Team Code: 31R

29TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT

COMPETITION (2024-25)

BEFORE THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE,

THE HAGUE, NETHERLANDS

QUESTIONS RELATING TO SUBSISTENCE USE AND TROPHY HUNTING

ASTOR (APPLICANT)

V.

RISHMAK (RESPONDENT)

MEMORIAL ON BEHALF OF THE RESPONDENT

Table of Contents

Index of Authorities

INTERNATIONAL TREATIES AND CONVENTIONS

JUDICIAL AND ARBITRAL DECISIONS

UN AND OTHER INTERNATIONAL DOCUMENTS

ESSAYS, JOURNALS, AND ARTICLES

OTHER SOURCES

List of Abbreviations

ARTA	Astor-Rishmak Trade Agreement
CBNRM	Community-Based Natural Resource Management
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
GATT	General Agreement on Tariffs and Trade
IAC	Inter-American Convention for the Protection and Conservation of Sea Turtles
IACtHR	Inter-American Court of Human Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICJ	International Court of Justice
ICRW	International Convention for the Regulation of Whaling
ILO Convention 169	Indigenous and Tribal Peoples Convention, 1989
IUCN	International Union on the Conservation of Nature
NIH	US National Institutes of Health
UDHR	Universal Declaration of Human Rights
UNDRIP	UN Declaration on the Rights of Indigenous Peoples
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

Questions Presented

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

In accordance with Article 40(1) of the *Statute of the International Court of Justice,* the states of Astor and Rishmak submitted a Special Agreement to the International Court of Justice pertaining to their differences concerning questions related to subsistence use and trophy hunting. The parties transmitted a copy to the Registrar of the Court on July 1, 2024. The Registrar acknowledged receipt on July 31, 2024. The parties agree that the Court has jurisdiction to decide this matter, and neither party will dispute the Court's jurisdiction in written or oral proceedings.

Statement of Facts

Background

Rishmak and Astor are neighboring states in Central Asia. Rishmak's population includes approximately 4,000 members of the Indigenous Dione Ginsu community, which has a high poverty rate.

The two countries are the only range states of the Royal Markhor, a species of large, wild goat. With a current population of 2,200, the species is critically endangered and faces a severe disease threat—particularly *Mycoplasma capricolum*, which they may contract from domestic goats. Both countries have domestic laws that prohibit the taking of the Royal Markhor, but Rishmak makes an exception for the Dione Ginsu community, whose traditional relationship with the Royal Markhor has prevailed since time immemorial.

Both countries are Parties to CITES and the CMS. Additionally, Rishmak is a Party to ILO Convention 169 and ICESCR. Moreover, Rishmak voted in favor of UNDRIP, while Astor abstained. Finally, the states have signed and ratified ARTA, which prohibits quantitative restrictions on imports from either party.

Auction Process

In 2009, when the Royal Markhor was added to CMS Appendix I, Rishmak instituted a numerical cap of 10 hunting permits per year for the Dione Ginsu community. In 2016, the Dione Ginsu began auctioning off their permits. On average, the winning bids were USD $150,000, often by Astori nationals, who would then import hunting trophies back into Astor.

The revenue generated by the Dione Ginsu from the auction process is allocated as follows: 30% for community housing expenses, 30% for community medical expenses, 15% for

community food expenses, 15% for Royal Markhor conservation programs—much of which goes to the development of a *Mycoplasma capricolum* vaccine—and 10% for the auctioneers.

In May 2022, Astor delivered a diplomatic note to Rishmak, contending that the hunting of the Royal Markhor, through the auction process violated the CMS. Rishmak maintained that the auction process was justified by the exceptions detailed in CMS Article III(5).

Import Ban

After Astori civil society organizations protested trophy hunting, Astor's legislature banned the import of hunting trophies. A domestic ban on trophy hunting was proposed but rejected. Polls that same year found opposition to trophy hunting in Astor. As a result, the Dione Ginsu were unable to auction off the right to hunt Royal Markhor and Astori hunters who had initially won the auction demanded a refund.

