

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 2019-20

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QUESTIONS PRESENTED

- I. WHETHER THE REPUBLIC OF RANVICORA HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS BEAR REINTRODUCTION PROJECT.**

- II. WHETHER THE FEDERAL STATES OF ARCTOS HAS VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO RANVICORA'S REINTRODUCTION PROJECT.**

STATEMENT OF JURISDICTION

The Federal States of Arctos [“Arctos”] and the Republic of Ranvicora [“Ranvicora”] have consented to the jurisdiction of the International Court of Justice [“ICJ”] to decide the questions relating to the reintroduction of Bears in accordance with Article 36(1) of the Statute of the ICJ [“Statute”].

Pursuant to Article 40(1) of the Statute and by virtue of a Special Agreement [“Record”], both the parties have jointly transmitted a copy thereof to the Registrar of the Court on July 15th, 2019, the ICJ is hereby requested to adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

Arctos undertakes to accept the judgment of the Court as final and binding and shall execute it in utmost good faith.

STATEMENT OF FACTS

BACKGROUND

The Federal States of Arctos [hereinafter “Arctos”] and The Republic of Ranvicora [hereinafter “Ranvicora”] are neighbouring states located in the continent of Suredia along with the countries of Paddington and Aloysius. Arctos is located to the north of Ranvicora, sharing a 75km long border which primarily consists of forests and privately owned agricultural farms and orchards.

The Grey bears (*Ursus smokeysius*) [hereinafter “the Bear”] are an endangered species, endemic to parts of Suredia. The Bear lived in Ranvicora, Paddington and Aloysius for centuries before it went extinct in Ranvicora in 1963 due to overhunting and habitat destruction.

THE REINTRODUCTION PROJECT

Fifty years after the extinction, Ranvicora reintroduced the Bear in 2013. The Environmental Impact Assessment [hereinafter “EIA”] conducted for the project was national in scope and its results were not shared with any neighbouring state. Consequently, 20 bears were released at six different locations, nearest being 50 km from the Arctos-Ranvicora border.

On 19th September 2017, a bear was sighted near the Arctos border. Since then, the Bear repeatedly crossed the Arctos’ border, damaging farms, orchards, beehives etc in the process. Additionally, the Bear has killed cattle, damaged livestock, mauled children and ransacked the nests and eggs of the Trouwbourst tern (*Sterna ariensis*) [hereinafter “the Tern”], an endangered endemic species in Arctos.

ARCTOS' RESPONSE AND FURTHER NEGOTIATIONS

Amidst rising uproar from its citizens, the government of Arctos sought Ranvicora's cooperation by sending multiple diplomatic notes highlighting the problems caused by the Bear. Despite repeated attempts, Ranvicora unequivocally refused to take note of any such inconvenience and denied to compensate the loss suffered by the people of Arctos. As a result, Arctos issued an emergency regulation which permitted its citizens to shoot any bear in sight which entered their territory.

As further negotiations between the two countries reached an impasse, they entered into a special agreement to institute proceedings in the ICJ.

SUMMARY OF PLEADINGS

PLEADING I

The grey bear reintroduced by Ranvicora is an invasive alien species for Arctos since no fossil records have ever been found to establish its presence in the territory. The Bear destroyed the orchards and beehives which were instrumental in greenhouse mitigation mechanisms and Ranvicora has expressly denied to prevent, control or eradicate them. The reintroduction has, therefore, led to the violation of Ranvicora's obligations under the CBD, CMS and Bern convention. Further, Ranvicora conducted an EIA which was inadequate and the failure to notify Arctos about the possibility of grave and imminent danger has caused transboundary harm to Arctos. Ranvicora also violated the precautionary principle by omitting to take measures to prevent environmental degradation in Arctos.

PLEADING II

Arctos' actions were in furtherance of the protection of its citizens, their property and the Trouwborst tern. The Tern is endemic to Arctos and thus protected under its national laws. Notably, the bear posed a grave and imminent peril to the Tern population in Arctos, and therefore, Arctos' responses taken against them were legitimate as per CBD, CMS and Bern. In addition, Ranvicora categorically denied and failed to cooperate with Arctos to take mitigating steps against the Bear after which it became imperative to initiate the responses. Further, Arctos' plea for compensation is with respect to Ranvicora's refusal in providing due compensation for the harm caused to life and property of the people of Arctos.

PLEADINGS

**I. THE REPUBLIC OF RANVICORA VIOLATED INTERNATIONAL LAW
WITH RESPECT TO ITS BEAR REINTRODUCTION PROJECT.**

A. THE BEAR IS AN INVASIVE ALIEN SPECIES.

Invasive alien species [hereinafter, “IAS”] are plants, animals, pathogens and other organisms that are non-native to an ecosystem, and which may cause economic or environmental harm or adversely affect human health.¹ Under international instruments, species are deemed invasive only if they are non-native and cause harm to the environment.

a. *Arctos is not a range state of the Bear.*

A range state generally exercises jurisdiction over migratory species² that cyclically and predictably cross one or more national boundaries.³ The Bear has never been known to migrate to any other country and there is no historic or fossil record indicating the same in Arctos.⁴ They entered the territory of Arctos only after the reintroduction project initiated by Ranvicora. Therefore, Arctos cannot be a range state of the Bear in absence of any cyclical or predictable movement to Arctos.

b. *The Bear is causing harm to the environment and human life.*

¹ *What are Invasive Alien Species?*, CONVENTION ON BIOLOGICAL DIVERSITY, <https://www.cbd.int/invasive/WhatareIAS.shtml> [hereinafter IAS]; GLOBAL INVASIVE SPECIES PROGRAM, *Climate Change and Ecosystem – Based Adaptation: Addressing Multiple Drivers of Global Change* (2010).

