

AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS



THE CASE CONCERNING
QUESTIONS RELATING TO SUBSISTENCE USE AND TROPHY HUNTING

ASTOR
(APPLICANT)

v.

RISHMAK
(RESPONDENT)

MEMORIAL FOR THE RESPONDENT
29TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION

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TABLE OF ABBREVIATIONS	
Trophy Hunting	TH
Royal Markhor	RM
Convention on the Conservation of Migratory Species	CMS
Appellate Body	AB
Panel Report	PR
Inter-American Commission on Human Rights	IACHR
International Covenant on Economic, Social and Cultural Rights	ICESCR
International Convention for the Regulation of Whaling	ICRW
United Nations Declaration on the Rights of Indigenous Peoples	UNDRIP
Quantitative Restrictions	QR
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QUESTIONS PRESENTED

- A. **THE AUCTION-BASED TROPHY HUNTING OF THE ROYAL MARKHOR COMPLIES WITH INTERNATIONAL LAW**
- B. **THE IMPORT BAN OF ROYAL MARKHOR TROPHIES BREACHES INTERNATIONAL LAW**

STATEMENT OF JURISDICTION

In accordance with Article 40, paragraph I of the Statute of the International Court of Justice, Astor and Rishmak have submitted a dispute regarding the *Questions Relating to Subsistence Use and Trophy Hunting* to the Court. By Special Agreement, both parties have agreed to submit their dispute to the Registrar of the Court through a Joint Notification dated July 1, 2024.

The Registrar of the Court acknowledged the receipt of the Joint Notification and addressed a formal notice to the parties on July 31, 2024. Accordingly, Astor and the Rishmak have accepted the jurisdiction of the Court under Article 36 (1) of its Statute and requested it to adjudicate the dispute in accordance with international law, including all applicable treaties.

Both parties have agreed to respect and abide by the decision of the Court.

STATEMENT OF FACTS

Astor is a high-income nation with a population of 220 million people, while Rishmak is a low-income nation with a population of 3.5 million, which includes the Dione Ginsu

Indigenous community, the most impoverished group in the country. Both share borders and are the sole remaining range states of the critically endangered Royal Markhor (*Capra roylali*), a species of wild goat listed in Appendix I of the *Convention on the Conservation of Migratory Species of Wild Animals* (CMS). Both countries have enacted legislation forbidding the taking of the Royal Markhor, with exceptions being made for the Dione Ginsu, for whom the animal and its horns have significant cultural, religious and ceremonial importance.

To reinforce its commitment to CMS and implement stricter conservation measures for the Royal Markhor, Rishmak introduced a lottery system in 2009, permitting members of the Dione Ginsu to take only up to 10 Royal Markhors annually.

In 2016, the Dione Ginsu, chose to auction their hunting rights to foreign trophy hunters – mostly Astorian citizens. This decision was driven by the realization of the significant economic benefits such auctions could bring to their community.

The auctions were held at a casino located in Astor, with a minimum bid of USD \$100,000 for each hunting right. The proceeds were strategically allocated to support the Dione Ginsu community, with 75% of the funds directed towards housing, food, and medical assistance. Additionally, 15% was earmarked for conservation efforts, managed by Rishmak', to protect the Royal Markhor from the lethal *Mycoplasma capriculum* bacteria, a disease which caused high mortality rates within the species.

The horns of the Royal Markhor were typically exported to Astor with the necessary CITES permits, in full compliance with international regulations.

On 22 May 2022, the Government of Astor raised concerns about potential violations of the CMS related to the trophy hunting rights for the Royal Markhor. In response, Rishmak issued a defense on 16 June 2022, arguing that the hunting of the Markhor in this context is justified under the CMS, as it serves both species conservation and the subsistence needs of the

Dione Ginsu. The two nations, ultimately, disagreed on the interpretation of what constitutes acceptable "*subsistence needs*".

On 11 December 2022, the national legislature of Astor passed a law prohibiting the importation of hunting trophies. Contradictorily, this decision was made despite the failure of proposed legislation to ban domestic trophy hunting in the country.

The consequences were significant: the Dione Ginsu were unable to conduct the auctions due to the import ban, resulting in the loss of the crucial funds that supported their livelihood for 6 years.

On 3 March 2023, Rishmak sent a note to Astor, claiming the import ban on hunting trophies violated the Dione Ginsu's subsistence rights, asserting that limited exports wouldn't threaten the Royal Markhor's survival and that the ban violated their bilateral agreement, ARTA, Article 11. In response, Astor argued on 22 April 2023 that the ban was justified under the general exceptions of ARTA, Article 20 of the protection of public morals and the conservation of exhaustible natural resources. The countries disagreed on whether the ban was a legitimate measure under ARTA.

