

**TEAM CODE : 21**

**INTERNATIONAL COURT OF JUSTICE**

*THE PEACE PALACE*

**THE HAGUE, NETHERLANDS**



**THE CASE CONCERNING  
QUESTIONS RELATING TO THE ROYAL MARKHOR**

**ASTOR**

(APPLICANT)

v.

**RISHMACK**

(RESPONDENT)

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MEMORIAL FOR THE APPLICANT  
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2024

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## **QUESTIONS PRESENTED**

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### **I.**

WHETHER THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS, BY HUNTERS WHO ARE NOT DIONE GINSU, VIOLATES OR COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW

### **II.**

WHETHER THE BAN ON THE IMPORTATION OF ROYAL MARKHOR HUNTING TROPHIES VIOLATES OR COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW

## **STATEMENT OF JURISDICTION**

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Astor and Rishmak have submitted by Special Agreement their differences concerning questions relating to the conservation and management of the Royal Markhor and transmitted a copy thereof to the Registrar of the International Court of Justice (“Court”). The Registrar acknowledged receipt of the notification of the Parties regarding this matter. Therefore, Astor and Rishmak have accepted the jurisdiction of the Court pursuant to Article 40(1) of the Statute.

## STATEMENT OF FACTS

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The Royal Markhor (*Capra roylali*) is a critically endangered wild goat species, endemic to Central Asia. As of 2023, the global population of the Royal Markhor consisted of approximately 2,200 individuals, primarily inhabiting the territories of Astor and Rishmak, two neighboring sovereign States. These States share a mountainous border, with significant portions of the markhor's habitat spanning both jurisdictions (R.1, C.Q10).

Adult females and their young live in herds of about ten individuals, while adult males, constituting roughly 20% of the population, are solitary. The Royal Markhor faces numerous threats, including habitat loss, disease, and both legal and illegal hunting. The species is listed on Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") and classified as critically endangered by the International Union for Conservation of Nature ("IUCN") (R.9).

In 2015, Astor implemented a conservation program to stabilize the markhor population. This program included controlled trophy hunting auctions, with proceeds allocated to habitat preservation and anti-poaching efforts. This approach, based on international conservation models, showed significant success, increasing the population in Astor by 15% over eight years (R.11, R.12).

In contrast, Rishmak has maintained stricter conservation measures, imposing a blanket hunting ban on the Royal Markhor since 2010. Rishmak contends that trophy hunting, even if regulated, is inconsistent with international wildlife protection norms. Tensions escalated in 2022,

when Rishmak alleged that hunters from Astor, acting under permits issued through trophy auctions, illegally crossed into Rishmak's territory to hunt markhors. Rishmak further asserted that these activities disrupted local ecosystems and violated its sovereignty (R.14, R.15).

Despite Rishmak's protests and diplomatic efforts to resolve the dispute, Astor continued to issue hunting permits, arguing that such activities complied with international conservation treaties and did not breach Rishmak's territorial integrity. Following failed negotiations, both States agreed to submit the matter to the Court for resolution (R.20).

## SUMMARY OF ARGUMENT

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Astor's import ban on Royal Markhor hunting trophies complies with international law as it is justified under both ARTA Article XX and CITES. The ban is necessary to protect public morals and conserve an exhaustible natural resource, is consistent with CITES requirements, and appropriately prioritizes species conservation through Article XIV(1) of CITES.

Rishmak's actions violate Article III(5)(b) of CMS. The primary purpose of the auction process is commercial gain, not enhancing the propagation or survival of the Royal Markhor. Only 15% of auction revenue is allocated to conservation, which is insufficient.

Rishmak's actions violate Article III(5)(c) of CMS. Auctioning hunting rights to foreign, non-subsistence users like Astori nationals transforms a subsistence practice into a commercial transaction, exceeding the limits set by CMS.

Astor's import ban on Royal Markhor hunting trophies complies with international law as it is justified under both ARTA Article XX and CITES. The ban is necessary to protect public morals and conserve an exhaustible natural resource, is consistent with CITES requirements, and appropriately prioritizes species conservation through Article XIV(1) of CITES.