² Convention on the Conservation of Migratory Species of Wild Animals art. 1(a), Nov. 1, 1983, 1651 U.N.T.S. 333 [hereinafter CMS].

³ CMS, art. 1(h).

⁴ Record ¶10.

An alien species is considered invasive only if it has adverse impacts on the environment, the economy or human health,⁵ including displacement and extinction of native species and causing harm to livestock and human life.⁶

The Bear reintroduced by Ranvicora is not only invading the territory of Arctos but also causing harm to the environment by killing livestock, damaging the apple orchards and sniffing out the nests and consuming the eggs of the Tern which is an endangered endemic species in Arctos. Further, two children died as a result of an attack by a female Bear⁷ establishing that they are a threat to human life.

c. The Bear's presence is harmful to greenhouse gas mitigation mechanisms.

- i. Ranvicora has violated Article 4(1)(d) of UNFCCC and Article 5(1) of the Paris Agreement.

According to the UNFCCC and Paris Agreement, State Parties are required to conserve and enhance sinks and reservoirs⁸ of all the greenhouse gases [hereinafter, "GHGs"].⁹ The presence

⁵ *Module 1, Introduction to Invasive Alien Species*, INVASIVE SPECIES SPECIALIST GROUP, http://www.issg.org/pdf/publications/GISP/GISP_TrainingCourseMaterials/Management/ManaginginvasivesModule1.pdf [hereinafter Module 1]; Recommendation No. 115 (2005) on the Conservation and Management of Transboundary Populations of Large Carnivores (promulgated by the Standing Comm. Bern Convention, Nov. 26, 2009) [hereinafter Recommendation No. 115]; National Environmental Management Biodiversity Act 10 of 2004 (BSRSA).

⁶ Module 1.

⁷ Record ¶21.

⁸ United Nations Framework Convention on Climate Change art. 1.7, 1.8, 9 May 1992, 1771 U.N.T.S. 107 [hereinafter UNFCCC].

⁹ UNFCCC, art. 4.1(d).

of sinks and reservoirs in the terrestrial and marine ecosystems helps in mitigating the effect of GHGs.¹⁰ Orchards, which generally act as both, sinks and reservoirs, help in mitigating the effects of GHGs¹¹ through carbon sequestration¹². The Bear reintroduced by Ranvicora, has been damaging the apple orchards in Arctos for more than six months¹³ which is known to reduce the sequestration abilities of ecosystems.¹⁴ Notably, apple orchards have low respiration rate, which helps in the reduction of loss of carbon in the carbon cycle.¹⁵ The continuous damage to these orchards will certainly increase the atmospheric concentration of GHGs, resulting into an escalation of the greenhouse effect. Therefore, the reintroduction of the Bear is detrimental to the conservation and enhancement of sinks in Arctos and violative of the UNFCCC and Paris Agreement.

B. RANVICORA HAS VIOLATED THE CONVENTION ON BIOLOGICAL DIVERSITY.

a. *Reintroduction of the Bear is causing harm to Arctos' environment.*

Article 3 of the CBD empowers States to exercise sovereign right over their biological resources¹⁶ provided they ensure transboundary environmental protection.¹⁷

¹⁰ UNFCCC, recital ¶4.

¹¹ UNFCCC, art. 1.7, 1.8.

¹² Constance Demestihis, Daniel Plenet et al., *Ecosystem services in orchards. A review*, 37 AGRONOMY FOR SUSTAINABLE DEV. 12, (2017).

¹³ Record ¶17.

¹⁴ IAS, *supra* note 1.

¹⁵ *Id.*

¹⁶ Convention on Biological Diversity art. 3, 1760 U.N.T.S. 69 [hereinafter CBD].

¹⁷ CBD, art. 3.

In March 2013, Ranvicora reintroduced the Bear pursuant to its national policies near the Arctos border.¹⁸ However, the project violates Article 8 of CBD, by ignoring the high probability of the Bear's movement into Arctos' territory. Due to Ranvicora's failure to curb the said movement of the Bear, Arctos has faced significant loss of environment and human life.¹⁹ Thus, Ranvicora contravened the right to exploit sovereign resources by using it beyond permissible limits.

b. *Ranvicora failed to prevent the introduction, control or eradication of the Bear.*

Article 8 of the convention obligates parties to prevent the introduction of, control or eradicate such species which threaten ecosystems, habitats or other species, to combat the threat posed by IAS.²⁰ This is because, after introduction, IAS often cause severe ecological disruption and become predators of other species and destroy their habitats.²¹

Notably, the Bear reintroduced by Ranvicora²² entered the territory of Arctos and caused ecological disruption in its territory²³ owing to its predatory nature. Consequently, Arctos sought cooperation regarding the same through a diplomatic note,²⁴ however, Ranvicora failed to control

¹⁸ Record ¶14.

¹⁹ Record ¶¶17, 20.

²⁰ LYLE GLOWKA ET AL., A GUIDE TO THE CONVENTION ON BIOLOGICAL DIVERSITY 46 (1994) [hereinafter Guide to CBD]; Regulation 1143/2014, of the European Parliament and of the Council of 22 October 2014 on the Prevention and Management of the Introduction and Spread of Invasive Alien Species, release no. L 317/35, ¶1 (Oct. 22, 2014).