After negotiations failed, the parties instituted proceedings at the ICJ.

MAIN ARGUMENTS

A. THE AUCTION-BASED TROPHY HUNTING OF THE ROYAL MARKHOR COMPLIES WITH INTERNATIONAL LAW

The regulated hunting of the Royal Markhor, even if conducted by non-nationals, aligns with conservation goals and the rights of indigenous communities, fully in compliance with (1) CMS's criteria under Article III (5), (2) its object and purpose.

1. The Taking of the Royal Markhor is Permitted Under CMS Article III (5)

Under CMS Article III (5), when specific conditions are met, exceptions to the general prohibition on taking species listed in Appendix I are allowed. Here, the term "taking" is broadly defined and includes the activity of hunting¹.

“Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species. Exceptions may be made to this prohibition only if: (...)

b) the taking is for the purpose of enhancing the propagation or survival of the affected species;

c) the taking is to accommodate the needs of traditional subsistence users of such species (...)”²

The trophy hunting auctions organized by the Dione Ginsu meet the criteria outlined.

1.1. The Taking Enhances the Survival of the Species

The Royal Markhor hunting auctions contribute to the species' conservation by generating significant funding aimed on developing vaccines and treatments to the species against the *Mycoplasma capricolum*, as well as educating the Dione Ginsu about cross-species disease transmission³. 15% of the proceeds are directed towards conservation efforts – which means that, over 6 years, this would amount to at least \$900,000 USD. The Rishmak Scientific Authority has also concluded that regulated trophy hunting poses no threat to the Royal Markhor population.⁴

Regulated trophy hunting has proven to be an effective tool for biodiversity preservation. A similar example can be found in Pakistan with the Markhor (*Capra*

¹ Trouwborst, A., Loveridge, A. J., and Macdonald, D. W. (2019). Spotty data: managing international leopard (*Panthera pardus*) trophy hunting quotas amidst uncertainty. J. Environ. Law. doi: 10.1093/jel/eqz032.

² Convention on the Conservation of Migratory Species of Wild Animals, art. III(5), June 23, 1979, 1651 U.N.T.S. 333

³ Record, ¶ 18

⁴ Record, ¶ 32

falconeri), a wild goat species also considered endangered, prompting the establishment of the Torghar Conservation Project. To fund conservation efforts, the project permitted a limited number of goats to be hunted annually for significant fees, with the proceeds directed towards species preservation, local government, and community development. As a result, the markhor population rebounded dramatically, increasing from approximately 100 individuals in the mid-1980s to over 3,500 nowadays. This success has been attributed to the limited, regulated hunting⁵.

Thus, the regulated taking of the Royal Markhor through hunting auctions is aligned with the purpose of *enhancing the propagation and survival of the species* according to **Article III (5) “b”** of CMS.

1.2. The Taking Promotes the Subsistence of the Dione Ginsu

The proceeds from hunting activities predominantly benefit the Dione Ginsu community, being essential in supporting their subsistence and thus fulfilling the requirement of **Article III (5) “c”**.

While traditionally associated with direct access to food or materials, subsistence in a modern context can also include financial means to secure essentials. At the General Comment No. 12 of the United Nations Committee on Economic, Social and Cultural Rights, it is explicitly recognized that “*the right to adequate food is realized when every man (...) has physical and economic access at all times to adequate (...) means for its procurement*”⁶. As well, the IACHR Report on Indigenous and Tribal Peoples’ Rights highlights that “*subsistence in Indigenous communities often includes*

⁵ R. Cooney et al., “*The Baby and the Bathwater: Trophy Hunting, Conservation and Rural Livelihoods*,” *Unasylva*, vol. 68, no. 1 (2017), pp. 3-16.

⁶ *Committee on Economic, Social and Cultural Rights, General Comment No. 12: The Right to Adequate Food, U.N. Doc. E/C.12/1999/5 (1999), reprinted in Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.6 at 62 (2003).*

*(...) financial strategies adapted to contemporary conditions, ensuring the survival of cultural identity and meeting economic necessities."*⁷

The auctioning of Royal Markhor hunting rights benefits the Dione Ginsu community economically, culturally, and nutritionally. The program ensures steady employment for them as guides; indigenous techniques, such as using the scent of female Markhors, are incorporated into the hunts, showcasing the community's expertise. Additionally, meat from the hunts is distributed among residents, meeting subsistence needs⁸. By integrating financial, employment, and food benefits, the auction program aligns with the international subsistence rights framework.

1.2.1. Interpretation of Subsistence under International Law

Current frameworks demonstrate that economic and subsistence needs of communities can coexist with conservation goals. Resolution CIT-COP10-2022-R5⁹ of the IACHR for the Protection and Conservation of Sea Turtles, for example, grants an exception to its Article IV (2) "a" which generally prohibits the taking/selling of turtle eggs. This exception is granted when the activities are essential for meeting the basic economic needs of traditional communities. The rationale is based on the fact that revenue from the regulated sale of turtle eggs directly supports the community's livelihood, while still ensuring the species' conservation.

