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THE TWENTY-FOURTH ANNUAL STETSON INTERNATIONAL
ENVIRONMENTAL MOOT COURT COMPETITION
2019-2020

QUESTIONS RELATING TO REINTRODUCTION OF BEARS

THE FEDERAL STATES OF ARCTOS
(APPLICANT)
V.
THE REPUBLIC OF RANVICORA
(RESPONDENT)

MEMORIAL FOR THE RESPONDENT
2019



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

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QUESTIONS PRESENTED

1. WHETHER THE REPUBLIC OF RANVICORA VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROJECT.

2. WHETHER THE APPLICANT VIOLATED INTERNATIONAL LAW WITH RESPECT TO ITS RESPONSE TO RANVICORA'S REINTRODUCTION OF GREY BEARS.

STATEMENT OF JURISDICTION

Pursuant to the Joint Notification and Special Agreement concluded on 15 July, 2019, including the Clarifications agreed to therein, between the Federal State of Arctos [**“Arctos”**] and the Republic of Ranvicora [**“Ranvicora”**], and in accordance with Article 40(1) of the Statute of the International Court of Justice [**“ICJ”**], the Parties hereby submit to this Court their dispute concerning the Questions Relating to Reintroduction of Bears.

In accordance with Article 2 of the Special Agreement, notified to the Court on 15 July, 2019, the ICJ is hereby requested to decide the dispute in accordance with the rules and principles of general international law, including any applicable treaties determining the legal consequences, the rights and obligations of the Parties.

Arctos and Ranvicora have agreed to respect the decision of this Court.

STATEMENT OF FACTS

The Federal States of Arctos and the Republic of Ranvicora are neighboring states located on the continent of Suredia in the Northern Hemisphere. Arctos and Ranvicora are considered developed countries and both are Members of the United Nations, Parties to the Statute of the ICJ, VCLT, CBD, Bern Convention, CMS, United Nations Framework Convention on Climate Change, Kyoto Protocol, and to the Paris Agreement.

The grey bears lived in Ranvicora for centuries, representing a great cultural importance of this country. They were extinct in 1963 and it was considered as a national tragedy for Ranvicora's citizens. The grey bear (*Ursus *smokeysius**) is listed as Endangered on the IUCN Red List of Threatened Species, on Appendix II of the Bern Convention, and on Appendix I of CMS.

In 2008, the Government of Ranvicora started planning a project to reintroduce the grey bears in its territory and conducted an environmental impact assessment (EIA), which considered multiple reintroduction phases ending in 2026. The first release happened on 23 March 2013.

The largest remaining habitat suitable to sustain a viable grey bear population was in the northern part of Ranvicora, in the region that borders Arctos. Twenty grey bears (14 females and 6 males) were reintroduced in Ranvicora over a five-year period and half of the released bears were fitted with GPS collars.

Since 19 September 2017, grey bears were spotted in Arctos near the Arctos and Ranvicora border, during this period many animals got injured and died in Arctos territory. Although there were no witnesses to any of the attacks, authorities determined that grey bears had killed those animals.

After 9 August 2018, several diplomatic notes were exchanged between Arctos and Ranvicora. Arctos claimed that the grey bears were causing transboundary harm to their environment and requested the termination of the project and Ranvicora explained that grey bears might have moved across the border as part of a climate-induced range shift and claimed that Ranvicora did not violate any international law with the Reintroduction Project.

After that, Arctos set out poisoned carcasses near the farms and, in January 2019, four grey bears died after eating them. On 22 April 2019, two children were trying to play with a bear cub, and the mother bear attacked them, causing death to one of the children.

Two days later, Arctos issued an emergency regulation that expressly granted permission for the citizens of Arctos to shoot any grey bear spotted in Arctos. After this decision, a female grey bear, her two cubs and a pregnant bear were killed in Arctos.

On 5 June 2019, Ranvicora sent a diplomatic note to Arctos, demanding to revoke its emergency regulation and stop harming the grey bears. On 23 June 2019, Arctos sent a diplomatic note to Ranvicora, disagreeing with its demands.

The two countries entered into a Special Agreement to institute proceedings in the International Court of Justice (ICJ). The Republic of Ranvicora declares that (1) the Republic of Ranvicora did not violate international law with respect to its grey bear reintroduction project, and (2) the Federal States of Arctos violated international law with respect to its responses to Ranvicora's reintroduction of grey bears.

SUMMARY OF ARGUMENTS

I.The Government of Ranvicora did not violated international law by implementing the Reintroduction Project, since there is no casual link between the presumed harmful actions and the bears. Rather, the project is contributing to the protection of a threatened animal and the recovery of its natural habitat, helping to protect the biodiversity.

II.The Federal State of Arctos violated international law regarding its response to the Reintroduction Project, causing a transboundary harm. The grey bears are a wild animal that feel threatened when humans are attacking, and in under no circumstance killing those bears were a legal or rational action.

ARGUMENTS

I. RANVICORA COMPLIED WITH INTERNATIONAL LAW WITH RESPECT TO ITS GREY BEAR REINTRODUCTION PROJECT.

A. THE REINTRODUCTION PROJECT IS IN COMPLIANCE WITH RANVICORA'S ENVIRONMENTAL OBLIGATIONS.

1. The reintroduction project is complying with several international conventions by protecting an endangered migratory species and its natural habitat.

The European Commission issued technical report on Large Carnivores demonstrating its concern regarding the urge to conserve and protect large carnivores' species¹.