²¹ CBD, *supra* note 16, art. 8; Decision 14/11 Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fourteenth Meeting, U.N. Doc. CBD/COP/DEC/14/11, ¶11(c) (Nov. 30, 2018).

²² Record ¶13.

²³ Record ¶17.

²⁴ Record ¶18.

and eradicate the Bear despite having the knowledge regarding the situation.²⁵ Therefore, Ranvicora has intentionally failed in its duty to prevent the introduction of, control or eradicate the Bear that has caused ecological disruption to Arctos.

c. *Ranvicora has failed to conduct an adequate Environmental Impact Assessment.*

i. Ranvicora failed to consult the government and population of Arctos.

EIA is a procedure used to identify the environmental effects of a proposed project and plan appropriate measures to reduce or eliminate any adverse effects.²⁶ States are required to conduct an EIA of projects that are likely to have significant adverse effects.²⁷ While conducting the EIA, it is necessary to take into account the population to be affected by the proposed project²⁸ especially while reintroducing species outside their indigenous range as the risks of unintended damages increase significantly.²⁹

²⁵ Record ¶¶16, 18.

²⁶ Guide to CBD, *supra* note 20, at 73; CBD Technical Series no. 26, Convention on Biological Diversity: Biodiversity in Impact Assessment (2006). [hereinafter CBD Technical Series no. 26].

²⁷ CBD, *supra* note 16, art. 14; Rio Declaration on Environment and Development, UN Doc. A/CONF.151/126, Principle 17 (Jun. 14 1992) [hereinafter Rio Declaration]; Decision VI/23 Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Sixth Meeting, U.N. Doc. CBD/COP/DEC/6/23 Principle 10 (Apr. 7, 2002) [hereinafter Decision VI/23]; Pulp Mills on the River Uruguay (Arg. v. Uru.), 1949 I.C.J Rep. 4 (Apr. 9). ¶204 [hereinafter Pulp Mills].

²⁸ Certain Activities carried out by Nicaragua in the Border Area (Nicar.v. Costa Rica), Judgment, 2015, I.C.J. Rep. 200, ¶168 (Dec. 16, 2015) [hereinafter Nicar. case]; Pulp Mills, ¶206; Rio Declaration on the Human Environment, Agenda 21, U.N. Doc. A/CONF. 151/26 (1992) [hereinafter Agenda 21]; CBD Technical Series No. 26, *supra* note 26, at 18,23.

²⁹ Int'l Union for Conserv. of Nature, Guidelines for Reintroductions and Other Conservation Translocations, § 6.1 (2013) [hereinafter IUCN Guidelines for Reintroduction].

Ranvicora conducted an EIA but failed to consult the government and the affected population of Arctos.³⁰ The reintroduction of the Bear near the Arctos border³¹ makes it an affected party as the Bear has caused harm to the environment of Arctos by killing sheep, horses, children and eggs of the Tern, an endangered endemic species of Arctos.³² Thus, it was Ranvicora's responsibility to consult the people of Arctos while conducting the EIA and reintroducing the Bear.

d. *Ranvicora failed to notify Arctos about the possibility of grave and imminent danger.*

Parties are obligated to notify other potentially affected States, when actions under their jurisdiction or control threaten to cause or actually cause damage to biological diversity within the jurisdiction of another State.³³ In recent decades, the grey bears in Aloysius and Paddington started moving poleward.³⁴ Ranvicora acquired the grey bears from Paddington and Aloysius for reintroducing them near the Arctos border,³⁵ completely disregarding the fact that the grey bears were moving northwards³⁶ where Arctos was situated. Due to this, the movement of the Bear

³⁰ Record ¶12.

³¹ Record ¶13.

³² Record ¶¶17, 20, 21.

³³ Guide to CBD, *supra* note 20, at 74; Rep. of the fifth meeting of the Conference of the Parties to the Convention on Biological Diversity, Principle 11, U.N. Doc. UNEP/CBD/COP/5/23 (June 22, 2000); Decision VI/23, *supra* note 27, annex.

³⁴ Record ¶13.

³⁵ Record ¶13.

³⁶ Record ¶13.

towards Arctos was foreseeable. Therefore, Ranvicora failed to notify Arctos of the possibility of the foreseeable grave and imminent danger that the Bear could cause.

C. RANVICORA HAS VIOLATED THE BERN CONVENTION.

a. *Ranvicora has failed to keep a control on the Bear, which is a non-native species.*

According to Article 11(2) (b) of the Bern Convention, State Parties are required to keep a strict control on the introduction programs of species which are not native in nature.³⁷ In situations where non-native species are introduced without strict control, they often cause extensive harm to the environment and human health.³⁸ A parallel can be drawn with the reintroduction of the JJ1 brown bear in Italy which caused immense ruckus in Germany and emphasized on the importance of keeping a strict control on the reintroduction of a non-native species.³⁹

Ranvicora had released the Bear merely 50 kilometres from the Arctos – Ranvicora border.⁴⁰ The Bear is a wild animal reproducing at a fast rate and owing to its characteristic northward shift in the recent decades,⁴¹ it was imperative that it will need more space for its sustenance and would eventually cross the border. This indicates the foreseeability of the Bear’s entry into the territory of Arctos as an IAS, which would have certainly caused damage to the human life, livestock and property. Moreover, there is a lack of any historic or fossil records to prove the presence of the

³⁷ Convention on the Conservation of European Wildlife and Natural Habitats art. 11(2)(b), E.T.S. 104 [hereinafter Bern Convention].