⁷Inter-American Commission on Human Rights. (n.d.). *The right to self-determination in the Inter-American human rights system: Development and applicability*

⁸ Record, ¶ 17

⁹ Inter-American Convention for the Protection and Conservation of Sea Turtles, Resolution CIT-COP10-2022-R5: *Exceptions Under Article IV (3a and 3b) for Subsistence Harvesting of Lepidochelys olivacea Eggs in Costa Rica* (2022).

By ensuring that the number of hunts is capped and that the hunting is regulated, the practice of auctioning hunting rights for the Royal Markhor mirrors the sustainable use approach of the Turtle Convention.

1.2.2. Applicability of the International Convention for the Regulation of Whaling (ICRW)

On 6 November 2022, the Government of Astor sent a diplomatic note mentioning the ICRW Schedule¹⁰ as an example of the conceptual distinction between indigenous subsistence and commercial activities; however, this interpretation overlooks key aspects of the convention:

Paragraph 13 (a) of ICRW governs indigenous subsistence whaling and specifies that such activities are for their consumption. It emphasizes that they should not have a primarily commercial purpose. However, the text does not explicitly state that the presence of foreign nationals makes an activity commercial. Instead, this distinction hinges on purpose and scale: commercial whaling is profit-driven and intended for widespread market distribution, whereas indigenous subsistence whaling supports local, non-commercial needs.

Following this definition, the revenues from the trophy hunting directly fund only the subsistence of the Dione Ginsu. Moreover, hunting is subject to the numerical cap imposed by Rishmak. Therefore, Astor's ICRW interpretation is misguided.

1.2.3. The permission of the auction is in conformity with the subsistence rights under ICESCR

¹⁰ *International Whaling Commission. (n.d.). Schedule to the International Convention for the Regulation of Whaling.*

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognizes the *right of everyone to an adequate standard of living*¹¹. Complementary, General Comment No. 12 of ICESCR¹² states that this right is “*indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights*” and that this “*imposes an obligation (on States) to move as expeditiously as possible towards that goal*”.

Therefore, if Rishmak were to impose a prohibition on the Dione Ginsu's practice of auctioning its hunting rights, it would be in contravention of its obligations as a Party to the ICESCR.

2. The Transfer of Rights and Hunting by Non-Nationals Aligns with CMS Object and Purpose

The hunting of the Royal Markhor by non-nationals is not contrary to the object and purpose of CMS. Reflected in its preamble¹³, the Convention calls for international cooperation for the protection of species while allowing its sustainable use.

Consequently, the transfer of hunting rights, which contributes to both conservation and community development, is consistent with the core principles of the Convention.

2.1. Consentment of Hunting Rights Transfer

At *Kaliña and Lokono Peoples v. Suriname*, the IACHR emphasized that Indigenous peoples' rights cannot be altered or transferred without their free, prior, and

¹¹ United Nations (1966). *International Covenant on Economic, Social and Cultural Rights*

¹² United Nations Committee on Economic, Social and Cultural Rights (CESCR). (1999). *General Comment No. 13: The right to education (Article 13 of the Covenant)*

¹³ Convention on the Conservation of Migratory Species of Wild Animals (CMS). (1979). *Convention on the Conservation of Migratory Species of Wild Animals*.

informed consent¹⁴. Similarly, In *Ominayak (Lubicon Lake Band) v. Canada*, the United Nations Human Rights Committee recognized the Indigenous right to cultural development¹⁵. Both cases reinforce the notion that Indigenous peoples should maintain authority over traditional practices and resource management, which is also required by Article 3 of Declaration on the Rights of Indigenous Peoples (UNDRIP)¹⁶.

In the context of the Dione Ginsu, the community has explicitly consented to the transfer of hunting rights through the auctioning system, which allows them to utilize their traditional knowledge, maintain their cultural rituals, and generate income. Thus, the transfer of the rights is fully in compliance with international law while abiding to the goals outlined by CMS.

2.2. Compliance with ILO Convention No. 169

The *Indigenous and Tribal Peoples Convention*¹⁷ establishes standards for the protection of the rights of Indigenous peoples. Rishmak, as a Party to the Convention, has a legal obligation under its Article 7, which affirms Indigenous peoples right to define their own development priorities; as well as Article 15, which underscores the importance of their participation in resource management.

Likewise, Article 23 (2) of the ILO Convention No. 169 permits Indigenous communities to seek external support, including technical and financial assistance, to sustain their cultural practices.

