

**Questions Relating to
Reintroduction of Bears
(Federal States of Arctos v. Republic of Ranvicora)**

RECORD

**Twenty-Fourth Annual
Stetson International Environmental
Moot Court Competition**

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JINDAL GLOBAL LAW SCHOOL, SONIPAT, HARYANA
O.P. Jindal Global University, Sonipat Narela Road,
Near Jagdispur Village, Sonipat, Haryana, 131001



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NOTIFICATION, DATED 22 JULY 2019, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ARCTOS
AND
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF RANVICORA

The Hague, 22 July 2019.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 15 July 2019. I have the further honor to inform you that 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. The written proceedings shall consist of memorials to be submitted to the Court by 15 November 2019. Oral proceedings are scheduled for 2–4 April 2020.

/s/ _____
Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 15 JULY 2019, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 15 July 2019.

On behalf of the Federal States of Arctos and the Republic of Ranvicora, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts 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, signed at Barcelona, Spain on 11 July 2019.

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

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

The Federal States of Arctos and the Republic of Ranvicora,

Recalling that the Federal States of Arctos and the Republic of Ranvicora are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that grey bears are ecologically and culturally important to Ranvicora and other countries,

Recognizing that differences have arisen between the Federal States of Arctos and the Republic of Ranvicora concerning the reintroduction of grey bears in Ranvicora and Arctos's responses to Ranvicora's reintroduction project,

Noting that the Federal States of Arctos and the Republic of Ranvicora have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as "the Court," consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

The Federal States of Arctos and the Republic of Ranvicora, hereinafter referred to as "the Parties," shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.

3. The Parties also shall request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules for the 2019–2020 Stetson International Environmental Moot Court Competition (International Finals (and North American Regional)).
4. No changes may be made to any written pleading once it has been submitted to a regional or national round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the regional or national round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature. DONE at Barcelona, Spain, this 11th day of July 2019, in two copies, each in the English language, and each being equally authentic.

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

ANNEX A

1. The Federal States of Arctos and the Republic of Ranvicora are neighboring sovereign states located on the continent of Suredia in the Northern Hemisphere. Arctos and Ranvicora are considered developed countries, and their economies are diversified across all sectors. Arctos is approximately 570,000 km², and Ranvicora is approximately 640,000 km². Arctos is located to the north of Ranvicora. The area along the 75-km border between the two countries consists primarily of forests and privately owned farms. Arctos does not share a border with any other countries.
2. Arctos and Ranvicora are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
3. Arctos and Ranvicora are Parties to the Vienna Convention on the Law of Treaties (VCLT).
4. Arctos and Ranvicora are Contracting Parties to the Convention on Biological Diversity (CBD).
5. Arctos and Ranvicora are Parties to the Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention).
6. Arctos and Ranvicora are Contracting Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS).
7. Arctos and Ranvicora are Parties to the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement.
8. High-level representatives from Arctos and Ranvicora attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm; the 1992 United Nations Conference on Environment and Development at Rio de Janeiro; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro. Arctos and Ranvicora were part of the consensus of any documents adopted at these conferences.
9. The grey bear (*Ursus smokyus*) is a species that is endemic to parts of Suredia. The grey bear is similar to the brown bear in size and appearance. The grey bear 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.
10. For centuries, grey bears lived in Ranvicora, as well as in Paddington and Aloysius, two of the other countries on Suredia. The Ranvicoran population of grey bears had long been isolated from the populations in Paddington and Aloysius. Bears from the Ranvicoran population migrated within Ranvicora but were not known to have moved into any other country. Grey bears went extinct in Ranvicora in 1963, primarily due to overhunting and habitat destruction. No other species of bear or any other large carnivore species lives on Suredia. There are no historic or fossil records of grey bear presence in Arctos.