³⁸ IAS, *supra* note 1.

³⁹ Luke Harding, *Bavarian Hunters kill Bruno the Bear*, THE GUARDIAN, <https://www.theguardian.com/world/2006/jun/26/animalwelfare.germany>.

⁴⁰ Record ¶14.

⁴¹ Record ¶13.

Bear in the geographical territory of Arctos,⁴² which further establishes that the Bear has a non-native status in Arctos.

Therefore, Ranvicora was under the obligation to keep a strict control on the Bear, which it has violated despite repeated requests by Arctos, thereby violating the Bern Convention.

b. *Ranvicora has failed to disseminate general information regarding its reintroduction project.*

Under Article 3(3) of the Bern Convention, the State Parties must disseminate information for the purpose of conservation of wild flora and fauna⁴³ which is further reaffirmed in Recommendation 115 and 158 of the Standing Committee, with regard to the conservation and management of transboundary populations of large carnivores.⁴⁴

Ranvicora not only failed to disclose the results of the EIA, but also failed to consult Arctos regarding its reintroduction program despite the possibility of a transboundary impact.⁴⁵ Hence, Ranvicora has violated the provisions and the purpose and object of the Bern Convention.

c. *Ranvicora has failed to carry out its reintroduction program in consonance with the recommendations of the Standing Committee of the Bern Convention.*

⁴² Record ¶10.

⁴³ Bern Convention, *supra* note 37, art. 3(3).

⁴⁴ Recommendation No. 115, *supra* note 5; Recommendation No. 158 (2012) on Conservation Translocations Under Changing Climatic Conditions (promulgated by the Standing Comm. Bern Convention, Nov. 30, 2012) [hereinafter Recommendation No. 158].

⁴⁵ Record ¶12.

According to Recommendation No. 158,⁴⁶ reintroduction programs may be undertaken only if such reintroduction has, inter alia, clear objectives,⁴⁷ permanent management plans and identification of risks, including any transboundary impact.⁴⁸

Ranvicora introduced the Bear on the basis of cultural significance which cannot be the sole ground for reintroduction under international law,⁴⁹ and the objectives must themselves be sufficient to justify the programme. Ranvicora was required to have a clear objective and an exit strategy in place as per the mandate under the IUCN guidelines for reintroduction.⁵⁰ Ranvicora went on to deny any responsibility for the damage caused by the Bear and did not take any effort to control the species.⁵¹ Further, the identification of risks was inadequate under the EIA conducted by Ranvicora and the entire process was unilateral as Arctos was not consulted for the same.⁵² As a consequence, the reintroduction project has resulted in evident transboundary impacts to life, livestock and property of Arctos violating basic tenets of international environmental law.⁵³

D. RANVICORA HAS VIOLATED THE CUSTOMARY INTERNATIONAL LAW.

a. *Ranvicora has caused transboundary harm to Arctos.*

⁴⁶Recommendation No. 158, *supra* note 44.

⁴⁷Whaling in the Antarctic (Austl. v. Japan: N.Z. Intervening), Judgment, 2014, I.C.J. Rep. 226, ¶¶95-105 (Mar. 31, 2014)

⁴⁸ *Id.*

⁴⁹ IUCN Guidelines on Reintroduction, *supra* note 29, annex 3.1 ¶¶4.

⁵⁰ IUCN Guidelines on Reintroduction, *supra* note 29, art. 1, 4.3.

⁵¹ Record ¶19.

⁵² Record ¶12.

⁵³ Bern Convention, *supra* note 37, Recital ¶ 7.

States do not have a right to permit the use or make use of its territory in a manner that might cause clear provable injury to the territory of another state.⁵⁴ Violation of this obligation requires two prerequisites: (i) there is a transboundary movement of harmful effects and there exists a causal link between the reintroduction and the harm caused; and (ii) reintroduction of the Bear involved the risk of causing significant harm.⁵⁵

- i. There is a transboundary movement of harmful effects and there exists a causal link between the reintroduction and the harm caused.

Transboundary movement of harmful effects requires that the activity in question should involve or affect more than one state.⁵⁶ In order to establish this movement a physical relationship should be bridged between the act and the harm caused which involves natural resources⁵⁷ causing bodily, materially or environmentally harmful consequences.⁵⁸

⁵⁴ Stockholm Declaration on the Human Environment, Principle 21, UNDOCA/CONF.48/14/Rev.1 (1973); Trail Smelter Arbitration (U.S. v Can.) 3 U.N. Rep. Int'l Arb. Awards 1905, at 62 (1941) [hereinafter Trail Smelter]; Harald Hohmann, *Precautionary Legal Duties and Principles of Modern International Environmental Law*, 5 Y.B. OF INT'L ENVIRONMENTAL L. 642-645 (1994); Rio Declaration, *supra* note 27, Principle 14; Agenda 21, *supra* note 28, at 149.

⁵⁵ Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, Rep. of the Int'l L. Comm'n on the Work of its Fifty-Third Session, art. 1, U.N. Doc. A/56/10 (Aug. 2001) [hereinafter Draft Articles on Transboundary Harm].