¹⁴ *Kaliña and Lokono Peoples v. Suriname*, Judgment, Inter-American Court of Human Rights, Series C No. 309, 305 (Nov. 25, 2015)

¹⁵ *Ominayak (Lubicon Lake Band) v. Canada*, Communication No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984, ¶ 32.1 (Mar. 26, 1990).

¹⁶ United Nations. (2007). *United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)*.

¹⁷ International Labour Organization. (1989). *Indigenous and Tribal Peoples Convention, 1989 (No. 169)*.

CMS shares the same principles of ILO: During the 14th Meeting of the Conference of the Parties to the CMS¹⁸, it was underscored the increasing recognition of the need to integrate biodiversity conservation with the development of sustainable livelihoods — enabling communities to meet present needs while safeguarding the environment for future generations.

By maintaining the auction system established by the Dione Ginsu, Rishmak is ensuring the continuation of their traditional practices while fostering community welfare and economic growth. By shifting from traditional bow hunting to structured auctions, the community has redefined its subsistence strategies to prioritize communal well-being, while maintaining the cultural significance of Royal Markhor horns in rituals.

Far from undermining the principles of ILO and CMS, the auctions empower the community, being a modern expression of autonomy that balances economic necessity and cultural preservation.

B. THE IMPORT BAN OF ROYAL MARKHOR TROPHIES BREACHES INTERNATIONAL LAW

The import ban of the Royal Markhor hunting trophies disrespects the provisions of (1) CITES and (2) ARTA Article XI (3) and Article XX.

1. The Ban Lacks Authorization under CITES

CITES mandates that any trade restriction to be based on scientific assessments and non-detrimental findings. However, Astor has not complied with any of those requirements: the import ban breaches international law.

¹⁸ UNEP/CMS, Community Participation and Livelihoods, UNEP/CMS/COP14/Inf.30.2.3 (2023), available at <https://www.cms.int>.

1.1. Infringement of CITES Resolution 2.11: not acceptance of non-detriment finding

The ban on the importation of Royal Markhor hunting trophies disregards the findings of Rishmak's Scientific Authority, which confirmed that the exportation of hunting trophies would not be detrimental to the survival of the species. Under **CITES Resolution 2.11**¹⁹, member states are obligated to respect the non-detrimental findings (NDF) of the exporting country's Scientific Authority, unless there is valid scientific evidence to the contrary.

As defined by CITES²⁰, an NDF is a conclusion made by a Scientific Authority that the export of specimens will not negatively impact the species' survival in the wild. This is a critical component of conservation efforts under CITES, especially for species listed in Appendix I, such as the Royal Markhor. However, Astor has failed to present any scientific evidence disputing Rishmak's NDF, which makes its ban on trophy imports unjustifiable.

The burden of proof in these matters lies with the party challenging the NDF. This is the rule under CITES, but also the rule previously used in this Court for several judgements. An example is the *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*²¹, in which the ICJ held that Argentina had to demonstrate with sufficient evidence that Uruguay's actions violated international environmental obligations.

Conclusively, the burden falls on Astor to present credible evidence showing that Rishmak's NDF is flawed or that the trophy hunting violates conservation principles, which it has not done. The import ban lacks legal and scientific grounding.

¹⁹ CITES. (1979). *Resolution Conf. 2.11: Trade in hunting trophies of species listed in Appendix I*. Geneva: CITES Secretariat.

²⁰ CITES. (2024). *Module 15: Glossary of key terms and definitions introduced in this guidance*.

²¹ International Court of Justice. (2010). *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment. I.C.J. Reports. Retrieved from <https://www.icj-cij.org/en/case/135>

1.2. The ban is not authorized by CITES Resolution 17.9 or 13.7

CITES Resolution 17.9 or Resolution 13.7 are not applicable to this case, as these resolutions provide guidelines that do not extend to the complete prohibition of trade in hunting trophies. **Resolution 17.9**²² specifically aims to ensure that such trade is carried out sustainably and with appropriate management practices, encouraging Parties to monitor and control hunting activities. The text of such document does not sanction a blanket prohibition on the trade of trophies: in fact, recognizes that “*well-managed and sustainable trophy hunting is consistent with and contributes to species conservation*”.

Similarly, **Resolution 13.7**²³, which addresses the control of trade in personal and household effects, also does not provide grounds for a complete ban on the trade of trophies. It “*further recommends that Parties consider the contribution of hunting to species conservation and socio-economic benefits (...) when considering stricter domestic measures and making decisions relating to the import of hunting trophies*”.

These resolutions do not authorize the unilateral imposition of an outright ban on the importation of hunting trophies for the Royal Markhor, especially because their conservation is linked to sustainable hunting practices and community involvement. Therefore, Astor’s ban cannot be justified under CITES guidelines.