By implementing this project, Ranvicora is complying with its environmental obligations to conserve and recover biodiversity, protecting the Grey Bear, an endangered species.

The Reintroduction Project is following the Bern Convention, Convention on the Conservation of Migratory Species (CMS), Convention on Biological Diversity (CBD), Stockholm and Rio Declarations, contributing to the conservation of migratory species and to the protection of wild flora and fauna.

¹ Key actions for Large Carnivore populations - Support to the European Commission's policy on large carnivores under the Habitat Directive - Phase Two in Europe. Istituto Ecologia Applicata, Roma; January of 2015, page 2

a. The Project is in Compliance with the preamble, article 3(1) and 11(2)(a) of the Bern Convention.

Article 11(2)(a) of the Bern Convention² establishes that States should reintroduce native species of wild flora and fauna when a reintroduction can contribute to the conservation of endangered species.

This article also recognizes that conservation of these native species should be taken into consideration by the governments in their national goals and programs and international co-operation between States should be established to protect migratory species, as the case of the grey bears.

Article 3(1) of the Convention³ establishes that States shall take steps to promote national policies for conservation of wild flora, wild fauna and natural habitats, with particular attention to endangered species and to vulnerable species, including the migratory ones listed on the appendix II.⁴

Since the grey bear is listed in the said appendix⁵, the Reintroduction Project is a measure to help the protection of singular fauna species in its natural habitat.

With the Reintroduction Project, Ranvicora not only follows the obligations set out in this Convention, but also takes measures to protect and conserve the biodiversity of this threatened species.

² Convention on the Conservation of European Wildlife and Natural Habitats [Bern Convention], September 19 1979, 1284 UNTS 104, preamble

³ Bern Convention, art. 3(1)

⁴ Bern Convention, art. 4(1)

⁵ Bern Convention, Appendix II, p.3

b. The Reintroduction Project is in accordance with the Convention of Migratory Species.

The Grey bear is a migratory species that, due to climate change, is shifting its migration patterns, a behavior that has been demonstrated in the territories of Paddington and Aloysius.

As parties of the CMS, Ranvicora and Arctos must protect migratory species that live within or pass through their national jurisdictional boundaries.⁶

Article II-2(b) of the Convention affirms that Parties should take immediately actions to protect the migratory species listed in the Appendix I, to prevent them from becoming endangered⁷.

The action taken by the Respondent, with the Reintroduction Project, demonstrates its compliance with the environmental taken in international law and its concern to protect this species.

c. The Project is following the Convention on Biological Diversity.

When implementing the Reintroduction Project, Ranvicora was complying with its obligations taken under the CBD, contributing for conservation of biodiversity⁸.

The CBD aims the conservation of the biodiversity in all components, including the ecological, cultural and social ones⁹, reaffirming the States responsibility to put that in action.

⁶ Bern Convention, preamble

⁷ Convention on the Conservation of Migratory Species of Wild Animals [CMS], June 23 1979, 1651 UNTS 333, art. II-2(b)

⁸ R¶19

⁹ United Nations, Convention on Biological Diversity [CBD], June 05 1992, 1760 UNTS 79, preamble

Ranvicora is also acting in accordance with Article 8(d), (f) and (k) of the CBD¹⁰ by promoting the protection of the grey bears, its natural habitat and recovering an endangered and extinguished species.

Article 8 of the Convention establishes that the Parties shall rehabilitate, restore degraded ecosystems and promote the recovery of threatened species, through the implementation of plans and management strategies¹¹.

The Government of Ranvicora is making efforts to comply with obligations¹² by adopting measures for the recovery of grey bears¹³.

d. The project is complying with the Respondent's duties under the United Nations Conference on the Human Environment at Stockholm and the Rio Declaration.

Principles 2 and 4 of the United Nations Conference on the Human Environment at Stockholm (Stockholm Declaration) recognize the importance to protect the fauna and the States responsibility to take care of the management of wildlife heritage^{14,15}.

By implementing this reintroduction project, Ranvicora protects the bears and its habitat for future generations and helps to restore biodiversity¹⁶.

¹⁰ CBD art. 8(d), (f) and (k)

¹¹ CBD art. 8(f)

¹² CBD, art. 9(c)

¹³ R¶19

¹⁴ UN General Assembly, United Nations Conference on the Human Environment [Stockholm Declaration], 15 December 1972, A/RES/2994, Principle 2

¹⁵ Stockholm Declaration, Principle 4

¹⁶ Rio Declaration on Environment and Development [Rio Declaration], UN Doc.A/CONF.151/26 (1992), article 7

B. THE GOVERNMENT OF RANVICORA DID NOT CAUSE TRANSBOUNDARY HARM.

The Draft Articles on Prevention of Transboundary Harm from Hazardous Activities defines transboundary harm as a “meaning harm caused in the territory of or in other places under the jurisdiction or control of a State other than the State of origin”¹⁷, establishing that, for an activity to be considered as cause of transboundary harm, it has to result in a physical consequence that causes a significant harm¹⁸.

Under no circumstances the Reintroduction Project caused a substantial harm, since the children’s incident was an unusual event. Instead, it is causing several positive effects in the environment, such as protection of biodiversity and recovery of threatened animal.

1. The Grey Bear is not an Invasive Alien Species.

a. The Grey bear is characterized as a Native species in accordance with The Recommendation No. 142 (2009).

