the lives of Arctos's citizens, their livestock and other property, and endangered terns.

Since Ranvicora did not ensures that the activities within its jurisdiction would not cause damage to other states, Ranvicora violated CBD article 3.

**ii. Ranvicora violated CBD article 5**

CBD article 5 says Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent

international organization, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity.

Arctos expressed its concern about damages occurred on their national jurisdiction and attempted cooperation by requesting Ranvicora ends its negative effects of its reintroduction project. However, Ranvicora rejected addressing the problem and didn't do any further cooperation.

In the Gabcikovo-Nagymaros case, ICJ required the parties to cooperate in good faith and initiate a process of monitoring for the purpose of environmental protection. Which refers ICJ emphasizes cooperation as an important feature with regard to prevention of harm. Under these facts, damages by reintroduction project were certain and regardless of the icj's requirement Ranvicora's failure to cooperate violated CBD article 5.

### **iii. Ranvicora violated CBD article 8**

CBD article 8(h) says prevent the introduction of, control or eradicate those alien species which threaten ecosystems, habitats or species.

Protecting and re-introducing endangered animals are always welcomed when safely managed under strict conditions. Arctos also stand for taking care of animals in danger. In this case, Ranvicora should have estimated the risk of reintroducing grey bears and notified Arctos. Because they did not, grey bears killed and injured Arctos citizens.

There can be no room for doubt that injury to people and damage to objects is covered by the *general obligation* not to cause transboundary harm. According to "*Trail Smelter*" case, where Canada was found legal duties for economic harm "to the territory of another or the properties or persons therein."

**IV. By failing to provide prior notice of the project, Ranvicora violated CBD Decision VIII/27.**

Decision VIII/27 (12) says Urges parties and other governments to communicate to potential importing countries relevant information about particular species that are subject to export and are known to be potentially invasive, through for example, web-based databases, alert lists or other appropriate information-sharing mechanisms at global and regional levels, and to provide information that is relevant for risk analysis and other proactive measures as appropriate to prevent or minimize effects of invasive alien species in other countries, in accordance with Article 3 of the Convention.

Since **no-harm rule** is a widely recognized principle of customary international law whereby a State is duty-bound to prevent, reduce and control the risk of environmental **harm** to other states Environmental impact assessment (EIA) is necessary.

An EIA evaluates likely environmental effects of a proposed project, accounting for interrelated social economic cultural and human-health effects, both beneficial and adverse. Several international conventions require conducting *transboundary* EIAs, like CBD article 14 and the Rio Declaration. In addition, the ICL's Articles on Prevention state that "any decision in respect of the authorization of an activity . . . shall, in particular, be based on an assessment of the possible transboundary harm caused by that activity, including any environmental impact assessment." Article 8 of the prevention of the ICL requires the state If the assessment indicates a risk of causing significant transboundary harm, Article 8 requires the state of origin to provide the state likely to be affected with timely notification of the risk and the assessment

Furthermore, Judge Palmer, emphasized that states have a legal duty before initiating an activity, to establish that the activity does not involve any unacceptable risk to the environment and that an EIA is "simply a means of establishing a process to comply with that international legal duty".

To addition, according to the pulp mills case, the statutes between both parties required that if a party were planning activities involving risk of significant damage to the other party, prior notification was obligatory, and the party planning the activity could only proceed if the notified country had no objections

In the Gabrcikovo- Nagymaros case, discuss the need to assess environmental risks in more general terms:

The awareness of the vulnerability of the environment and the recognition that environmental risks have to be assessed on a continuous basis have become much stronger in the years since the Treaty's conclusion ... The Court recognizes that both Parties agree on the need to take environmental concerns seriously and to take the required precautionary measures, but they fundamentally disagree on the consequences this has for the joint Project.

Although not fully spelled out, the Court indicated that the parties were under an obligation to assess environmental impact, as it also noted that in order to evaluate environmental risks current standards must be taken into consideration,

By the record Arctos had no history of grey bears inhabited before and no history of any other large carnivore species inhabit before . Releasing grey bears on the border was apparent to cause adverse effect to the applicant. Under these facts, Ranvicora has violated CBD decision 8/27 by not proceeding EIA and not informing to the applicant about the adverse effect followed by the reintroduction project.

Thus, Decision VIII/27 (4) says Encourage parties to build capacity for action at the national level for addressing the various pathways for introduction and spread of invasive alien species.



**CONCLUSION AND PRAYER FOR RELIEF**

Respondent, the Republic of Arctos, dutifully asks the Court to rule that:

1. The Federal States of Arctos did not violate international law.
2. The Republic of Ranvicora violated international law.

RESPECTFULLY SUBMITTED,

AGENTS OF APPLICANT