11. The grey bear is of great cultural importance in Ranvicora, and its extinction in Ranvicora was considered a national tragedy by most Ranvicoran citizens. In 2008, the Government of Ranvicora began considering the possibility of reintroducing grey bears in Ranvicora. Over the next five years, the Government of Ranvicora worked with a team of scientists and other professionals to plan a reintroduction project to bring grey bears back to Ranvicora.
12. As part of the planning process and pursuant to its national laws, the Government of Ranvicora conducted an environmental impact assessment (EIA). The EIA was national in scope and considered multiple reintroduction phases ending in 2026. Because grey bears historically migrated only within Ranvicora and had not lived in Arctos, the Government of Ranvicora did not inform or consult with other countries about the reintroduction project and did not assess the potential impacts of the reintroduction project on other countries. Based on the results of the EIA, Ranvicora decided to move forward with its grey bear reintroduction project.
13. Because of development, 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. In recent decades, the grey bear's range in Paddington and Aloysius has been shifting poleward, with the principal hypothesis being that this has been in response to rising temperatures and shifting vegetation due to climate change. For these reasons, it was decided that the grey bears would be released in the northern region of Ranvicora close to the border with Arctos. Some biologists, however, questioned whether this region was part of the grey bear's historic range.
14. The grey bear reintroduction project occurred in phases, with the first release on 23 March 2013. Altogether, 20 grey bears (14 females and 6 males) were reintroduced in Ranvicora over a five-year period. Ranvicora legally acquired the bears from Paddington and Aloysius. The bears were released at six locations in the northern region of Ranvicora near the Arctos border; the nearest release to Arctos was about 50 km from the border. Half of the released bears were fitted with GPS collars.
15. Most females produced offspring within a year of being released, and only a few of the reintroduced bears died in the first three years from various causes, including a traffic collision, disease, and fights with other bears. Ranvicora intends additional phased releases of grey bears in a second five-year period, beginning in 2021.
16. On 19 September 2017, a grey bear was spotted in Arctos not far from the Arctos- Ranvicora border. For the next several months, citizens occasionally reported seeing grey bears in Arctos. Based on the tracking information available, scientists involved with the reintroduction project confirmed that some of the grey bears had been intermittently moving back and forth between Ranvicora and Arctos.
17. On 27 February 2018, a farmer in Arctos reported that one of her horses had been attacked and killed. The farm was located 5 km from the Arctos-Ranvicora border. Authorities determined that a grey bear had killed the horse. Over the next five and a half months, 7 horses and 20 sheep were killed on different farms in Arctos near the border. Although there

were no witnesses to any of the attacks, authorities determined that grey bears had killed the animals. Grey bears also began damaging apple orchards and beehives in Arctos, and it was determined that grey bears were sniffing out the nests and consuming the eggs and nestlings of the Trouwborst tern (*Sterna ariensis*), an endangered endemic species in Arctos that breeds on the ground in dense colonies. The Trouwborst tern is protected under national law in Arctos but is not a listed species on any international treaty. Farmers and other citizens in Arctos, outraged by the attacks on animals and environmental damage, demanded that the Government of Arctos take action.

18. On 9 August 2018, the following diplomatic note was forwarded to the Government of the Republic of Ranvicora:

The Embassy of the Federal States of Arctos presents its compliments to the Government of the Republic of Ranvicora and wishes to convey its concerns about the reintroduction of grey bears in Ranvicora. As Ranvicora is no doubt aware, grey bears have crossed into Arctos from Ranvicora, attacking horses and sheep on farms, damaging orchards and beehives, and killing endangered Trouwborst terns. Our citizens are justifiably upset about this situation, as the bears are harming their livelihood and the environment and could affect their safety.

It is Arctos's position that Ranvicora has violated customary and conventional international law by reintroducing grey bears. Ranvicora's actions have directly resulted in transboundary harm. In addition, Ranvicora's actions contravene, *inter alia*, Articles 3, 5, and 8 of the CBD and various CBD decisions (such as Decision VIII/27 and related decisions) because some of the released grey bears are causing serious harm in Arctos and the grey bear is essentially an invasive alien species in Arctos. Ranvicora also has violated Article 11 of the Bern Convention and Recommendation No. 158 (2012) and Recommendation No. 159 (2012) of the Standing Committee to the Bern Convention, as the grey bear is a nonnative, invasive alien species in Arctos. As recognized in CMS Resolution 11.28, translocated migratory species may become invasive.

To remedy this situation, the Government of Arctos requests that the Government of Ranvicora compensate the farmers and other citizens whose property has been damaged by grey bears. We further ask that Ranvicora formally end its harmful reintroduction project and that Ranvicora capture and remove the grey bears from the wild.

Please accept the assurance of my highest consideration.

/s/ _____
A. Milne
Ambassador

19. On 21 August 2018, the following diplomatic note was forwarded to the Government of the Federal States of Arctos:

The Embassy of the Republic of Ranvicora presents its compliments to the Government of Arctos and has the honor to acknowledge receipt of the diplomatic note dated 9 August 2018. Ranvicora appreciates Arctos's concerns, but Ranvicora has in no way violated international law. That the grey bears have killed some animals in Arctos is unfortunate, but the bears are wild, and Ranvicora cannot control where the bears migrate and is not responsible for what the bears do.