## ARGUMENTS ADVANCED

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### **I. THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS BY HUNTERS WHO ARE NOT DIONE GINSU VIOLATES CONVENTIONAL INTERNATIONAL LAW**

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Rishmak's actions violate Article III (5) of the CMS, which prohibits hunting since Rishmak's hunting is conducted neither for the purpose of enhancing the propagation or survival of the affected species [I] nor to accommodate the needs of traditional subsistence users of such species [II]. Consequently, Rishmak is obligated to end the trophy hunting of the Royal Markhor through the auction process.

#### **I. Rishmak's actions violate its obligation under Article III(5)(b) of CMS.**

##### **i. Enhancing the propagation or survival is not the *primary purpose* of the taking.**

The requirement of *enhancing the propagation or survival of the affected species*” under Article III(5)(b) of CMS means that species conservation must be the central purpose of the taking. As noted in *Safari Club International v. Zinke*, the term ‘enhance’ implies a consistent and measurable contribution to the health of the species.<sup>1</sup>

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<sup>1</sup> SAFARI CLUB INTERNATIONAL v. ZINKE (2017), United States District Court for the District of Columbia, p. 17

The ICJ in *Costa Rica v. Nicaragua* held that the purpose for which a right may be exercised implies, in principle, the exclusion of all other purposes.<sup>2</sup> In *Whaling in the Antarctic*,<sup>3</sup> the ICJ clarified that to determine if a program is for "scientific research," it is not enough to have a scientific element merely; the design and implementation of the program must reasonably serve scientific objectives. The financial benefits derived from trophy hunting of a limited number of specimens shall benefit the conservation of the species *directly* and provide additional incentives for conservation and habitat protection when such hunting is done within the framework of national conservation and management plans and programs.<sup>4</sup>

Similarly, the primary purpose of hunting through the auction process in Rishmak must be species conservation, and any deviation would invalidate the exception granted under CMS.

As such, insufficient revenue sharing can be considered to violate Article III(5)(b) of CMS because only 15% of the revenue generated from auction-based trophy hunting is allocated directly to conservation efforts.<sup>5</sup> The remaining 85% is used for non-conservation purposes, such as housing, healthcare, and other community needs of the Dione Ginsu. This distribution clearly shows that the primary goal of the auction is not species survival.

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<sup>2</sup> Dispute Regarding Navigational and Related Rights (*Costa Rica v. Nicaragua*), 2009 I.C.J. 213, ¶61 (Jul. 13) ["*Costa Rica v. Nicaragua*"]

<sup>3</sup> *Whaling in the Antarctic* (*Australia v. Japan: New Zealand intervening*), 2014 I.C.J. 258-259, ¶87-89 (March 31) ["*Whaling in the Antarctic*"]

<sup>4</sup> Establishment of export quotas for black rhinoceros hunting trophies. Resolution Conf. 13.5 (Rev. CoP14)

<sup>5</sup> Record. ¶16

**ii. The primary purpose of the auction process is commercial gain.**

An activity can generally be described as ‘commercial’ if its purpose is to obtain economic benefit (whether in cash or otherwise).<sup>6</sup> In Rishmak, the auction process for the Royal Markhor is predominantly oriented towards revenue generation rather than conservation.

As articulated in Resolution<sup>7</sup> concerning *Markhor Capra falconeri*, adopted by CITES, Pakistan, as an example of a state having CMS and CITES Appendices-listed species, is actively promoting community-based management of wild resources that ensure the financial benefits derived from trophy hunting of a limited number of specimens go direct to the managing communities and that the communities use an *equitable share* of such economic benefits *to sustain the management program* for the species.

Unlike successful models in South Africa and Namibia, where an equitable share — 63% of trophy hunting revenues — is reinvested in conservation,<sup>8</sup> Rishmak allocates only 15%, which is insufficient. Other examples include the conservation of Bighorn Sheep in Wyoming, USA, where auctions for bighorn sheep tags generate \$350,000 annually, with **70%** directed towards conservation.<sup>9</sup> Furthermore, in Tajikistan, trophy hunting of Argali is managed to support

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<sup>6</sup> **Costa Rica v. Nicaragua** ¶73; Definition of 'primarily commercial purposes' Resolution Conf. 5.10 (Rev. CoP19)

<sup>7</sup> Establishment of quotas for markhor hunting trophies Res. Conf. 10.15 (rev. CoP 14)

<sup>8</sup> Informing decisions on trophy hunting (submitted by the Secretariat of CITES). [**“CoP17 Inf. 60”**]

<sup>9</sup> Informing decisions on trophy hunting, 2016. **CoP17 Inf. 60**



conservation through reinvestment in anti-poaching efforts, with 60% of revenues directed towards nature protection.<sup>10</sup>

Therefore, the benefits received by Rishmak, primarily focused on economic goals rather than directly enhancing species survival and conservation, categorize the process as commercial. Rishmak's model prioritizes commercial gain over conservation, which constitutes a violation of Article III(5)(b) of the CMS.