1.3. Article XIV of CITES does not justify the overlapping of ARTA’s provision

The restriction imposed by the Astori Management Authority on the import of Royal Markhor hunting trophies is not consistent with CITES Article XIV, paragraph 1(a), especially when viewed in the context of CITES Article XIV, paragraph 3. The

²²CITES. (2016). *Resolution Conf. 17.9: Trade in hunting trophies of species listed in Appendix I or II*. Geneva: CITES Secretariat.

²³CITES. (2004). *Resolution Conf. 13.7: Control of trade in stockpiled specimens of species listed in the CITES Appendices*. Geneva: CITES Secretariat.

provisions of CITES should not overlap with the ones agreed under the Astor-Rishmak Trade Agreement.

While CITES Article XIV, paragraph 1(a) permits parties to adopt stricter domestic measures concerning trade in species listed in Appendix I, it does so with the stipulation that these measures must not conflict with other international agreements.

Comparatively, Article XIV, paragraph 3 explicitly states that CITES will not affect the provisions of any treaty or international agreement concluded between states, particularly those within regional trade agreements. This provision essentially prioritizes the trade obligations stipulated by regional trade agreements over the restrictions allowed under CITES.

Therefore, since ARTA contains provisions that regulate trade between the countries, specifically prohibiting quantitative measures in its Article 11²⁴, those provisions should prevail.

2. The ban is a violation of Art. 11 of the ARTA

Art. 11 of the ARTA prohibits quantitative restrictions on the import of goods between the Parties²⁵. Astor, however, recognized the ban's character of Quantitate Restrictions on trade²⁶.

This measure is set to harm the free flow of goods between the Parties and serve as a violation of the ARTA's objective and purpose, contained within its preamble²⁷ and shall harm the economy of both countries²⁸²⁹.

²⁴ Record, ¶ 12

²⁵ Record, ¶ 12

²⁶ Record, ¶ 32

²⁷ Record, ¶ 12

²⁸ Quantitative Restrictions and their respective General Exceptions are also contained in Arts. XI and XX of the GATT, respectively. As of the identical reading of the devices of both the ARTA and the GATT, as well as explicit permission as of ARTA, Art. 30, WTO case law may be utilized in the resolution of the dispute

²⁹ Similar quantitative restrictions are exemplified by Appellate Body Report, Turkey—Restrictions on Imports of Textile and Clothing Products, WT/DS34/AB/R, (Nov. 22, 1999)

3. The ban is not covered by the general exceptions of art. XX of the ARTA

3.1. The ban is not necessary to protect public morals

3.1.1. The measure was not designed to protect public morals

In *US-Gambling*, US restrictions on internet gambling were justified under art. XX (a) of the GATT, which pertains to the public morals exception. The Panel stated that member States have the autonomy to define and apply the concept of public morals within their own territories³⁰. In determining whether a measure is necessary for the protection of public morals, it is essential that the design of the measure is consistent with the aim of safeguarding those values³¹

In *Colombia — Textiles*, the AB found that Colombia successfully demonstrated the existence of a real and present concern on money laundry³², as well as a real public moral rejection, configuring a measure designed to protect public morals demonstrated by systematic government action³³. In the present case, it cannot be said that the Astori restrictions are sufficiently based on systematic rejection of TH.

Astori surveys indicated that most citizens opposed any form of action related to trophy hunting³⁴. Yet, the Astori Government did not take action on Astori casinos organizing trophy hunts, with the bill failing to receive majority votes in both chambers of the Astori legislature³⁵. This outcome showcases the weakness of the public rejection of TH.

³⁰ Panel Report, *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WT/DS285/R, ¶ 6.461 (Nov. 10, 2004)

³¹ US — Gambling, *supra* note 18, ¶ 6.461

³² *Colombia—Textiles*, ¶ 5.20.

³³ *Colombia—Textiles*, ¶ 5.50.

³⁴ Record, ¶ 28

³⁵ Record, ¶ 30

Therefore, the ban of importation of hunted trophies was not designed to protect public morals, as the actions from the Astori government were not aligned with their own values and did not showcase systematic reprehension.

3.1.2. The measure was not necessary to protect public morals

The restrictions on the importation of hunting trophies are not necessary to the protection of public morals, as they do not comply with the requirements set by WTO case law. In *Korea – Various Measures Affecting the Importation of Beef*, the AB established an understanding which can also be found in the EC-Asbestos³⁶ and US-gambling³⁷. It concluded that some points had to be considered, weighed and balanced in order to determine if the measures were “necessary” in protecting public morals³⁸³⁹.