Recommendation No. 142 (2009) of the Standing Committee of the Bern Convention characterize invasive alien species as the ones that were reintroduced outside its past or present natural habit and whose introduction threatens biological diversity¹⁹.

¹⁷ International Law Commission, Prevention of Transboundary Harm from Hazardous Activities [Draft Articles on Prevention of Transboundary Harm], 2001, Official Records of the General Assembly, fifty-sixth Session, Supplement No. 10 (A/56/10) art. 2, Commentary 9

¹⁸ Draft articles on Prevention of Transboundary Harm from Hazardous Activities, art. 2, Commentary 16

¹⁹ Recommendation No. 142 (2009) of the Standing Committee [Recommendation No. 142], adopted on 26 November 2009, interpreting the CBD definition of invasive alien species to take into account climate change.

Before the Reintroduction set place, Ranvicora analyzed the present habitat of the bears in Aloysius and Paddington to establish the characteristics of the territory in which they were adapted, since the species is migrating to the north of those countries due to the climate change.

Thereon, the areas that the bears were allocated were chosen because they would be the present habitat of the species in Ranvicora's territory, considering its migration to the north of Aloysius and Paddington²⁰.

Nonetheless, the grey bear is a natural species of Ranvicora's territory and it cannot be considered as an invasive alien species in pursuant to the recommendation aforementioned. The government is trying to reestablish the native fauna and habitat of the species, contributing to the balance of this environment.

In accordance with the Recommendation No. 158 (2012)²¹ the translocation of a species is riskier when there is an intentional release of an organism outside its natural range habitat. According to this recommendation, there are several cases where species released outside its range ended becoming invasive alien species²².

For these reasons, since the bears are being reintroduced in a place considered as its natural habitat, not outside it, the bears are considered native species.

²⁰ R¶13

²¹ Recommendation No. 158 (2012) of the Standing Committee, adopted on 30 November 2012. on Conservation translocations under changing climatic conditions [Recommendation No. 158]

²² Recommendation No. 158 Preamble.

b. The Grey Bear is a species Naturally Expanding its Range Due to Climate Change.

Climate change is a natural human action consequence and has the power to modify the range of a species' migration, making them move to neighboring areas.²³ That modification is seen as a common and natural consequence²⁴.

The Recommendation No. 158 (2012) made clear that species that are being translocated must be prioritized due to their ecological role and their threatened status²⁵, as the case of the grey bear²⁶.

Because of the Climate Change, States must take adaptation approaches, such as conservation of species and ecosystems and protection of biodiversity²⁷. By reintroducing the grey bears in Ranvicora, a national policy is being fomented for the conservation of a wild threatened animal.

2. The Burden of Proof of the Transboundary Harm Falls for the Applicant.

With respect to the principle of the *onus probandi incumbit actori*, this Court asserts that the Applicant has the duty to prove that the facts it claims exist²⁸. There is no proof that

²³ Recommendation No. 142

²⁴ Recommendation No. 142

²⁵ Recommendation No. 158, point 6

²⁶ R¶9

²⁷ Schmitz, Oswald J.; Lawler, Joshua J.; Beier, Paul; Groves, Craig; Knight, Gary; Boyce Jr., Douglas A.; Bulluck, Jason; Johnston, Kevin M.; Klein, Mary L.; Muller, Kit; Pierce, D. John; Singleton, William R.; Strittholt, James R.; Theobald, David M.; Trombulak, Stephen K. and Trainor, Anne. "Conserving Biodiversity: Practical Guidance about Climate Change Adaptation Approaches in Support of Land-use Planning". BioOne Complete, 2015

²⁸ Pulp Mills Case (Argentina v. Uruguay), Judgement, I.C.J. reports, 2010, ¶162 [Pulp Mills Case]; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgement, I.C.J. reports, 1984, ¶99 [Nicaragua Case]; Asylum Case (Colombia v. Peru), Judgement, I.C.J. reports, 1950, p. 20; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro),

Ranvicora's Reintroduction Project caused transboundary harm or that the grey bears have been responsible for the attacks over Arctos territory.²⁹

Besides, the ICJ decided in Pulp Mills case that, when a State is affirming an environmental harm, it has to prove that such facts are real and should submit relevant evidence³⁰. Arctos failed to prove that the death of horses and sheep are attributable to the bears, since there were no witnesses to any of these events³¹ and that there are farms in both States³², and none of these events happened in Ranvicora³³.

It is a presumption of harm against Ranvicora and this Court has already refused Circumstantial prove³⁴.

Judgement, I.C.J. reports, 2007, para. 204; Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgement, 9 April 1949, Dissenting Opinion of Judge Krylov, I.C.J. Reports 1949 [Corfu Channel Case]

²⁹ R¶17

³⁰ Pulp Mills Case (Argentina v. Uruguay), Judgement, I.C.J. reports, 2010, [Pulp Mills Case] ¶162; Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Judgement, I.C.J. reports, 1984, [Nicaragua Case], ¶99; Asylum Case (Colombia v. Peru), Judgement, I.C.J. reports, 1950, p. 20; Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgement, I.C.J. reports, 2007, para. 204; Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgement, 9 April 1949, Dissenting Opinion of Judge Krylov, I.C.J. Reports 1949 [Corfu Channel Case]

³¹ R¶17

³² R¶1

³³ R¶17

³⁴ Sovereignty over Puluu Ligitun und Puluu Sipudan (IndonesiulMuluysia), Application,for. Permission to Intervene, Judgment, I. C. J. Reports 2001, Para.94; Application of the Conventon on the Prevention and Punishment of the Crime of Genocide (Bosn & Hen v Serb & Monte), 2007 ICJ, para 373, 376; Scharf, Michael P. and Day, Margaux (2012) "The International Court of Justice's Treatment of Circumstantial Evidence and Adverse Inferences," Chicago Journal of International Law: Vol. 13: No. 1, Article 6, pág 140.