⁵⁶ 27 XUE HANQIN, TRANSBOUNDARY DAMAGE IN INTERNATIONAL LAW 8 (2003).

⁵⁷ *Id.*, at 5.

⁵⁸ *Id.*

When the Bear was reintroduced by Ranvicora it had been intermittently moving back and forth between Ranvicora and Arctos.⁵⁹ While doing so, it caused harm to the environment of Arctos by damaging apple orchards, beehives, killing animals and consuming eggs of the Tern, an endangered endemic species in Arctos.⁶⁰ The Bear further attacked 2 children which led to their death.⁶¹ Therefore, the reintroduction of the Bear in Ranvicora has caused direct harmful effects to Arctos and contravenes international law.

ii. Reintroduction of the Bear involved the risk of causing significant harm.

The ‘risk’ element requires future possibilities of causing significant harm and thus implies assessment or appreciation of the risk involved in an activity.⁶² Significant harm must be more than “*de minimis*”, “trivial”, or simply ‘detectable’ in substance⁶³ which might be involved even when those carrying the activity were unaware or underestimated the said risk.⁶⁴

The Tern is an endemic species which is on the verge of extinction.⁶⁵ The Bear sniffs the nests of these terns and destroys their eggs.⁶⁶ Considering the conservation status of the Tern, the harm caused to their population is more than trivial. Further, the attacks on the citizens of Arctos by

⁵⁹ Record ¶16.

⁶⁰ Record ¶¶17,20.

⁶¹ Record ¶21.

⁶² Draft Articles on Transboundary Harm, *supra* note 55, art. 2.

⁶³ Günther Handl, *Transboundary Impacts*, THE OXFORD HANDBOOK OF INT’L ENVIRONMENTAL L. 535 (Sep. 2012).

⁶⁴ Draft Articles on Transboundary Harm, *supra* note 55.

⁶⁵ Record ¶17.

⁶⁶ Record ¶17.

the Bear has caused loss of lives of two children.⁶⁷ Therefore, reintroduction of the Bear has caused significant harm to Arctos.

b. *Ranvicora has violated the Precautionary Principle.*

Precautionary principle mandates that, lack of full scientific uncertainty should not be used to postpone cost-effective measures to prevent environmental degradation where there are threats of serious or irreversible damage.⁶⁸ This is a recognized principle of customary international Law [hereinafter, “CIL”],⁶⁹ the elements of which includes threat of a serious or irreversible nature, in situation of scientific uncertainty where no causal link between environmental damage and action can be established.⁷⁰

The acts of Ranvicora pose a threat of environmental damage which is undisputedly serious and irreversible in nature. The Bear reintroduced by Ranvicora is damaging apple orchards which is leading to an increase in GHGs. Moreover, the Bear is consuming eggs of the Tern, an endangered endemic species in Arctos⁷¹ which can render its status extinct. Subsequently, it

⁶⁷ Record ¶21.

⁶⁸ UNFCCC, *supra* note 8, art. 3(3); Rio Declaration, *supra* note 27, Principle 15; CBD Technical Series No. 26, *supra* note 26.

⁶⁹ Arie Trouwborst, *Evolution and Status of the Precautionary Principle in International Law*, 96 CAMBRIDGE UNIV. PRESS 1016-1018 (Oct. 2002); Agne Sirinskiene, *The Status of Precautionary Principle: Moving towards a Rule of Customary Law*, MYKOLAS ROMERIS UNIV. 349-364 (Dec. 2009); David Freestone & Ellen Hey, *The Precautionary Principle and International Law: The Challenge of Implementation*, 31 KLUWER L. INT’L (1996); TIMOTHY O’RIORDAN, INTERPRETING THE PRECAUTIONARY PRINCIPLE [PAGE](#)(2013).

⁷⁰ Int’l Union for Conserv. of Nature, Guidelines for Applying the Precautionary Principle (2007).

⁷¹ Record ¶¶17, 20.

attacked 2 children which led to their death.⁷² Thereafter, Arctos sought help regarding the same which has been overlooked by Ranvicora and no measure has been taken till date.⁷³ Thus, Ranvicora failed to take measures to prevent environmental degradation in Arctos and the impending extinction of the terns.

II. THE FEDERAL STATES OF ARCTOS DID NOT VIOLATE INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSES TO RANVICORA'S REINTRODUCTION OF THE GREY BEAR.

A. ARCTOS HAS SUFFICIENT REASONS TO TAKE APPROPRIATE RESPONSES AGAINST THE THREAT POSED BY THE BEAR.

a. *The Tern is an endangered endemic species in Arctos.*

i. Arctos' actions to prioritize the Tern is valid.

As a State Party to CBD, Arctos is required to protect biodiversity especially in the case of large threatened or endemic species.⁷⁴ The IUCN Guidelines accord the highest priority to vulnerable ecosystems in case of a risk to significant biodiversity.⁷⁵ Further, there is enough State Practice⁷⁶ to provide protection primarily to species which are endangered or whose habitat faces significant risk.⁷⁷

⁷² Record ¶21.

⁷³ Record ¶18.

⁷⁴ CBD Technical Series No. 26, *supra* note 26, at 13.

⁷⁵ Int'l Union for Conserv. of Nature, Guidelines for the Prevention of Biodiversity Loss Caused By IAS (2000)[hereinafter Guidelines for Prevention of Biodiversity Loss].

⁷⁶ Council Directive 79/409, art. 5, 14, 1979 O.J. Spec. Ed. 103/1 (EEC) [hereinafter Council Directive].