## **II. Rishmak's actions violate its obligation under Article III(5)(c) of CMS.**

Rishmak's practice of auctioning hunting rights for the Royal Markhor to non-subsistence users, including foreign nationals,<sup>11</sup> contravenes Article III(5)(c) of CMS. This provision limits exceptions to the prohibition of taking Appendix I species to cases that accommodate the needs of *traditional subsistence users* of the Royal Markhor who have strong cultural and nutrition connections with the species. By allowing non-subsistence hunters to participate in this activity, Rishmak exceeds the limits set by CMS.

### **i. Astori nationals lack a subsistence connection to the Royal Markhor.**

The purpose of the subsistence exception in CMS Article III(5)(c) is to protect communities' cultural and economic survival with historic, direct reliance on the species.

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<sup>10</sup> Mallon, D. (2013) Trophy Hunting of CITES-listed species in Central Asia. Secretariat of CITES, Geneva, Switzerland. p.13

<sup>11</sup> Record ¶17

The term "subsistence uses" under IWC entails the personal consumption of animal products for food, fuel, shelter, clothing, tools, or transportation by participants in the harvest.<sup>12</sup>

The Universal Declaration of Human Rights (1948) states that everyone has the right to freely participate in the cultural life of the community.<sup>13</sup> Article 20 of the United Nations Declaration on the Rights of Indigenous Peoples declares that indigenous peoples have the right to their means of subsistence.<sup>14</sup> In *Lubicon Lake Band v. Canada*, the United Nations Committee on Human Rights found that "it is the right of all people, in community with others, to engage in economic and social activities which are part of *the culture of the community to which they belong*."<sup>15</sup> Furthermore, in *Awas Tingny v. Nicaragua*, the Inter-American Court of Human Rights upheld the right of Indigenous peoples to own their property, which also includes subsistence use rights as part of human inheritance and the importance of preserving indigenous communities' access to natural resources to safeguard their cultural heritage.<sup>16</sup>

Thus, subsistence rights are *integral to cultural identity* and the *preservation of traditional practices*.

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<sup>12</sup> White Paper on Management and Utilization of Large Whales in Greenland (May 2012) IWC/64/ASW7, page 6.

<sup>13</sup> The Universal Declaration of Human Rights (1948). Article 27

<sup>14</sup> The United Nations Declaration on the Rights of Indigenous Peoples. Article 20

<sup>15</sup> *Lubicon Lake Band v. Canada*, Communication No. 167/1984 (26 March 1990), U.N. Doc. Supp. No. 40 (A/45/40) at 1 (1990). ¶32.2

<sup>16</sup> *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*. Inter-American Court of Human Rights. Judgment of August 31, 2001 ¶103e, 119, 144, 149

The Dione Ginsu community relies on the Royal Markhor for cultural, religious, or subsistence purposes. Evidence<sup>17</sup> suggests that, for the Dione Ginsu, the taking of the Royal Markhor has always constituted *an integral part of their distinctive culture*,<sup>18</sup> with the animal's horns holding deep cultural and religious significance. Its pivotal role involved not only consumption for subsistence purposes but also symbolizing strength and prosperity and playing a crucial role in important life ceremonies such as marriages and funerals. [Emphasis added.]