3. Ranvicora Complied with its Obligation to Prevent Transboundary Harm, respecting its Due Diligence duty.

a. Ranvicora complied with its obligations regarding the Environmental Impact Assessment.

Due diligence is the obligation to take all possible measures to prevent environmental harm.³⁵ States must take necessary actions, such as monitoring mechanisms, and are obliged to have an authorization to continue the activities before making an EIA³⁶.

Ranvicora complied with its duty of due diligence under international environmental law, since the bears were fitted with GPS collars for monitoring³⁷ and it has conducted an environmental impact assessment (EIA) and the result was positive to move forward with the project³⁸, and the Project complied with the requirements established in the International Community.

In the past, the grey bears only lived in Ranvicora and there is no proof that they had crossed any State borders.

³⁵ Takano, Akiko. “Due Diligence Obligations and Transboundary Environmental Harm: Cybersecurity Applications”. Graduate School Of Global Environmental Studies, Kyoto University, 2018, p. 1-2

³⁶ Koivurova, Timo. “Due Diligence.” Max Planck Encyclopedias of International Law [MPIL], 2010, ¶ 21.

³⁷ Record, ¶ 14

³⁸ R¶12

The EIA did not foresee the possibility of bear crossing and, because of that, it was only necessary to do it in a national scope, as it was complied by the Respondent³⁹, confirming that the reintroduction project is in accordance with international law⁴⁰.

This Court, in Nicaragua Case, found that, in cases where there is no possible significant harm confirmed in the assessment, there is no obligation under international law of notification or consultation⁴¹. The EIA made did not identify a risk of significant transboundary harm. Consequently, the obligation to notify or consult the Applicant was not applicable to the case.

b. The Project is Complying with the Criterias Established in the International Community.

The International Union for Conservation of Nature Guidelines (IUCN Guidelines) states that a successful reintroduction requires that the released area contains all the biotic and abiotic elements necessary for the species translocated and that the habitat must be the appropriate one for the reintroduced life⁴².

The climate of the destination site must be appropriated for the species' propagation and carefully identified⁴³ and sufficient to support the stated population targets⁴⁴. Any conservation

³⁹ R¶12

⁴⁰ Nicaragua Case, ¶153-155

⁴¹ Nicaragua Case ¶7

⁴² IUCN/SSC (2013). Guidelines for Reintroductions and Other Conservation Translocations. Version 1.0. Gland, Switzerland: IUCN Species Survival Commission [IUCN Guidelines], p. 18

⁴³ IUCN GUIDELINES, p. 8;

⁴⁴ IUCN GUIDELINES, ANNEX 5.3, p. 13

translocation project should be made with a multi-disciplinary management grounded on technical expertise⁴⁵.

The Reintroduction Project made by the Respondent has been developed carefully through 5 years, which gave the multi-disciplinary team of professionals⁴⁶ sufficient time to deeply study the destination site⁴⁷ and to produce the required Environmental Impact Assessment (EIA), which concluded that the chosen area was the suitable habitat for the reintroduced bears⁴⁸.

The chosen area has 50 km⁴⁹ and is large enough for the population target⁵⁰.

The planning process considered multiple reintroduction phases until 2026⁵¹, complying with the IUCN requirement regarding the necessity of multiple conservation translocations for some species⁵².

Thus, the Government of Ranvicora complied with the requirements for a legal Reintroduction Project.

⁴⁵ IUCN GUIDELINES, Executive Summary, p. VIII

⁴⁶ R¶11-12

⁴⁷ R¶11

⁴⁸ R¶12

⁴⁹ R¶14

⁵⁰ European Commission, Environment Directorate-General; LIFE and Human Coexistence with Large Carnivores, 2013, p. 20

⁵¹ R¶12

⁵² IUCN GUIDELINES, p. 12

II. THE STATE OF ARCTOS COMMITTED INTERNATIONAL WRONGFULLY ACTS BY THE RESPONSE TO RANVICORA'S REINTRODUCTION OF GREY BEARS.

A. ARTCOS BREACHED ITS OBLIGATION TO PROTECT ENDANGERED SPECIES.

It is known that the grey bears are listed as endangered⁵³ and, instead of protecting the biodiversity and conserving this species, Arctos has used its sovereignty to allow its citizens to shoot, poison and kill the grey bears⁵⁴.

The protection of biological diversity and the sustainable use of its components are objectives established in the CBD⁵⁵, which presents measures that Parties should take to protect biological diversity, including the obligation to promote the recovery of threatened species, *inter alia*, through the development of plans or other management strategies⁵⁶.

The Applicant is not taking proper measures to protect the grey bear, an endangered species, being in violation of CBD provisions.

⁵³ R¶6

⁵⁴ R¶21

⁵⁵ CBD, Article 1, page 3.

⁵⁶ CBD, Article 8 (f), (k), page 6.