⁷⁷ Council Directive, Recital ¶¶3, 9; CBD Technical Series No. 26, *supra* note 26, art. 8(k).

States are also obligated to identify activities which can adversely impact or destroy habitats of such endangered species.⁷⁸ Notably, Arctos has a greater obligation to protect the Tern which is in its endemic habitat,⁷⁹ as opposed to the Bear, which being an invasive species, is damaging the native habitat of the Tern.⁸⁰ The Bear was found sniffing out the nests and consuming eggs of the Tern, which is causing significant environmental damage to Arctos, where the Tern is protected under national laws.⁸¹ Therefore, Arctos had to undertake necessary steps to protect its endangered biodiversity.

ii. Arctos' actions were in furtherance of Art. 8 of CBD.

When Alien species are introduced into a non-native area, they become predators of other species.⁸² Accordingly, States can take actions to control or eradicate species which threaten other ecosystems, habitats or species.⁸³

As per articles 7(c) and 8(l), States have extremely wide and significant discretion⁸⁴ to regulate or manage” the processes and categories that have been identified under Art. 7(c).⁸⁵ Arctos took

⁷⁸ CBD, *supra* note 16, art. 7(c).

⁷⁹ Agenda 21, *supra* note 28, at 150.

⁸⁰ *Id.*

⁸¹ Record ¶17.

⁸² Guide to CBD, *supra* note 20, at 46.

⁸³ CBD, *supra* note 16, art. 8(h); United Nations Convention on the Law of the Sea art. 196, 10 Dec. 1982, 1833 U.N.T.S. 3; Agenda 21, *supra* note 28, at 168; CMS, *supra* note 2, art. III (4)(c).

⁸⁴ CBD, *supra* note 16, art. 7(c), 8(l).

⁸⁵ Guide to CBD, *supra* note 20, art. 8(l); Council Directive, *supra* note 76, Recital ¶7.

steps such as the emergency regulation,⁸⁶ and the laying down of poisoned carcasses⁸⁷ to control the Bear which threatens the habitat of the Tern.⁸⁸

B. ARCTOS HAS TAKEN LEGITIMATE RESPONSES AGAINST IAS, AS PER THE PRINCIPLES OF INTERNATIONAL LAW.

a. *The responsive actions are permissible under Article 9 (1) of the Bern Convention.*

Wildlife damage to human property threatens human–wildlife coexistence, resulting in biodiversity loss in the form of livestock, flora and fauna, etc.⁸⁹ Under Art. 9(1) of the Bern Convention, State Parties are, thus, allowed to kill certain wild animals, with a view of biodiversity conservation.⁹⁰

The reintroduction of the Bear and its eventual movement into Arctos caused severe damage to the human life, endemic Terns, sheep, horses, beehives and farms.⁹¹ To cease such damages,

⁸⁶ Record ¶21.

⁸⁷Record ¶19.

⁸⁸ Record ¶17.

⁸⁹ Carlos Bautista, et al., *Patterns And Correlates Of Claims For Brown Bear Damage On A Continental Scale*, 54 J. OF APPLIED ECOLOGY 282 - 292 (2016); Reider Andersen, et al., *Large Predators And Human Communities In Norway. A Guide To Coexistence For The 21st Century*, NORWEGIAN INSTITUTE FOR NATURE RESEARCH (2003).

⁹⁰ Bern Convention, *supra* note 37, art. 2; BERN CONVENTION, EXPLANATORY REPORT TO THE CONVENTION ON THE CONSERVATION OF EUROPEAN WILDLIFE AND NATURAL HABITATS, EC (SEP. 19, 1979); JDC Linnell, et al., *When is it acceptable to kill a strictly protected carnivore? Exploring the legal constraints on wildlife management within Europe's Bern Convention*, 21 NATURE CONSERVATION 129-157 (2017); Case C-342/05, *Comm'n v. Fin.*, 2007 E.C.R. [hereinafter *Comm'n v. Fin.*]; Jukka Bisi, et al., *Human Dimensions Of Wolf (Canis Lupus) Conflicts In Finland*, 53 EUR. J. OF WILDLIFE RESEARCH 304–314 (2007); Goran Ericsson, et al. *Support For Hunting As A Means Of Wolf Canis Lupus Population Control In Sweden*, 10 WILDLIFE BIOLOGY 260–276 (2004).

⁹¹ Record ¶¶17, 20.

Arctos undertook immediate and exceptional measures, as permitted under the Bern Convention.⁹² Arctos' measures are further valid because (a) there was an absence of other satisfactory solutions and (b) the response is not detrimental to the conservation status of the Bear.

1. Absence of other satisfactory solutions.

A retaliation can be deemed valid when it disqualifies all other satisfactory solutions.⁹³ The IUCN recognizes the underdeveloped structure of adequate responses to damages caused by IAS.⁹⁴ Under such circumstances, a State undertaking rehabilitation projects must have preventive measures as their highest priority.⁹⁵ Owing to the scientific uncertainty that wild species like the Bear possesses, a precautionary approach is required.⁹⁶ Ranvicora has failed to incorporate either of the requirements, by conducting a unilateral EIA⁹⁷ and refusing to provide a

⁹² Bern Convention, *supra* note 37, art. 9(1).