By contrast, Astori nationals, allowed by Rishmak to hunt the Royal Markhor, lack any subsistence connection to the species. They do not belong to a traditional community that has historically depended on hunting the Markhor to fulfill cultural or economic needs. Their practice of hunting, initiated only in 2016, cannot be considered an established or customary use within the meaning of Article III(5)(c) of the Convention on the Conservation of Migratory Species of Wild Animals.<sup>19</sup> Therefore, foreign hunters lack the right to use the species in a manner that supports traditional community needs. Rishmak's current practice of granting hunting rights to foreign nationals, such as Astori trophy hunters, who remove hides and horns from the community entirely, denies the Dione Ginsu the cultural continuity that Article III(5)(c) aims to protect. Although some of the Royal Markhor's meat is distributed within the community, the primary cultural components, such as horns and hides, are retained as trophies by foreign hunters.<sup>20</sup>

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<sup>17</sup> Record ¶14

<sup>18</sup> R. v. Van der Peet, [1996]. Supreme Court of Canada. Judgment. ¶45

<sup>19</sup> Record ¶16,17

<sup>20</sup> Record ¶17

Therefore, if the right to take is granted to non-subsistence users, the traditional use of the Royal Markhor that comprised the Dione Jinsu culture is lost. By allowing foreign nationals to participate in hunting the Royal Markhor without any substantive subsistence need or cultural ties to the animal, Rishmak has violated its obligation under Article III(5)(c) of the CMS. This traditional practice aligns with the requirements of Article III(5)(c), as it directly serves the subsistence needs of the community. However, the auction of hunting rights to foreign hunters, predominantly from Astor, represents a clear departure from this tradition.

**ii. Auctioning subsistence users' hunting rights is a part of commercialization.**

Rishmak's practice of auctioning the right to hunt Royal Markhors to foreign, non-subsistence hunters transforms what should be a subsistence-based activity into a commercial transaction.

The second part of the definition of "subsistence use" under IWC includes the barter, trade, or sharing of animal products in their harvested form with relatives in the harvest, with others in the local community, or with persons in locations other than the local community with whom *residents share familial, social, cultural, or economic ties*. A generalized currency is involved in this barter and trade, but the predominant portion of the products from each whale is ordinarily *directly consumed or utilized in their harvested form within the local community*.<sup>21</sup>

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<sup>21</sup> Paper on Management and Utilization of Large Whales in Greenland (May 2012).

IWC/64/ASW7, page 6.

Additionally, the rules for aboriginal subsistence whaling (ASW) allow for “aborigines,” whose cultural, subsistence, and nutritional need for whales and whaling has been recognized by the IWC, to hunt some baleen whale species “*exclusively for local consumption.*”<sup>22</sup>

Similarly, the Supreme Court of Canada in *R v Van der Peet* distinguished between subsistence and commercial use, emphasizing that subsistence exceptions are meant for *personal or community* consumption, not profit. In this case, the court emphasized that trade practices were only considered subsistence when they first met the cultural and nutritional needs of the community before engaging in outside exchange.<sup>23</sup>

Rishmak’s auction system, introduced in 2016, allows foreign hunters with no cultural connection to the Royal Markhor to bid for hunting rights at a minimum of USD 100,000 per hunt.<sup>24</sup> The purpose of this natural resources use is to raise funds, and this commercial aspect of the transaction, where foreign nationals pay significant sums of money for hunting rights, falls outside the scope of the term of subsistence use. By allowing the auction of hunting rights to non-subsistence users, Rishmak transforms a practice intended to serve the survival needs of an Indigenous community into a revenue-generating commercial activity.

The foreign hunters have no cultural or subsistence connection to the Royal Markhor, and their participation transforms a subsistence practice into a commercial transaction that cannot be justified as a subsistence exception. Therefore, Rishmak’s actions violate its obligation under

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<sup>22</sup>International Convention for the Regulation of Whaling, 1946 Schedule. ¶13(b)(1)

<sup>23</sup> *R. v. Van der Peet*, [1996]. Supreme Court Judgment. ¶84

<sup>24</sup> Record ¶16

Article III(5)(c) of CMS. Consequently, Rishmak must be obligated to end the trophy hunting of the Royal Markhor through the auction process.

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## **II. THE IMPORT BAN ON ROYAL MARKHOR HUNTING TROPHIES BY ASTOR COMPLIES WITH INTERNATIONAL LAW**

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Astor's import ban on Royal Markhor hunting trophies complies with international law as it is justified under both ARTA Article XX and CITES. The ban is necessary to protect public

morals and conserve an exhaustible natural resource [I], is consistent with CITES requirements [II], and appropriately prioritizes species conservation through Article XIV(1) of CITES [III].