In March 2023, the Government of Rishmak sent a diplomatic note to the Government of Astor stating that the ban was a violation of ARTA and Indigenous rights. Astor attempted to justify the ban under the WTO decision in *Seals* and CITES Article XIV(a), but Rishmak maintained that neither the WTO nor CITES permit such a violation of ARTA.

Further negotiations between the states have not been able to resolve the dispute. As such, the issues have been submitted to the ICJ for judgment.

Summary of Argument

I. The Trophy Hunting of the Royal Markhor Through the Auction Process Complies with Conventional International Law.

Rishmak satisfied its international obligations under ILO Convention 169 and ICESCR, as well as its commitments to UNDRIP. Together, these confer upon the Dione Ginsu the rights to hunt the Royal Markhor, to auction off hunting permits for subsistence, and to adapt traditional subsistence practices to contemporary circumstances. These rights prevail even in conflict with Rishmak's conservation obligations. Even so, Rishmak complies with the CMS. First, the auction process qualifies for an exception under CMS Article III(5)(b) because it is for the purpose of the Royal Markhor's propagation and survival. Second, the auction process qualifies for an exception under CMS Article III(5)(c) because it accommodates the needs of the Dione Ginsu, who are traditional subsistence users of the Royal Markhor.

II. The Astori Ban on the Importation of Royal Markhor Hunting Trophies Violates Conventional International Law.

The Astori ban is a quantitative restriction, and therefore, violates ARTA Article 11. Further, the Astori ban cannot be justified under ARTA Article 20. The ban impinges upon Indigenous subsistence rights, as described above, so it is arbitrary as applied to the Dione Ginsu and forbidden by the chapeau of Article 20. Even if not arbitrary, the ban is not eligible for a general exception. First, Astor cannot substantiate a public morals concern or prove that the ban is necessary. Second, the ban is not made effective in conjunction with equivalent restrictions on domestic trophy hunting, so the natural resources exception does not apply. CITES cannot excuse such a violation. Though CITES Article XIV(1)(a) permits stricter domestic regulations, Article XIV(2) and (3) require that they obey other treaty obligations.

Argument

I. The Trophy Hunting of the Royal Markhor Through the Auction Process Complies with Conventional International Law.

A. Under international law, the Rishmak has an obligation to safeguard the Dione Ginsu's right to auction Royal Markhor hunting permits.

Rishmak, as a party to ILO Convention 169 and ICESCR, has subsistence and sovereignty obligations to the Dione Ginsu Indigenous peoples on whose territory the country is situated.[1] Rishmak is also advised by UNDRIP, which forwards similar rights.[2]

1. Rishmak has a duty to protect the Dione Ginsu's right to manage natural resources.

Rishmak must respect the Dione Ginsu's right to manage the taking of the Royal Markhor. ILO Convention 169 Article 7 imposes a binding obligation on Rishmak to respect the rights of Indigenous communities "to decide their own priorities for ... the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development."[3] Similarly, Article 26 of UNDRIP includes a right for Indigenous people to "own, use, develop and control the lands, territories and resources that they possess."[4]

---

[1] R.6.

[2] *Id.*

[3] ILO Convention 169, art. 7, 76th ILC Session (27 June 1989).

[4] UNDRIP, art. 26, GA Res 61/295, UN GAOR, 61st Sess, Supp No 49, UN Doc A/RES/61/295 (13 September 2007).

Implicit in the right to "decide their own priorities" includes the right to transfer resource use rights to third parties. The contrary interpretation — that Indigenous peoples have the right to land and resources but not to their transfer — is contrary to both UNDRIP and ILO Convention 169, which obligate governments to respect the land tenure systems of Indigenous peoples.[5]

Finally, Rishmak is obligated to ensure, in accordance with Article 1 of ICESCR, that "in no case may a people be deprived of its own means of subsistence."[6] In practice, land and resource rights without transfer rights significantly hinders the accumulation of wealth, which deprives Indigenous communities of their means of subsistence.[7]

Thus, the Dione Ginsu have a sovereign right to transfer their own hunting rights to non-community members. Rishmak is obligated to protect this right. As a prior question, Astor's argument would require Rishmak to violate these obligations.