⁹³ *Id.*; Council Directive 92/43, art. 16, 14, 1992 O.J. No. L. 206/7 (EEC); NATALIA BRAGALANTI ET AL., BEAR REPORT 2012 (2012), http://www2.nina.no/lcie_new/pdf/635011008584394697_rapportoORSO_2012_EN_sito.1365493931.pdf.

⁹⁴ Guidelines for the Prevention of Biodiversity Loss, *supra* note 75, at 2.

⁹⁵ *Id.* at 8; Guiding Principle 2, Decisions V/8 Adopted by the Conference of the Parties to the Convention on Biological Diversity at its Fifth Ordinary Meeting, U.N. Doc. UNEP/CBD/COP/DEC/V/8 (May 26, 2000); Large Carnivore Initiative for Europe, Guidelines For Population Level Management Plans For Large Carnivores In Europe (2008) [hereinafter Guidelines for Large Carnivores].

⁹⁶ Convention on Biological Diversity, Guiding Principles For The Prevention, Introduction And Mitigation Of Impacts Of Alien Species That Threaten Ecosystems, Habitats Or Species (2002); Guidelines for Large Carnivores; Arie Trouwborst, *Managing the Carnivore Comeback: International and EU Species Protection Law and the Return of Lynx, Wolf and Bear to Western Europe*, 22 J. OF ENVIRONMENTAL L. 347-372 (2010).

⁹⁷ Record ¶12.

redressal procedure. In such situations, Standing Committee to the Bern Convention permits States to define and justify conditions that warrant a retaliation.⁹⁸ Arctos' measures were in response to the intensifying presence of the Bear and its depredation on livestock and humans.

2. Arctos' exceptional measures were not detrimental to the survival of the population of the Bear.

An assessment for detriment should be based on current data on the state of the population, including its size, distribution and future prospects.⁹⁹ Ranvicora's reintroduction project introduced 20 Bears which produced offspring within a month,¹⁰⁰ highlighting a rapid multiplication of the species. Moreover, Ranvicora had proposed additional phases of the reintroduction project.¹⁰¹ Considering such circumstances, Arctos undertook measures to mitigate the damage, only harming the invasive Bear causing damage in Arctos. Thus, no permanent detriment was caused to the species' population as a whole.

- b. *Arctos' actions are permissible under Art. III (5)(d) of CMS.*

As per CMS, Range States may take species listed under Appendix I in the event of an extraordinary circumstance.¹⁰² Despite not being a Range State, Arctos has exercised its

⁹⁸ Revised Res. No. 2 (1993) The Scope Of Articles 8 And 9 Of The Bern Convention (promulgated by the Standing Comm. Bern Convention, Nov. 29 – Dec. 2, 2011).

⁹⁹ *Id.*

¹⁰⁰ Record ¶¶14, 15.

¹⁰¹ Record ¶15.

¹⁰² CMS, *supra* note 2, art III (5).

legitimate discretion of this exception without causing disadvantage to the species as provided in Art. III.¹⁰³

States have significant discretion to invoke the said exception,¹⁰⁴ which was validly exercised by Western Australia when no other course of action was reasonably available.¹⁰⁵

Initially, Ranvicora had released 20 bears as part of the first phase of the reintroduction project.¹⁰⁶ However, the numbers quickly rose and Ranvicora planned additional phases of release of the Bear in 2021.¹⁰⁷ Arctos merely killed only a handful of the Bear population albeit to protect its farms, livestock as well as prevent more human injury.¹⁰⁸ Thus, it is a reasonable exercise of Arctos' discretion guaranteed under CMS.

C. RANVICORA HAS BREACHED ITS DUTY TO COOPERATE UNDER INTERNATIONAL LAW.

The duty to cooperate to protect the environment,¹⁰⁹ and its significance has been highlighted in Art. 5 of CBD, which recognizes migratory species as a matter of mutual interest between two states.¹¹⁰ Furthermore, its obligations that deal with the components of biological diversity fall

¹⁰³ *Id.*

¹⁰⁴ Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species*, 2 CORNELL INT'L L. J. 42 (2014).

¹⁰⁵ *Buzzacott v. Minister for Sustainability, Environment, Water, Population and Communities* (2013) 111 FCA 39 (Austl.).

¹⁰⁶ Record ¶14.

¹⁰⁷ Record ¶15.

¹⁰⁸ Record ¶¶20, 21.

¹⁰⁹ G.A. Res. 2995 (XXVII) (Dec. 15, 1972) [hereinafter G.A. Res.]; Rio Declaration, *supra* note 27, Principle 7; Agenda 21, *supra* note 28, at 150.

¹¹⁰ CBD, *supra* note 16, art. 5.

within the same ambit.¹¹¹ Art. 2 of CMS requires States to acknowledge the importance of cooperation.¹¹² Additionally, its importance has been reaffirmed in Principle 24 of the Stockholm Declaration,¹¹³ in the UN General Assembly Resolution 2995¹¹⁴ and the 1982 World Charter for Nature.¹¹⁵ Owing to the endemic and endangered nature of the Tern,¹¹⁶ their protection and preservation is given paramountcy by Arctos.¹¹⁷ The Bear was causing impairment to the breeding grounds of the Tern.¹¹⁸ This act was defended unjustifiably by Ranvicora and no actions were taken to resolve the harm caused even after repeated requests by Arctos. Thus, Ranvicora has acted in contravention of its duty to cooperate.