**I. Astor's import ban on importing Royal Markhor hunting trophies complies with ARTA Article XXI. Astor's import ban on importing Royal Markhor hunting trophies complies with ARTA Article XX**

**i. The ban on importing Royal Markhor hunting trophies imposed by Astor is directly related to the conservation of exhaustible natural resources.**

The state is allowed to impose restrictions on trade if such measures relate to the conservations of exhaustible natural resources<sup>25</sup>. The WTO Appellate Body in *the US - Shrimp Case* expanded the interpretation of "exhaustible natural resources" to include renewable resources (living resources - i.e. Royal Markhor) that can be depleted if not properly managed. For a measure to be justified under this exception, it must be (1) primarily aimed at conservation and must be (2) applied in conjunction with restrictions on domestic production or consumption.

Therefore, while states have the right to implement trade restrictions for conservation purposes under Article XX(g), such measures must satisfy a two-part test: they must be primarily focused on conservation efforts and must be accompanied by corresponding domestic restrictions.

**ii. The ban on importing Royal Markhor hunting trophies imposed by Astor is primarily aimed at conservation**

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<sup>25</sup> ARTA Article XX(g)

The ban on importing Royal Markhor hunting trophies meets the criteria for relating to the conservation of exhaustible natural resources for the following reasons: (1) *the Royal Markhor is an exhaustible natural resource*; (2) *the ban is primarily aimed at conservation*; (3) *the ban is applied in conjunction with restrictions on domestic production or consumption*.

***1.1. The Royal Markhor is an exhaustible natural resource.***

The Royal Markhor, with only 2,200 individuals remaining in the wild, clearly qualifies as an exhaustible natural resource.<sup>26</sup>

The ban is primarily aimed at conservation by discouraging trophy hunting and reducing international demand for Royal Markhor trophies. A study by Palazy et al. (2012) in PLOS ONE found that trophy hunting can create a feedback loop that increases demand for rare species, potentially accelerating their decline.<sup>27</sup>

***1.2 The ban is primarily aimed at conservation.***

While CITES Resolution 17.9 encourages parties to ensure that the import of hunting trophies does not negatively affect species conservation, Astor's complete ban on imports goes further. This approach is more in line with CITES Article XIV, which explicitly allows parties to

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<sup>26</sup> Record, ¶ 1

<sup>27</sup> Palazy, L., Bonenfant, C., Gaillard, J. M., & Courchamp, F. (2012). Rarity, trophy hunting and ungulates. *Animal Conservation*, 15(1), 4-11

<http://www.rhinosourcecenter.com/index.php?s=1&act=pdfviewer&id=1347062785&folder=1>

[34](#)

[.p.8.](#)



adopt stricter domestic measures regarding the conditions for trade, taking, possession, or transport of specimens of species included in Appendices I, II, and III.<sup>28</sup>

While trophy hunting may provide some funding for conservation, there is no guarantee that these funds are used effectively for such a critically endangered species. The ban represents a more cautious approach to conservation, prioritizing the species' survival over potential economic benefits. Trophy hunting contributes only 10% (\$100,000) of the total \$1 million annual conservation budget for the Royal Markhor<sup>29</sup>, suggesting that alternative funding sources could potentially replace this income without risking the species' survival.

Ecotourism and photo safaris can generate stable income through organized wildlife watching tours, while local cooperatives producing traditional Markhor-themed products (souvenirs, clothing) provide community income<sup>30</sup>. A practical example from Chitral National Park (Pakistan) demonstrates that after implementing an ecotourism program, annual visitor revenue exceeded previous trophy hunting income by 40%<sup>31</sup>.

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<sup>28</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243, Art. XIV.

<sup>29</sup> Record, ¶ 16

<sup>30</sup> IUCN/SSC (2012). Guiding principles on trophy hunting as a tool for creating conservation incentives. Ver. 1.0. IUCN, Gland; Informing decisions on trophy hunting (2016). Submitted by the Secretariat of CITES. CoP17 Inf. 60

<sup>31</sup> Informing decisions on trophy hunting (2016). Submitted by the Secretariat of CITES. CoP17 Inf. 60.

Therefore, the ban on importing Royal Markhor hunting trophies is directly related to the conservation of exhaustible natural resources.

***1.3. The ban is applied in conjunction with restrictions on domestic production or consumption.***

Astor has implemented domestic measures to protect the Royal Markhor, including establishing protected areas within the Royal Markhor's habitat, implementing anti-poaching patrols, and enacting strict regulations on any activities that might disturb or harm the species within its territory.<sup>32</sup> These concrete actions demonstrate that the import ban is applied in conjunction with restrictions on domestic activities that could impact the species.