Some grey bear experts have suggested that the grey bears might have moved across the border as part of a climate-induced range shift, and in accordance with CMS Resolution 12.21, Arctos needs to take action to conserve migratory species like the grey bear beyond the species' historic range, especially in the case of climate-induced range shifts. The grey bears are not an invasive species—as Recommendation No. 142 (2009) of the Standing Committee to the Bern Convention notes, invasive alien species should not be interpreted to include “native species naturally extending their range in response to climate change.”

The Government of Ranvicora has dedicated significant time and resources to reestablish and conserve this ecologically and culturally important endangered species. The project has reintroduced a species that was extinct in Ranvicora, and Ranvicora thus has acted in furtherance of the CBD and in compliance with other international laws and principles by contributing to the conservation of endangered species and biodiversity.

Arctos also has a duty to protect this endangered species and should act accordingly. Ranvicora will not provide any compensation to the citizens of Arctos; rather, any compensation should be paid by Arctos.

Please accept the assurance of my highest consideration.

/s/ _____
O. Sogris
Ambassador

20. Grey bears continued to cross the border into Arctos, killing more horses, sheep, and terns, and continuing to damage orchards and beehives. In an attempt to protect its citizens, their property, and the environment, the Government of Arctos began setting out poisoned animal carcasses in Arctos near the farms where the horses and other animals had been attacked. In January 2019, four grey bears died after eating the poisoned animal carcasses.
21. On 22 April 2019, a female grey bear mauled two children who were playing outside on a farm in Arctos. The children were trying to play with a bear cub, and the mother bear attacked them. One of the children died as a result of the attack, and the other sustained significant permanent injuries. Two days later, the Government of Arctos issued an emergency regulation, effective immediately, that expressly granted permission for the citizens of Arctos to shoot any grey bear spotted in Arctos. Four weeks after the press release, a farmer in Arctos shot and killed a female grey bear and her two cubs that had wandered onto his farm. A day later, another farmer shot and killed a female grey bear that was pregnant.

22. On 5 June 2019, the Government of Ranvicora sent a diplomatic note to the Government of Arctos that stated in part:

Ranvicora sends its sincere condolences to the family of the children who were attacked by a grey bear in April. The attack was unfortunate.

* * *

Rather than accusing the Government of Ranvicora of violating international law, however, the Government of Arctos should be held responsible for its own transgressions. Arctos has violated customary and conventional international law by intentionally poisoning and shooting grey bears from Ranvicora's reintroduction project. Arctos has breached the duty to prevent transboundary harm because killing the grey bears has a direct negative impact on the species and Ranvicora. Moreover, Arctos has acted in contradiction of, *inter alia*, Articles 1 and 8 of the CBD, Article III of CMS, and Articles 1, 2, 6, 8, and 10 of the Bern Convention.

Instead of protecting biodiversity and conserving an endangered species, Arctos is deliberately poisoning and shooting grey bears. The Government of Ranvicora hereby demands that the Government of Arctos immediately revoke its emergency regulation and stop poisoning, shooting, or otherwise harming the grey bears.

23. On 23 June 2019, the Government of Arctos sent a diplomatic note to the Government of Ranvicora that stated in part:

The Government of Arctos vehemently disagrees that its response actions infringe on any international law. Arctos expressed its concerns and attempted to cooperate with Ranvicora, but Ranvicora refused to do anything to address the serious negative effects of its reintroduction project. In light of Ranvicora's inaction, Arctos had no choice but to do what was necessary to protect its citizens and their property from the imminent threat posed by the grey bears.

Contrary to Ranvicora's assertions, Arctos has acted in accordance with the duty to prevent transboundary harm. If anything, Arctos has tried to remedy the transboundary harm that *Ranvicora* caused. Arctos has not violated the CBD because, among other reasons, the grey bear is an invasive alien species in Arctos. Furthermore, Arctos has not acted in contravention of CMS; Arctos is not even a Range State for the grey bear, but even if it were, Arctos's responses are permissible under CMS Article III(5)(d). Finally, Arctos also has not violated the Bern Convention, but in any event, Arctos's actions are appropriate pursuant to the exceptions in Article 9.

24. Further negotiations between Arctos and Ranvicora failed to resolve the dispute, and the two countries entered into a Special Agreement to institute proceedings in the International Court of Justice (ICJ).

25. The Federal States of Arctos seeks an order from the ICJ declaring that (1) the Republic of Ranvicora violated international law with respect to its grey bear reintroduction project, and (2) the Federal States of Arctos did not violate international law with respect to its responses to Ranvicora's reintroduction of grey bears.

26. The Republic of Ranvicora opposes the claims in paragraph 25 above and seeks an order from the ICJ declaring 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.