2. These treaty rights apply even though Astor is not a party.

Astor is not a party to ICESCR nor ILO Convention 169, and Astor abstained from voting for UNDRIP.[8] However, this has no bearing on Rishmak's own domestic obligations to the Dione Ginsu.

---

[5] Dippel, Christian, Dustin Frye, and Bryan Leonard. 2020. "Property Rights without Transfer Rights: A Study of Indian Land Allotment." Cambridge, MA: National Bureau of Economic Research.

[6] ICESCR, art. 1, adopted Dec. 16, 1966, 993 U.N.T.S. 3, entered into force Jan. 3, 1976.

[7] Dippel, supra note 5.

[8] R.6.

In the *Tasmanian Dam* case, the High Court of Australia interpreted the UNESCO World Heritage Convention to impose a direct obligation on Australia to comply with the international treaty provisions within its domestic policy.[9] So too, here. Rishmak's obligations to the Dione Ginsu under ICESCR and ILO Convention 169 are binding. Nothing about Rishmak's position requires similar duties to be imposed onto Astor, but Rishmak must fulfill its own obligations within its territory.

3. Rishmak's CMS obligations do not supersede its existing sovereignty and subsistence obligations to the Dione Ginsu.

There is no conflict between Rishmak's CMS obligations and its duties to the sovereignty and subsistence of the Dione Ginsu, given Rishmak does not violate the CMS. However, to the extent these obligations do conflict, Rishmak's obligations to the Dione Ginsu survive.

Multiple courts have held that it is impermissible to infringe on Indigenous rights for conservation objectives, as long as the Indigenous practice is sustainable. First, Canada's Supreme Court held in the 2014 case of *Tsilhqot'in Nation v. British Columbia* that "Aboriginal title confers the right to use and control the land and to reap the benefits flowing from it," as long as it does not "substantially deprive future generations of the benefit of the land"[10] Second, in the ACtHR case of *ACHPR v. Kenya*, Kenya attempted to justify stripping of Ogiek property rights

---

[9] *Commonwealth v. Tasmania* (1983) 158 CLR 1 (Austl.) ¶ 62.

[10] *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 SCR 257 ¶ 2, 74.

under a forest preservation objective. The Court held that the Ogiek "cannot entirely be associated" with the forest degradation, so their Indigenous rights must be preserved.[11]

In both cases, Indigenous subsistence rights were limited only by the capacity of the environment itself. And the hunting of ten Royal Markhor per year certainly does not "prevent future generations from enjoying" the species. Thus, even in light of the CMS, Rishmak is obliged to protect the Dione Ginsu's right to confer hunting permits through an auction process.

B. The taking of the Royal Markhor satisfies Article III(5)(b) of the CMS.

Article III(5)(b) allows states to conduct the taking of migratory species if that taking is "for the purpose of enhancing the propagation or survival of the affected species."[12] The plain meaning of Article III(5)(b), along with the context of the object and purpose of the CMS, both qualify any significant purpose (rather than a single primary purpose) as sufficient for an Article III(5)(b) exception. In this case, a significant purpose of Rishmak's auction process is the survival of the Royal Markhor.

1. The plain meaning of Article III(5)(b) does not limit the exception to a single primary purpose.

Astor argues that the text of Article III(5)(b) requires enhancing survival to be "the primary motivation," rather than "*a* purpose," of the taking.[13] But in common language, "the"

---

[11] *African Commission on Human and Peoples' Rights v. Republic of Kenya,* App. No. 006/2012, Judgment, Afr. Ct. H.P.R. (May 26, 2017) ¶ 130.

[12] CMS, art. III(5)(b), concluded June 23, 1979, 1651 U.N.T.S. 333, entered into force Nov. 1, 1983.

[13] R.11.

may refer to multiple nouns. Cambridge Dictionary notes that ""The" can mean each or every."[14] For instance, take the question "what is *the* color of a zebra?" By Astor's theory, either the answer is solely black, or it is solely white. Of course, the correct answer is both. The meaning of "the" is contextual, and it does not preclude references to multiple colors of a zebra, nor to multiple purposes of a hunt.