3.1.2.1. The importance of interests or values that the challenged measure is intended to protect.

The public morals being protected must be significantly important to the country where the restriction stems. In *Korea – Beef*, the AB found that the importance of the common interest intended to be protected is relevant in determining the necessity of a measure, as the more vital those interests are, the easier it would be to accept the necessity of the restrictions.⁴⁰ In the present case, the importance of the public morals around TH is questionable, as Astor failed to enact domestic legislation against trophy hunting⁴¹, signifying less than ideal concerts of Astor

³⁶ Appellate Body Report on *EC – Asbestos*, para. 172.

³⁷ Appellate Body Report on US-gambling, para. 6.477

³⁸ The AP recalled the need for such requisites in *EC–Seals* ¶ 5.169

³⁹ Appellate Body Report, *Korea—Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/AB/R, WT/DS169/AB/R, ¶ PARAGRAFO (Dec. 11, 2000).

⁴⁰ *Korea — Beef*, *supra* note 22, ¶ 162

⁴¹ Record, ¶ 30

and the representatives of its people on the issue. As such, the acceptability of the restrictions in question is questionable at best.

3.1.2.2. The measures must have a substantial relationship with the goals of the restriction

The contribution of the measure is not substantial in relation to the primary objective of protecting public morals. In *EC – Seal Products*, the AB stated that there should be sufficient nexus between the measure and the interest protected. That connection exists when there is a "genuine relationship of ends and means between the objective pursued and the measure at issue".⁴²

Here, prohibiting only the import does not correspond with broader moral objectives or the values of its community, as it does not consider prior efforts taken by Astori people. The import ban disregards the fact that hunting conducted by the Dione Ginsu tribe was permitted by CMS article III and well-managed. According to Resolution 17.9, the trade in hunting trophies of species listed in Appendices I or II, when conducted responsibly, contributes to species conservation. In support of this perspective, the non-governmental organization Responsible Hunters in Astor (RHINA), which boasts 50,000 members, advocates for sustainable hunting practices. RHINA has launched a campaign defending trophy hunting, highlighting that, when properly managed, it can yield demonstrable conservation benefits.⁴³

⁴² Appellate Body Report, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 5.180, WTO Doc. WT/DS400/AB/R (adopted June 18, 2014)

⁴³ Record, ¶ 18

In conclusion, the import ban fails to have a substantial relationship with Astori public morals, as it overlooks the proactive measures that the people of Astor have already undertaken to harmonize hunting practices with their moral values and international law.

3.1.2.3. There must be no WTO-consistent alternative measures

Restrictive measures shall only be considered necessary if no less restrictive WTO-consistent alternatives can be reasonably expected. In *US – Tuna-Dolphin*, Mexico argued that US restrictions on the importation of tuna products violated GATT provisions by imposing more trade restrictive measures than necessary to achieve legitimate objectives⁴⁴. The AB upheld the panel's findings, emphasizing the US failed to adequately consider less restrictive alternatives that could still fulfill its objectives of dolphin protection and consumer information.

Similarly, Astor's objective of preserving public morals and preventing its citizens from engaging in hunting could potentially be achieved through less restrictive measures, such as directly interfering with the TH auctions set in Astor, or even the establishing of higher taxes on the importation of hunting trophies.

Thus, less restrictive alternatives were available that could achieve the same objectives, making the measures not necessary for protection of public morals

3.2. The ban does not relate to the conservation of exhaustible natural resources

Art. 20 of the ARTA, subparagraph (g) presents a general exception to unilateral quantitative restrictions or prohibitions on products arising from one of the parties. The choice

⁴⁴ Appellate Body Report, United States—Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products: Recourse to Article 21.5 of the DSU by Mexico, WT/DS381/AB/RW/USA, ¶ 1.5

for the word “relating to” is indicative of the scope of the subparagraph⁴⁵. Similarly, the choice for the term in the ARTA can be attributed to the same intention.

Restrictions based on art. XX (g) of the GATT dismiss a necessity test, needing only to be “related to” the conservation efforts⁴⁶. This does not mean that any measures with conservation motives can be justified under it, as in the text it must be interpreted not to contradict the objective and purpose of the General Agreement⁴⁷. Under the interpretation achieved in the *1987 Herring and Salmon*, a measure must be “primarily aimed at” the conservation of exhaustible natural resources⁴⁸.

3.2.1. The measures are not primarily aimed at the conservation of exhaustible natural resources as there is no direct connection between the conservation goals and the restrictions.

Measures considered “related to” the conservation of exhaustible natural resources must bear direct connection with the goals of conservation. In *US - Gasoline*⁴⁹, the AB found that restrictions may only be considered “primarily aimed at” conservation given the substantial relationship between the measures and the goal of conservation⁵⁰. Furthering the understanding, the AB in the 1998 *US Shrimp-Turtle* dispute reinforced the need for an exam

⁴⁵ Panel Report, *Canada—Measures Affecting Exports of Unprocessed Herring and Salmon*, L/6268 - 35S/98, ¶ 4.6 (Mar. 22, 1988).