Therefore, since Astor has implemented comprehensive domestic conservation measures, the import ban satisfies the second requirement under Article XX(g) that trade restrictions must be applied "in conjunction with restrictions on domestic production or consumption." Astor's domestic measures demonstrate that the import ban is not discriminatory but rather part of a broader conservation strategy that places equivalent constraints on domestic activities.

**iii. Astor's Ban on importing Royal Markhor hunting trophies is necessary to protect public morals under Article XX(a) of the ARTA.**

A measure is justifiable under Article XX(a) GATT 1994 when: (1) it is adopted or enforced to protect public morals; and (2) it is necessary to protect such morals.<sup>33</sup>

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<sup>32</sup> Record, ¶14

<sup>33</sup> Appellate Body Report, *Colombia – Textiles*, ¶6.20.

*1. Astor's Ban on importing Royal Markhor hunting trophies is adopted and enforced to protect public morals*

Following the Report of the Appellate Body, "public morals" denotes standards of right and wrong conduct maintained by or on behalf of a community or a nation.<sup>34</sup> A measure is adopted to protect public morals if: (i) its objective is to address public concerns; (ii) such concerns exist; and (iii) these concerns are of a moral nature in that Member.<sup>35</sup>

The WTO Appellate Body in *EC - Seal Products* recognized that "public morals" could include concerns about animal welfare, and that members have the right to determine the level of protection they consider appropriate.<sup>36</sup>

The ban on importing Royal Markhor hunting trophies meets the criteria for a measure adopted to protect public morals as established in *the US - Gambling case*: it reflects Astor's strong public moral stance against trophy hunting of endangered species, as evidenced by widespread public opposition, support from animal welfare groups, and near-unanimous legislative backing.

*2. Astor's Ban on importing Royal Markhor hunting trophies is necessary to protect the public morals at issue*

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<sup>34</sup> Appellate Body Report, *US – Gambling*, WT/DS285/AB/R, adopted 20 April 2005, ¶296.

<sup>35</sup> Record, referring to Appellate Body Report, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014, ¶ 33 , ¶ 5.199-5.201.

<sup>36</sup> Appellate Body Reports, *EC – Seal Products*, WT/DS400/AB/R / WT/DS401/AB/R, adopted 18 June 2014, ¶ 5.199-5.201.

The necessity analysis involves a holistic exercise of weighing and balancing a series of factors: (i) the importance of the objective; (ii) the contribution of the measure to that objective; and (iii) the trade-restrictiveness of the measure.<sup>37</sup>

The protection of Royal Markhor is a significant objective for Astor, as demonstrated by the 91% public opposition and strong legislative support.

The ban makes a substantial contribution to upholding Astor's moral standard by preventing Astor's trophy hunters from bringing Royal Markhor trophies into Astor for personal display and use, which 91% of Astor's population considers morally objectionable.<sup>38</sup>

As recognized in *Korea - Various Measures on Beef*, Members have the right to determine their desired level of protection.<sup>39</sup> While the ban is trade-restrictive, it is the only way to fully achieve Astor's desired level of moral protection. Potential alternatives like limited imports would be insufficient given that the Astori legislature passed the ban with near-unanimous support (387-13 in the lower chamber and 98-2 in the upper chamber)<sup>40</sup>, demonstrating the strength of public sentiment and Astor's chosen level of protection.

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<sup>37</sup> Appellate Body Report, *Brazil – Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007, ¶145-147.

<sup>38</sup> Record, ¶ 28

<sup>39</sup> Appellate Body Report, *Korea – Various Measures on Beef*, WT/DS161/AB/R, WT/DS169/AB/R, adopted 10 January 2001, ¶ 176.

<sup>40</sup> Record, ¶ 29, 32

Alternative measures would be ineffective since public education campaigns would not prevent the importation of trophies, which is the primary moral concern. Limiting imports rather than banning them entirely would still allow for some morally objectionable products to enter the market, contradicting the public solid stance against trophy hunting. Labeling requirements or other partial measures would not address the fundamental moral objection to the practice of trophy hunting endangered species.