1. Arctos should promulgate polices concerning the Grey Bears' Migration Range due to Climate Change.

Considering the context of Climate Change, the CMS Resolution 12.21 recognizes that climate change causes impact on migratory species and changes into their natural range⁵⁷, demanding measures from the Parties to adapt and protect species that are vulnerable to this phenomenon⁵⁸.

The CMS requires that States must protect migratory species of wild animals that pass through their national jurisdictional boundaries⁵⁹. According to its Article III⁶⁰, the Parties must take appropriate measures to benefit species whose range crosses their territories.

On the presented case, the Applicant is working against the adaptation and protection of this species, demonstrating its violations of the International obligations assumed by the State.

Recommendation No. 159 (2012) of the Standing Committee of the Bern Convention⁶¹, states the need to adapt conservation work to the challenges of climate change as so to minimize impacts on the species protected under the Convention.

Article 6 of the said Convention stresses the importance for the Parties to take appropriate legislative and administrative measures to ensure the protection of these species⁶². The actions taken by the Applicant are in contrary sense of this obligation.

⁵⁷ UNEP/CMS/Resolution 12.21, p. 1

⁵⁸ CBD, Decision X.33.

⁵⁹ Glowka, Lyle; Burhenne-Guilmin, Françoise; Syngé, Hugh; McNeely, Jeffrey A.; Gündling, Lothar. "A Guide to the Convention on Biological Diversity". IUCN, Gland, Switzerland and Cambridge, UK, 1994

⁶⁰ CMS, art. III

⁶¹ "Meeting of the Group of Experts on Biodiversity and Climate Change." *8 Th Meeting of the Group of Experts on Biodiversity and Climate Change*. Strasbourg: the Directorate of Democratic Governance, 2014, page 9

⁶² Bern Convention, art. 6, p. 3.

Additionally, the Bern Convention, on its Article 2, requires States to take measures to maintain or adapt the wild fauna populations in its territory, in ecological levels⁶³. By deliberate killing the bears, the applicant is not adapting its policies to manage the grey bears adaptation in its territory.

In studies related to black bears populations⁶⁴, it is understood that, with the growth of human development, the animal becomes more capable to encounter humans. However, the movement of large mammals around human activities should stimulate effective conservation and management plans, instead of promoting conflicts and their deaths⁶⁵.

Arctos has not taken any measures to minimize the supposable impacts of the grey bears, acting against the Reintroduction project and not complying with the obligation to provide the conservation of species.

2. Arctos is violating International Law by Deliberate Killing The Grey Bears;

Arctos' decision to kill the grey bears is not in accordance to Bern Convention, which expressly prohibits, for the species specified in Appendix II, all forms of deliberate killing⁶⁶ and demands the prohibition of all indiscriminate means of capture and killing species⁶⁷.

It is known that retaliation killings of large carnivores, in response to their damage caused in human's livestock, are the primary threat to their worldwide⁶⁸. Consequently, populations and

⁶³ Bern Convention, art. 2, p. 2.

⁶⁴ Zeller, K.A., Wattles, D.W., Conlee, L. et al. Black bears alter movements in response to anthropogenic features with time of day and season. *MovEcol* 7, 19, 2019.

⁶⁵ Zeller, K.A., Wattles, D.W., Conlee, L. et al. Black bears alter movements in response to anthropogenic features with time of day and season. *MovEcol* 7, 19, 2019.

⁶⁶ Bern Convention, art. 6, p. 3.

⁶⁷ Bern Convention, art. 8, p. 3.

ranges of these species are declining⁶⁹, destabilizing ecosystems and ecological communities, so as their food webs⁷⁰. In that way, the maintenance or recovery of large carnivores is essential to keep the structure and function of diverse ecosystems⁷¹. Besides, large carnivores are valuable as a source of monetary income from ecotourism⁷².

The grey bear is one of the species listed on the Appendix II of the Bern Convention⁷³. However, the Applicant has not respected its condition by intentionally poisoning and killing a threatened species during a reintroduction project, instead of trying to less harmful conducts. Consequently, Arctos' decisions violate international conventions and contribute to the destruction of biological diversity.

⁶⁸ Woodroffe R. Strategies for carnivore conservation: Lessons from contemporary extinctions. In: Gittleman JL, Funk SM, Macdonald DW, Wayne RK, editors. *Carnivore conservation*. Cambridge: Cambridge University Press. pp. 61–92, 2001; Woodroffe R., Frank L.G., Lindsey P.A., ole Ranah S.M.K., Románach S. Livestock husbandry as a tool for carnivore conservation in Africa's community rangelands: a case-control study. In: Hawksworth D.L., Bull A.T. (eds) *Vertebrate Conservation and Biodiversity*. Springer, Dordrecht, 2006.

⁶⁹ Dickman, A.J., Macdonald, E.E., Macdonald, D.W. A review of financial instruments to pay for predator conservation and encourage human and carnivore coexistence, 2011.

⁷⁰ Ripple, W.J., Estes, J.A., Beschta, R.L., Wilmers, C.C., Ritchie, E.G., Hebblewhite, M., Berger, J., Elmhagen, B., Letnic, M., Nelson, M.P., Schmitz, O.J., Smith, D.W., Wallach, A.D., Wirsing, A.J. Status and ecological effects of the world's largest carnivores, 2014; Newsome, T.M., Greenville, A.C., Cirovic, D., Dickman, C.R., Johnson, C.N., Krofel, M., Letnic, M., Ripple, W.J., Ritchie, E.G., Stoyanov, S., Wirsing, A.J. Top predators constrain mesopredator distributions, 2017.