The language of the VCLT demonstrates this premise. Consistently, the VCLT refers to "the purpose"[15] or "the object and purpose"[16] of a given treaty. But in its own preamble, the VCLT imbues itself with three distinct "purposes": "[1] the maintenance of international peace and security, [2] the development of friendly relations and [3] the achievement of cooperation among nations."[17] It would be futile to select only one of these as VCLT's "primary" purpose. So too, here.

2. Article III(5)(b) should be read in light of the object and purpose of effective conservation.

Analysis of the CMS is not limited to the plain meaning of the text. VCLT Article 31(1) establishes that the terms of a treaty must be interpreted "in light of its object and purpose."[18]

---

[14] Cambridge Dictionary, *The*, https://dictionary.cambridge.org/us/dictionary/english/the (last visited Nov. 13, 2024).

[15] *See*, e.g., VCLT, art. 31(2), adopted May 23, 1969, 1155 U.N.T.S. 331, entered into force Jan. 27, 1980.

[16] *See*, e.g., VCLT, art. 18; 19(c); 20(2); 33(4); 41(b)(ii); 58(b)(ii).

[17] VCLT, preamble.

[18] VCLT, art. 31(1).

The object and purpose of the CMS is "effective migratory species conservation."[19] This comes from language in the preamble of the CMS, which indicates that "states are and must be the protectors of the migratory species of wild animals."[20] CMS Article I(b) defines "conservation status" as measured by the "long-term distribution and abundance" of a migratory species.[21] This contextualizes Article III(5)(b), as actions which increase the long-term numerical abundance of the Royal Markhor are geared towards the objective of the CMS.

To be sure, a single dollar dedicated to vaccine development would not satisfy Article III(5)(b). The preamble of the CMS includes two qualifiers: (1) that management of migratory species should be "effective," and (2) that action of states should be "concerted."[22] In this context, Article III(5)(b) requires that the taking is for "the purpose of [effectively] enhancing the propagation or survival" of the Royal Markhor.

3. The purpose of Rishmak's auction process is the survival of the Royal Markhor, which satisfies Article III(5)(b).

As argued above, Article III(5)(b) allows an exception when a purpose is to effectively enhance the propagation and survival of an endangered species. The auction process does just that.

---

[19] CMS, 17th Meeting of the Scientific Council, UNEP/CMS/ScC17/Inf.12, 21 September 2011.

[20] CMS, preamble.

[21] CMS, art. I(b).

[22] CMS, preamble.

a. The intent of the auction process is to protect the survival of the species.

Cambridge Dictionary defines "purpose" as "an intention or aim; a reason for doing something or for allowing something to happen."[23] The Dione Ginsu actively chose to allocate 15% of funds from the taking of the Royal Markhor for vaccine development and workshops, which is a demonstrable purpose. This is roughly USD $225,000 per year,[24] which demonstrates a significant intent to protect the survival of the Royal Markhor.

b. The effect of the auction process is to protect the survival of the species.

In the *Whaling* case, the ICJ was tasked with interpreting whether Japan's whaling program was "for purposes of" scientific research.[25] The Court used the following test: whether the "programme's design and implementation are reasonable in relation to its stated scientific objectives."[26] Similar analysis is appropriate here.

Japan's program was ultimately found to violate the ICRW because Japan killed 551 minke whales in 2007, which was deemed "far more extensive" than necessary.[27] In contrast, the

---

[23] Cambridge Dictionary, *Purpose*, https://dictionary.cambridge.org/us/dictionary/english/purpose (last visited Nov. 13, 2024).

[24] R.9.

[25] *Whaling in the Antarctic (Austl. v. Japan: N.Z. intervening)*, Judgment, 2014 I.C.J. 226 (Mar. 31), ¶ 87.

[26] *Id.* ¶ 88.

[27] *Id.* ¶ 224.

Dione Ginsu hunt no more than 10 Royal Markhor per year. And on balance, the taking of the Royal Markhor produces significantly more Royal Markhor than would have otherwise existed. *Mycoplasma capricolum* has a mortality rate of 10-30% and an extremely high risk of infection. Multiple NIH studies of the disease in goats have found that the transmission rate is "unbelievably high"[28] and that the morbidity rate can reach 80-100%.[29] This means if just one member of a herd gets infected, close to 100% of the herd will then catch the infection, and up to 30% of the herd will die.