Therefore, Astor's Ban on importing Royal Markhor hunting trophies is necessary to protect the public morals at issue. Astor's import ban satisfies the necessity test under Article XX(a) as it pursues a significant moral objective with overwhelming public support, makes a material contribution by eliminating objectionable products, and represents the only viable means to achieve the desired level of moral protection given the inadequacy of less restrictive alternatives.

## **II. Astor's Ban on importing Royal Markhor hunting trophies aligns with the requirements of the chapeau**

The chapeau of Article XX GATT requires that measures must not constitute arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade. As established in *US - Shrimp*<sup>41</sup> and *Brazil - Retreaded Tyres*<sup>42</sup>,

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<sup>41</sup> Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, adopted 6 November 1998, ¶ 150.

<sup>42</sup> Appellate Body Report, *Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, adopted 17 December 2007, ¶ 215.

the analysis examines whether the implementation of such measures aligns with these fundamental requirements.

***i. Astor's Ban on importing Royal Markhor hunting trophies complies with the principle of non-discrimination.***

The ban on importing Royal Markhor hunting trophies applies equally to all potential sources of such trophies. While the ARTA is a bilateral agreement, the measure is designed to be universally applicable to any potential import of Royal Markhor trophies, regardless of origin.

The ban treats all Royal Markhor trophies equally, regardless of their origin. The critically endangered status of the Royal Markhor creates similar conservation concerns in all range states.

***ii. Astor's Ban on importing Royal Markhor hunting trophies reflects the specificity of the measure***

The ban's primary purpose is moral, not economic. It arose from genuine public concern rather than protectionist motives. The focus on Royal Markhor trophies is justified by the species' critically endangered status, which heightens the moral concerns around its hunting. This specificity demonstrates that the measure is tailored to address a particular moral concern rather than being a blanket restriction. Astor's total ban on hunting these animals within its own territory further underscores the legitimacy of the import restriction and its basis in public morals.

Therefore, Astor's Ban on importing Royal Markhor hunting trophies aligns with the requirements of the chapeau.

**III. Astor's ban on importing Royal Markhor hunting trophies is consistent with CITES**

**i. Astor's ban on importing Royal Markhor hunting trophies is consistent with CITES Resolution Conf. 2.11 (Rev.) regarding the trade in hunting trophies of species listed in Appendix I.**

CITES Resolution Conf. 2.11 (Rev.) provides guidelines for the trade in hunting trophies of Appendix I species, emphasizing uniform interpretation of the Convention and collaboration between importing and exporting countries.<sup>43</sup>

**ii. Astor's ban on importing Royal Markhor complies with Article III of CITES.**

The Resolution recommends that trade in hunting trophies of Appendix I species be permitted only by Article III of CITES, requiring both import and export permits.<sup>44</sup> Rishmak, as the exporting country, has implemented a system regulating the hunting and export of Royal Markhor trophies. However, Astor's import ban is consistent with its right under CITES to adopt stricter domestic measures regarding the conditions for trade, taking, possession, or transport of specimens of species included in Appendices I, II, and III.

**iii. Astor has the right to question the exporting country's non-detriment finding for the Royal Markhor trophy imports**

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<sup>43</sup> CITES, Resolution Conf. 2.11 (Rev.), "Trade in hunting trophies of species listed in Appendix I", 1979 (amended 2004).

<sup>44</sup> Ibid., ¶. a).

The resolution recommends that the Scientific Authority of the importing country accept the non-detriment finding of the exporting country's Scientific Authority, **unless there are scientific or management data indicating otherwise.**<sup>45</sup>

Rishmak's Scientific Authority has advised that the limited export will not be detrimental to the survival of the Royal Markhor.<sup>46</sup> However, this finding may be questioned as the most recent census in 2023 counted only 2200 individuals<sup>47</sup>, indicating a critically endangered population. IUCN Red List classifies the Royal Markhor as "Endangered"<sup>48</sup>, suggesting that any hunting could potentially be detrimental. While 15% of auction proceeds are allocated for conservation programs<sup>49</sup>, there is no evidence provided on the effectiveness of these programs in stabilizing or increasing the population. Astor, as the importing country, has the right to make its own determination based on the precautionary principle, especially given the critically endangered status of the Royal Markhor.

The resolution recommends that the scientific examination by the importing country be carried out independently of the exporting country's assessment, and vice versa.<sup>50</sup> Astor's ban is based on its own independent scientific assessment of the overall conservation status of the Royal Markhor, rather than individual trophy import applications. This approach is consistent with the

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<sup>45</sup> CITES, Resolution Conf. 2.11 (Rev.), ¶ b).