⁴⁶ *Id.*

⁴⁷ In this case, the text must be interpreted in a way that does not contradict the objective and purpose of the ARTA, exemplified within the preamble

⁴⁸ *Id.* ¶ 4.7

⁴⁹ Additionally, such an interpretation has been reproduced in two different unadopted panel reports: *United States - Restrictions on Imports of Tuna*, DS29/R (1994); *United States - Taxes on Automobiles*, DS31/R (1994).

⁵⁰ “We consider that, given that substantial relationship, the baseline establishment rules cannot be regarded as merely incidentally or inadvertently aimed at the conservation of clean air in the United States for the purposes of Article XX(g)” Appellate Body Report, *United States—Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, at 19 (Apr. 29, 1996)

of the structure and the design of the measure⁵¹⁵². The AB reaffirmed the need for a structural test of the measure⁵³.

It must be noted that the Appellate Body took in consideration that the issue tackled, as in the harmful fishing methods, was a known cause of sea turtle mortality and population reduction⁵⁴, as well as that the measures, when properly applied, would be effective in preserving the turtles⁵⁵. It also found that the means and ends relationship would have to be sufficiently strong for the measure to be considered "primarily aimed at" conservation⁵⁶.

Contrary to the hazardous fishing methods in *US - Shrimp*, trophy hunting is known to not contribute to the mortality of wild animal populations, instead acting as a legitimate and necessary tool for animal conservation worldwide⁵⁷, as well as for the support of vulnerable communities⁵⁸. The Dione Ginsu's example heads the same direction, being integral to the protection of the Royal Markhor⁵⁹. As such, a ban on the importation of hunting trophies may be counterproductive to conservation efforts.

⁵¹ Appellate Body Report, *United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, AB-1998-4, ¶ 137 (Oct. 12, 1998)

⁵² The decision recalls the understanding of the unadopted *United States - Taxes on Automobiles*, DS31/R (1994), in which the Panel found that in order to claim exemption under Art. XX(g), the US would have to prove the measures comprised a comprehensive set of restrictions envisioning the same goal.

⁵³ *Id.* ¶ 141

⁵⁴ *Id.* ¶ 140

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ "Because they have a stake in sustaining populations of economically valuable game animals, Zimbabweans have a commitment to conservation. As a result, species such as elephants which are rare or extinct in many other countries are thriving in Zimbabwe" Alastair S. Gunn, *Environmental Ethics and Trophy Hunting*, 6 *Ethics & Env't* 68-98, 88 (2001).

⁵⁸ Gunn, *supra* note 30, at 85.

⁵⁹ Record ¶ 18

Thus, the restrictions cannot be considered “primarily aimed at” the conservation of exhaustible natural resources, and do not fall under the general exceptions of Art. 20(g) of the ARTA.

3.2.2. The ban is not made effective in conjunction with domestic restrictions on production or consumption

Both Art. 20 (g) of the ARTA and Art. XX(g) of the GATT hold that restrictive measures need to be made effective in conjunction with restrictions on domestic production or consumption. In *US Gasoline* (1998), the appellate body found that the clause must be interpreted as a requirement of even-handedness⁶⁰, although not necessarily identical treatment. Still, it admitted that an exam on whether the measures can generate effects is not in any way irrelevant⁶¹.

Additionally, the Panel in *China - Measures Related to the Exportation of Rare Earths* (2014), found that China would be obliged to provide proof that its domestic and foreign restrictions were somehow related and operated together, reinforcing each other⁶². The panel found that measures under art XX(g) must pass the “even-handedness” test by showcasing that the measure’s toll is balanced between the domestic and foreign consumers and/or producers⁶³. This test would require structural analysis of the design of the measure, to find whether it has a legitimate interest in conservation and an impartial rationale⁶⁴. The party must also prove that its foreign restrictive policy works together with domestic restrictions in achieving the same goal⁶⁵.

⁶⁰ *US – Gasoline*, *supra* note 22, at 22

⁶¹ *Id.*

⁶² Panel Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten, and Molybdenum*, WT/DS431/R, WT/DS432/R, WT/DS433/R, ¶ 7.333 (Mar. 26, 2014)

⁶³ *China — Rare Earths*, WT/DS431/R, WT/DS432/R, WT/DS433/R, ¶ 7.331.

⁶⁴ *Id.*

⁶⁵ *Id.* ¶ 7.333

The restriction promoted by Astor makes no question of balancing of the measure's toll. While it places an immediate and heavy burden on the affected countries (e.g. Rishmak), the domestic counterparts of the measure are unimpressive. Astor has not enacted legislation against domestic trophy hunting⁶⁶, and has not acted to intervene in the activities of Casino operating within its jurisdiction in the promotion of trophy hunts⁶⁷.