⁷¹ Ripple WJ, Estes JA, Beschta RL, Wilmers CC, Ritchie EG, Hebblewhite M, Berger J, Elmhagen B, Letnic M, Nelson MP, Schmitz OJ, Smith DW, Wallach AD, Wirsing AJ. Status and ecological effects of the world's largest carnivores, 2014.

⁷² Macdonald, D.W., Loveridge, A.J., Rabinowitz, A. Felid futures: crossing disciplines, borders and generations. In: Macdonald, D.W., Loveridge, A.J. (Eds.), *Biology and Conservation of Wild Felids*. Oxford University Press, 2010.

⁷³ R⁹.

B. ARCTOS HAS VIOLATED THE OBLIGATION TO COOPERATE WITH THE DELICATE SITUATION OF AN ENDANGERED SPECIES.

The duty of cooperation in international field is found in several treaties⁷⁴ demonstrating state practice⁷⁵ and the importance of principles of good-neighbourliness⁷⁶.

Ramsar Report of 2011 recommends strong cooperation between States, to promote integrated management of activities that may potentially cause damages⁷⁷. In that way, developing joint actions of cooperation enables compliance with international commitments concerned to the maintenance of ecological characteristics⁷⁸.

The exchange of Diplomatic Notes between the States demonstrates that Arctos did not tried to cooperate with Ranvicora's reintroduction project, a delicate situation where cooperation was essentially required to develop conflicts solutions and species adaptation.

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1. Arctos breached the CBD, the CMS and the Bern Convention in its response to Ranvicora's Project.

The CBD, on its Articles 8 and 9, requires cooperation between the parties in providing support for conservation measures⁷⁹.

The ICJ requires vigilance and prevention to avoid damage to the environment⁸⁰.

Arctos should have taken measures based on the principles of preventive action⁸¹ and

⁷⁴ Principle 27, Rio Declaration; Principle 24, Stockholm Declaration; United Nations Convention on the Law of the Sea, Dec. 10, 1833 UNTS 3, (1982), arts. 123 and 197 [UNCLOS]; UNGA, Vienna Convention on the Law of Treaties, 23 May 1969, Treaty Series, vol. 1155, Art.2(2); UN, CBD, June 05 1992, art. 5.

⁷⁵ Gabcikovo-Nagymaros Project case, para. 32.

⁷⁶ Charter of the United Nations [1945], 1 UNTS XVI, art. 74.

⁷⁷ Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgement, 16 December 2015, Separate Opinion of Judge ad hoc Dugard, I.C.J. Reports 2015

⁷⁸ Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica), Judgement, 16 December 2015, Separate Opinion of Judge ad hoc Dugard, I.C.J. Reports 2015

⁷⁹ CBD, art. 8.

cooperation⁸², to protect local habitants, to monitor its territory, to find sustainable strategies to cooperate with the coexistence of human and wildlife and, with that, not cause the harm to Ranvicora's initiative.

The Article 1 of the Bern Convention requires the conservation of wild flora and fauna by the cooperation between States⁸³, stressing, by its article 10 (1), the obligation to undertake efforts for the protection of the migratory species whose range extends into their territory. Working against its environmental obligations⁸⁴, Arctos has not cooperated with the reintroduction of a threaten species and its actions has caused serious harms to the reintroduction project and to the conservation species.

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2. Arctos did not negotiate with Ranvicora.

It cannot be considered that first diplomatic note sent was a negotiation with the Respondent, since Arctos order Ranvicora to cease the project and to remove the bears of its territory⁸⁵.

In mind of the cooperation principle, Parties have obligation to conduct themselves a negotiation⁸⁶ even if it doesn't reach an agreement⁸⁷, however, in this case, negotiations were not even tried.

⁸⁰ ICJ Reports 7 at 78, para. 140, 1997.

⁸¹Principles 6, 7, 15, 18 and 24, Stockholm Declaration; Principle 1, 1978 UNEP Draft Principles; 1982 World Charter for Nature.

⁸² Principle 24, Stockholm Declaration; Principle 27, Rio Declaration.

⁸³ Bern Convention, art. 1

⁸⁴ Lake Lanoux Arbitration (Spain/France), Reports of International Arbitral Awards, Page 24, 1957.

⁸⁵R¶18

C. ARCTOS HAS BREACHED THE DUTY TO PREVENT TRANSBOUNDARY HARM.

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States have the duty to prevent transboundary harm, an obligation established in international field that reflects customary international law⁸⁸.

Although States have the right to exploit their own natural resources⁸⁹, such obligation is not absolute and the State must not cause a significant damage to another sovereignty territory⁹⁰, considering principle 2/21 of Rio and Stockholm Declaration⁹¹.

Arctos did not comply with this obligation since, by irresponsible attacking bears, Arctos is damaging a species of over importance for Ranvicora citizens and culture⁹² and the recovery project that had costs to the Government of Ranvicora. Thus, Arctos also failed to comply with due diligence (1) and no harm rule (2).

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1. Arctos did not act in due diligence.

After some bears crossed the border, the local police presumed that the harm caused to the farms in Arctos territory were caused by bear attacks, even though there was no witness of any of those supposed attacks in the farms, the Government of Arctos reacted by determining to

⁸⁶ North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969, p. 47, para. 85.