D. ARCTOS' RESPONSES ARE VALID UNDER INTERNATIONAL LAW.

a. *Arctos has acted under a state of necessity against Ranvicora.*

¹¹¹ Guide to CBD, *supra* note 20, at 28; FRANZ X. PERREZ, COOPERATIVE SOVEREIGNTY: FROM INDEPENDENCE TO INTERDEPENDENCE IN THE STRUCTURE OF INTERNATIONAL ENVIRONMENTAL LAW 261 (2000).

¹¹² CMS, *supra* note 2, art. II.

¹¹³ U.N. Conference on the Human Environment, *Declaration of the United Nations Conference on the Human Environment*, Principle 21, U.N. Doc. A/CONF.48/14/Rev. 1 (June 16, 1972).

¹¹⁴ G.A. Res., *supra* note 109, at 6.

¹¹⁵ World Charter for Nature, U.N. Doc. A/RES/37/7 (Oct. 28, 1982).

¹¹⁶ Record ¶17.

¹¹⁷ CBD Technical Series No. 26, *supra* note 26, at 13, 14; Guidelines for the Prevention of Biodiversity Loss, *supra* note 75, Guiding Principle 5.1.

¹¹⁸ Record ¶17.

The state of necessity is invoked when it is the only way a State can protect its essential interest from a grave and imminent peril,¹¹⁹ without impairing an essential interest of the other State.¹²⁰

- i. Arctos has invoked necessity to protect its essential interests from a grave and imminent peril.

The frequent transboundary movements of the Bear¹²¹ to Arctos has caused severe damage not only to the livestock and property, but human life as well,¹²² creating a situation of imminence.¹²³ In order to remedy the situation Arctos has had to take immediate measures which warranted the use of poisoned carcasses¹²⁴ and shooting on sight.¹²⁵ These provisional measures were taken to secure its citizens and their property from the frequent menace posed by the Bear.

- ii. Arctos' conduct did not seriously impair the essential interest of Ranvicora.

An acting state's reliance on its interests must overshadow all other considerations, with due comparison with competing state's interests.¹²⁶

The conduct of Arctos was of immediate and defensive nature and aimed at protecting its biodiversity and the lives of citizens. On a reasonable assessment, Arctos' interests sufficiently

¹¹⁹G.A. Res. 56/83, annex, ILC Articles on the Responsibility of States for Internationally Wrongful Acts art. 25(1)(a) (Jan. 28, 2002) [hereinafter ARSIWA].

¹²⁰ ARSIWA, art. 25 (1)(b).

¹²¹ Record ¶20.

¹²² Record ¶¶17, 20.

¹²³ ARSIWA, *supra* note 119, art. 25.

¹²⁴ Record ¶20.

¹²⁵ Record ¶21.

¹²⁶ Gabcikovo-Nagymaros Project case (Hung. v. Slov.), ¶50, Judgment, 1997 I.C.J. Rep. 7, 7 (Sept. 25); Int'l L. Comm'n, Rep. of the ILC, Fifty-third Session 2001, GAOR, Fifty-sixth Session, Suppl. No. 10, Doc. A/56/10.

outweigh Ranvicora's sole interest of cultural significance in the reintroduction project.¹²⁷ There exists extensive practice¹²⁸ of States undertaking necessary management actions to safeguard their material interests from an extreme danger. Hence, Arctos' response has in no way impaired Ranvicora's essential interests.

E. RANVICORA IS LIABLE TO PAY COMPENSATION TO ARCTOS FOR THE DAMAGES CAUSED.

States are internationally wrongful when their actions are both attributable to them and consist a breach of international obligations.¹²⁹ These actions give rise to a responsibility to make reparations¹³⁰ towards the damages caused to the injured States.¹³¹ Ranvicora purported its intentional oversight¹³² in failing to incorporate precautionary methods before its reintroduction project. Its further prolonged wrongful actions,¹³³ in so far as the constant refusal to provide preventive remedies, gives rise to Ranvicora's eventual liability to provide compensation to Arctos.

¹²⁷ Record ¶11.

¹²⁸ *Id.*; Mordecai O. Ogada, et al., *Limiting Depredation By African Carnivores: The Role Of Livestock Husbandry*, 17 CONSERVATION BIOLOGY 1521–1530 (2003); Adrian Treves, *Hunting For Large Carnivore Conservation*, 46 J. OF APPLIED ECOLOGY 1350–1356 (2009); Bautista, *supra* note 89.

¹²⁹ ARSIWA, *supra* note 119, art. 31; JAMES CRAWFORD, ET AL., THE LAW OF INTERNATIONAL RESPONSIBILITY 208 (Kate Parlett ed. 2010).

¹³⁰ Int'l L. Comm'n, Commentaries on Draft Arts on Responsibilities of States for Internationally Wrongful Acts, art. 1 ¶5, U.N. Doc. A/56/10 (2001)s; Trail Smelter Case, *supra* note 54.

¹³¹ ARSIWA, *supra* note 119, art. 36.

¹³² Corfu Channel (U.K. and N. Ir. v. Alb.), Judgment, 1949 I.C.J. Rep. 4 (Apr. 9) (para).

¹³³ ARSIWA, *supra* note 119, art. 14.

PRAYER

For the foregoing reasons, Arctos requests this Hon'ble Court to adjudge and declare:

- I. Ranvicora violated International law with respect to its Grey Bear reintroduction project.
- II. Arctos did not violate international law with respect to its responses to Ranvicora's reintroduction of the Grey Bear.

Respectfully Submitted,

AGENTS FOR THE APPLICANT.