Therefore, the restrictions imposed by Astor do not meet the requirements of even-handedness and are not made effective in conjunction with restrictions on domestic production or consumption.

3.3. The ban fails the test of the ARTA Article 20 Chapeau and acts as a form of arbitrary or unjustifiable discrimination

Art. 20 of the ARTA condemns that measures within the justifications of the subparagraphs be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail⁶⁸. In *US – Shrimp*, the Appellate Body found that measures would be applied in such a way if it was attested the presence of three elements⁶⁹:

- a. The application of the measure must result in discrimination.
- b. The discrimination must be arbitrary or unjustifiable in character.
- c. Discrimination must occur between countries where the same conditions prevail.

3.3.1. The disregard for the relevant facts implies the restriction is applied as a form of arbitrary or unjustifiable discrimination.

⁶⁶ Record, ¶ 30

⁶⁷ *Id.* ¶ 16

⁶⁸

⁶⁹ United States—Shrimp, *supra* note 23, at ¶ 150

The terms “arbitrary” and “unjustifiable” both revolve around rational analyses of the measure⁷⁰, to the point that the terms “arbitrary”, “unjustifiable”, as well as “unreasonable”⁷¹, cannot be distinguished organically between each other⁷². *US – Shrimp* identifies the lack of reasonable grounds as indicative of arbitrariness⁷³.

In *US - Shrimp*, the Appellate Body found that the lack of consideration to the circumstances of each affected country, as well as their economic, environmental and conservation landscapes constituted a form of arbitrary discrimination.⁷⁴ Similarly, the Panel in the *Dominican Republic – Import and Sale of Cigarettes* dispute found that the restrictions imposed by the Dominican Republic failed to consider the circumstances of foreign cigarette manufacturers, thus configuring arbitrary discrimination⁷⁵.

This is relevant to the dispute, as Astor’s ban on the importation of hunting trophies fails to consider critical factual details, as well as the conditions of trophy hunting in each affected nation, subjecting them to the same ban regardless. As showcased beforehand, the trophy hunting of the Royal Markhor is a sustainable practice that contributes to both the subsistence of the Dione Ginsu and the conservation of the species⁷⁶.

The lack of consideration for such conditions is clearly unreasonable, and, therefore, constitutes arbitrary or unjustifiable discrimination.

⁷⁰ Christian Riffel, *The Chapeau: Stringent Threshold or Good Faith Requirement*, 45 *Legal Issues of Economic Integration* 141, 150 (2018).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *US – Shrimp*, *supra* note 23, at ¶ 158

⁷⁴ *US – Shrimp*, *supra* note 23, at ¶ 158

⁷⁵ Panel Report, *Dominican Republic—Measures Affecting the Importation and Internal Sale of Cigarettes*, WT/DS302/R, ¶ 7.388 (Nov. 19, 2005)

⁷⁶ Record ¶ 16

3.3.2. The measures fail the rational connection test and constitute arbitrary or unjustifiable discrimination

Furthermore, an additional metric of arbitrary or unjustifiable discrimination is the Rational Connection Test⁷⁷. That is, whether the reasoning for the discrimination is legitimate and has a sufficient rational connection with the objectives of the restriction. In EC Seals, the Appellate Body found that the discriminatory clauses favoring the taking of seals by indigenous communities could not be rationally reconciled with the public moral concerning seal pup welfare⁷⁸. Similarly, the discrimination arising from the lack of domestic restrictions on trophy hunting and the activity of the Casino is incoherent with the objective of protection of public morals. Additionally, both the lack of even-handedness and the disregarding of the conservational importance of the TH of the Royal Markhor are further incompatible with the rationale of conservation.

As such, the restrictions fail the rational connection test and constitute arbitrary or unjustifiable discrimination.

⁷⁷The rational connection test was first brought in the Appellate Body Report, Brazil — Measures Affecting Imports of Retreaded Tyres, WT/DS332/AB/R, AB-2007-4, (Dec. 3, 2007)

⁷⁸ Appellate Body Report, European Communities — Measures Prohibiting the Importation and Marketing of Seal Products, WT/DS400/AB/R, WT/DS401/AB/R, AB-2014-1, AB-2014-2, ¶ 5.338 (May 22, 2014)

CONCLUSION AND PRAYER

Respondent, Rishmak, respectfully requests the court to adjudge and declare that:

1. The auction-based trophy hunting of the Royal Markhor does not violate international law.
2. Astor violated international law in respect to its ban on the importation of Royal Markhor hunting trophies.

RESPECTFULLY SUBMITTED,

AGENTS OF THE RESPONDENT