⁸⁷ Railway Traffic between Lithuania and Poland, Advisory Opinion, 1931, P.C.I.J., Series A/B, No. 42, p. 116.

⁸⁸ Use of Nuclear Weapons, para. 241–242, para.29; Corfu Channel case p.22.

⁸⁹ UNGA Res. 523 (VI), 1950; Res. 626 (VII), 1952; Res. 837 (IX), 1954, Res. 1314 (XIII), 1958, Res. 1515 (XV), 1960, Res. 1803 (XVII), 1962.

⁹⁰ Sands, P., Peel, J., Fabra, A., Mackenzie, R., Principles of International Environmental Law (Cambridge University Press, 2012), p. 191; Corfu Channel Case p.22; Pulp Mills case ¶101; Trail Smelter, p. 1965; Lac Lanoux, p.197

⁹¹ Rio Declaration, resolution 1, annex I; Stockholm Declaration, part one, chap. I.; Draft Articles on Prevention of Transboundary Harm, p.149; Sands, P., Peel, J., Fabra, A., Mackenzie, R., Principles of International Environmental Law (Cambridge University Press, 2012), p.191.

⁹² R¶11.

poison animal carcasses near farms and later killing the bears⁹³. Besides, there isn't any information of attacks in Ranvicora's farms which are also near to the boarder⁹⁴.

After a few months, two accidents happened with two children in Arctos and because of those accidents, the Applicant decided to permit its citizens to arbitrary shoot any grey bear, an endangered species, without a criteria⁹⁵. Consequently, four bears died poisoned, a female grey bear, her two cubs and a pregnant one, were killed by farmers shots⁹⁶.

It is imperative the analysis of the government behavior in front of this delicate situation trough duty of due diligence. The government must use administrative policies through duty to prevent or in order to not or to minimize the risks of harm to another sovereignty country⁹⁷.

2. Arctos violated the obligation to not cause a significant harm.

The *Ursus smokeysius* is listed as endangered species in three important lists⁹⁸. The extinction of the bears can be qualified as a significant harm because causes serious consequences⁹⁹ and serious injury¹⁰⁰ to the Reintroduction Project and Ranvicora's Biodiversity.

⁹³ R¶20

⁹⁴ Clarifications Q.10

⁹⁵ R¶ 21

⁹⁶ R¶ 20-21

⁹⁷ Draft Articles on Prevention of Transboundary Harm, p.148.

⁹⁸ R¶9

⁹⁹ The Trail Smelter Arbitration Case (United States vc Canada) 1941, UN Rep. Int'L Arb. AWARDS 1905 (1949), p. 1965.

¹⁰⁰ Lac Lanoux(France v. Spain) (1957) 12 R.I.A.A. 281, p. 197.

Arctos has an obligation to not cause irreparable damage or substantially prejudice Ranvicora's Project¹⁰¹. A possible extermination of this species would be a tragedy to Ranvicora's population, since the grey bears are important for Ranvicora's culture and its extinction in its territory was considered a national tragedy¹⁰². Besides, Ranvicora invested in the project to restore biodiversity in mind of sustainable development.

The applicant has the duty to minimize the risk, by taking best efforts to preserve and protect this endangered species and pursuing to reduce to the lowest point this irreversible harm¹⁰³.

Although Arctos has international commitment with the sustainability and ecosystem preservation through several environment conventions¹⁰⁴, there wasn't any evidence of enforcement for the mitigation of human-bear conflicts.

The imprudent orientation of the authorities was made through a press release¹⁰⁵ that permitted population to arbitrary kill bears, but there was any attempt to formally notify the society to be aware of the bears, or how-to sustainable deal with such large animal even before the other animals be attacked, considering that citizens reported unusual presence of grey bear in the territory and by the available scientific information of the movement of the migratory specie¹⁰⁶ before any alleged bear harm.

¹⁰¹ Certain Phosphate Lands in Nauru, Nauru v. Australia, ICJ Rep. (1992), Preliminary Objections, p. 244; Pulp Mills case, para. 101; Gabčíkovo-Nagymaros case, para.140; Corfu Chanel Case p.22.

¹⁰² R¶11

¹⁰³ Draft Articles on Prevention of Transboundary Harm, p.153.

¹⁰⁴ R¶8

¹⁰⁵ R¶. 21

¹⁰⁶ R¶16

3. Arctos actions were unreasonable and unproportionable.

The response of Arctos to the reintroduction project should have been commensurate to the injury suffered, considering the gravity of the internationally wrongful act and rights involved by the supposed Ranvicora's violation¹⁰⁷.

It is widespread in the international field¹⁰⁸ and in its jurisprudence¹⁰⁹ that the legality of the reprisal is made through degree of proportionality¹¹⁰ and is valued with the act that motivated the reprisal¹¹¹ (in this case, the reintroduction project).

The application of the Principle of Proportionality in International Law occurs by verifying the three steps: (a) Suitability, (b) Necessity, (c) Proportionality in the strict sense¹¹².