<sup>46</sup> Record, ¶ 32.

<sup>47</sup> Record, ¶ 1.

<sup>48</sup> IUCN Red List of Threatened Species, 'Capra falconeri'.

<sup>49</sup> Record, ¶ 16.

<sup>50</sup> CITES, Resolution Conf. 2.11 (Rev.), ¶ c).



resolution's emphasis on independent scientific examination, as Astor has made a science-based decision to protect a critically endangered species.

CITES Resolution Conf. 17.9 recognizes that well-managed and sustainable trophy hunting can contribute to species conservation.<sup>51</sup> However, it does not mandate that all trophy hunting be permitted.

Given the critically endangered status of the Royal Markhor, Astor has determined that any trophy hunting of this species cannot be considered sustainable at this time.

Therefore, Astor's ban on importing Royal Markhor hunting trophies is consistent with CITES Resolution Conf. 2.11 (Rev.) and other relevant CITES resolutions. The ban represents Astor's independent scientific assessment of the conservation needs of the Royal Markhor, in line with the precautionary principle and Astor's right to adopt stricter domestic measures under CITES.

**IV. Astor's ban on importing Royal Markhor hunting trophies is justified under CITES Article XIV(1), which takes precedence over Article XIV(3) in this specific case.**

The principle of effectiveness (*ut res magis valeat quam pereat*) in treaty interpretation requires that all provisions of a treaty should be given meaning and effect.<sup>52</sup> The ICJ emphasized

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<sup>51</sup> CITES, Resolution Conf. 17.9, 'Trade in hunting trophies of species listed in Appendix I or II', 2016.

<sup>52</sup> Appellate Body Reports, China – Raw Materials, ¶ 360; Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, Art. 31.

this principle, stating that "all treaty provisions must be given a meaning and effect".<sup>53</sup> The WTO Appellate Body further applied this principle in *Japan - Taxes on Alcoholic Beverages*, stating that treaty interpretation should give effect to all terms of a treaty.<sup>54</sup>

In our case, Article XIV(1) should take precedence over Article XIV(3) as Astor's ban is directly related to the conservation of an endangered species, which is the primary purpose of CITES, and is not primarily a trade measure but a conservation measure with incidental effects on trade.<sup>55</sup> Additionally, courts have upheld stricter domestic measures under CITES, recognizing their importance for effective implementation of the Convention, and the ICJ has recognized that conservation measures may have implications for international agreements but upheld the right of states to implement such measures in good faith.<sup>56</sup>

Furthermore, Astor has followed the proper consultation procedures outlined in CITES. Astor has engaged in diplomatic dialogue with Rishmak through the exchange of diplomatic notes<sup>57</sup>, as required by Conference Resolution 6.7. Astor has clearly articulated its public morals

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<sup>53</sup> *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, I.C.J. Reports 1997, p. 7, ¶ 132.

<sup>54</sup> *Japan - Taxes on Alcoholic Beverages*, WT/DS8/AB/R, WT/DS10/AB/R, WT/DS11/AB/R, adopted 1 November 1996, p. 12.

<sup>55</sup> *Natural Resources Defense Council v. EPA*, 464 F.3d 1 (D.C. Cir. 2006).

<sup>56</sup> *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, I.C.J. Reports 2014, p. 226, ¶ 97.

<sup>57</sup> Record, ¶ 19, 21, 33

and conservation concerns justifying the trophy import ban<sup>58</sup>. Additionally, Astor took appropriate legislative action with overwhelming domestic support.<sup>59</sup> The fact that the parties have been unable to resolve the dispute through negotiation<sup>60</sup> does not negate Astor's right under CITES to adopt the stricter domestic measure.

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<sup>58</sup> Record, ¶ 33

<sup>59</sup> Record, ¶ 29

<sup>60</sup> Record, ¶ 35

## **CONCLUSION**

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Astor respectfully requests the Court to adjudge that:

1. The trophy hunting of the Royal Markhor through the auction process by hunters who are not Dione Ginsu violates conventional international law
2. The import ban on Royal Markhor hunting trophies by Astor complies with international law.

Respectfully submitted,

**AGENTS FOR APPLICANT**