¹⁰⁷ Commentary on the Draft Articles on Responsibility of States for Internationally Wrongful Acts Adopted by the International Law Commission at its Fifty-Third Session, U.N. Doc A/56/10 (2001) [ARSIWA], art. 51; Gabcikovo-Nagymaros Project (Hungary v. Slovakia), Judgment, I.C.J. Reports, 1997 [Gabcikovo-Nagymaros Project Case], p. 56, ¶ 85 and 87

¹⁰⁸ N. Emiliou, "The Principle of Proportionality in European Law: A Comparative Study", Kluwer International, London, 1996; M. Andenas and S. Zleptnig, 'Proportionality: WTO Law: In Comparative Perspective', Texas International Law Journal, vol. 42, no. 3, (2007), 371-427; N. Diebold, Non-discrimination in International Trade in Services: 'Likeness' in WTO/GATS, Cambridge University Press, Cambridge, 2010

¹⁰⁹ Nicaragua Case, ¶ 194; Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment, I.C.J. Reports 2005, at 168; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 [Use of Nuclear Weapons], at 226; Oil Platforms (Islamic Republic of Iran v. United States of America), Judgment, I.C.J. Reports 2003, at 161.

¹¹⁰ ARSIWA, commentary to art.51, (2)

¹¹¹ Portuguese Colonies case (Naulilaa incident), UNRIAA, vol. II (Sales No. 1949.V.1), p. 1011, at p. 1028

¹¹² Alexy, Robert. 'The Construction of Constitutional Rights', Law and Ethics of Human Rights. Vol. 4, 2010; The General Agreement on Tariffs and Trade (GATT 1947), Art. XX; Committee on Trade and Environment, GATT/WTO Dispute Settlement Practice Relating to Article XX, Paragraphs (b), (d) and (g) of GATT; Note by the Secretariat, Revision, WT/CTE/W/53/Rev.1 (October 26 1998), para. 10; A. D. Mitchell, 'Proportionality and Remedies in WTO Disputes', The European Journal of International Law, vol. 17, no. 5, (2007), 985-1008, at 999.

Firstly, it is examined whether the conduct of killing bears¹¹³ was appropriate to achieve the goal of protection of Arctos citizens and its properties. Indeed, indiscriminately killing the bears stopped the supposable threat.

However, Arctos did not fulfill second requirement, the necessity. The measure should be reasonable, not exceeding what is necessary¹¹⁴, but deliberate killing bears was a drastically remedy while there were another effective and achievable measures.

In similar projects, as the brown bear (*Ursus arctos*), electric fences around properties have been proven to be an efficient choice to bars the bears¹¹⁵. Additionally, public education and basic information are indispensable to instruct the population on how to deal with an unexpected encounter¹¹⁶, as it was apply in Trentino, Italy¹¹⁷.

This measure could avoid the supposable attacks to the horses and sheeps and protect the children.

4. Arctos did not notify the attacks to the grey bears in its territory.

¹¹³ R¶ 21

¹¹⁴ Xiuli, Han. “The Application of the Principle of Proportionality in Tecmed v. Mexico ,” September 13, 2007, p.637.

¹¹⁵ “Action Plan for Brown Bear *Ursus Arctos* Conservation .” Action Plan for Brown Bear *Ursus Arctos* Conservation . Salaspils : Latvian State Forest Research Institute “Silava” , 2018, p.58

¹¹⁶ “Action Plan for Brown Bear *Ursus Arctos* Conservation .” Action Plan for Brown Bear *Ursus Arctos* Conservation . Salaspils : Latvian State Forest Research Institute “Silava” , 2018, p.58

¹¹⁷ Assessment of the Brown Bear, Project in Trentino (Italy), The Large Carnivore Initiative for Europe (LCIE), IUCN/SSC Specialist Group, page 3

After the diplomatic notes exchanged between the two governments¹¹⁸, Arctos did not notify Ranvicora about the government authorization to shot grey bears that crossed the border.

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Arctos must act in accordance with reasonable procedures required in ARSIWA¹¹⁹, when it decided on deliberate kill of the bears.

The Party must previously notify the responsible State of its intention of reaction¹²⁰ and exchange information when its action may affect biological diversity of other State¹²¹. It's an opportunity to Ranvicora reconsider its position in the negotiation and to provide other alternatives for the situation in cooperation with Ranvicora, since at the time of the first diplomatic note no human life was injured by the bears and there was only a presumption of harm.

There wasn't any imminent risk that would authorize Arctos to take such response without a notification. Arctos had not an urgent necessity for such response¹²².

A number of treaties regarding the importance of report actions express a customary international law¹²³ that Arctos violated.

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¹¹⁸ R¶.18 - 19

¹¹⁹International Law Commission [ILC], ARSIWA, art. 52.

¹²⁰ARSIWA, art.52, 1 (b); Corfu Channel case, p.22; Pulp Mills case, Chapter 19.

¹²¹ CBD, art. 14 (c), 1993.; Rio Declaration, p. 3–14; Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Mar. 17, art.13, 1992.; UNCLOS, art. 200.

¹²² ARSIWA, art. 52.

¹²³ Sands, P., Peel, J., Fabra, A., Mackenzie, R., Principles of International Environmental Law (Cambridge University Press, 2012), p.634.

CONCLUSION

Respondent, the State of Ranvicora, respectfully requests the Court to adjudged and declare that:

1. Ranvicora complied with international law and with its environmental obligations when it implemented its reintroduction project; Ranvicora did not cause transboundary harm to another State.

2. Arctos did not act in a proportional way in response to Ranvicora’s reintroduction project; Arctos breached obligations to protect endangered species, to cooperate and to prevent transboundary harm.

For the Federal States of Arctos:

/s/ _____

B. Claverina

Minister of Foreign Affairs

For the Republic of Ranvicora:

/s/ _____

B. Goiat

Minister of Foreign Affairs