While the ICJ held against Japan's overall whaling program, it also held that Article VIII of the ICRW permitted Japan to sell whale meat in order to fund scientific research.[30] This case is analogous. Hundreds of thousands of dollars in vaccine development and workshops in proper herding aids the survival of far more than 10 Royal Markhor per year.

4. Rishmak's Article III(5)(b) exception is precise and limited in scope.

Finally, to qualify under Article 3.5, an exception must be "precise as to content and limited in space and time."[31] Rishmak allows no more than 10 adult male Royal Markhors to be

---

[28] Mostafa Abdollahi *et. al., First Identification of Mycoplasma Capricolum Subspecies Capripneumoniae in Goats in Iran,* 14 *Vet. Res. Forum* 109 (2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10003596/.

[29] Mohd Iqbal Yatoo *et. al., Contagious Caprine Pleuropneumonia – a Comprehensive Review,* 39 *Vet. Q.* 1 (2019), https://pmc.ncbi.nlm.nih.gov/articles/PMC6830973/.

[30] *Whaling,* supra note 25, ¶ 94.

[31] CMS, art. III(5).

hunted each year within the Rishmak's territorial borders.[32] This satisfies each requirement. Pursuant to Article III(5)(b), Rishmak complies with the CMS.

C. Independently, the taking of the Royal Markhor satisfies Article III(5)(c) of the CMS.

Article III(5)(c) allows states to conduct the taking of migratory species if that taking is "to accommodate the needs of traditional subsistence users of such species."[33] However, the plain meaning, object, and purpose of Article III(5)(c) all leave room for non-Indigenous people to conduct the taking. Here, the taking of the Royal Markhor provides significant funds to accommodate the subsistence needs of the Dione Ginsu.

1. The plain meaning of Article III(5)(c) does not set restrictions on who conducts the taking or what specific needs are being accommodated.

Astor argues that the text of Article III(5)(c) requires (1) that the Dione Ginsu themselves conduct the taking, and (2) that the Dione Ginsu must use the Royal Markhor for traditional needs (i.e., religion and culture).[34] Neither of these are substantiated by the text of the CMS.

First, the Dione Ginsu are traditional subsistence users of the Royal Markhor. They have "had a relationship with the Royal Markhor since time immemorial."[35] The details of this relationship have shifted, from food and ceremonial use to housing and medicinal use. But it is an uncontroversial principle of international law that subsistence includes "food, clothing,

---

[32] R.8.

[33] CMS, art. III(5)(c).

[34] R.11.

[35] R.8.

housing and medical care."[36] The fundamental nature of this relationship — that the Dione Ginsu depend on the Royal Markhor for subsistence — has not changed at all.

Recall that the text of Article III(5)(c) provides for "the needs of traditional subsistence users of such species."[37] As argued above, the Dione Ginsu are the "traditional subsistence users" of the Royal Markhor. In other words, Article III(5)(c) protects "the needs of [the Dione Ginsu]." There is no limitation on who conducts the taking. There is no limitation on a specific subset of needs. There is no requirement that religion or culture be in any way linked. This is purely a subsistence exception, that protects the subsistence needs of the Dione Ginsu, whatever those specific needs may be.

This case is thus distinct from the ICRW, to which Astor points. The ICRW intentionally distinguishes "commercial whaling" and "aboriginal subsistence whaling,"[38] the latter of which "does not seek to maximise catches or profit."[39] There, "aboriginal" describes the act of whaling itself, which denotes a specific traditional method of whaling conducted by Indigenous people. Further, the stated purpose of that ICRW exception explicitly emphasizes "cultural" practices in its definition of the aboriginal whaling method.[40] CMS Article III(5)(c) is distinct. Cultural

---

[36] UDHR, art. 25(1), G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948).

[37] CMS, art. III(5)(c).

[38] ICRW, Schedule, art. 13, Dec. 2, 1946, 62 Stat. 1716, 161 U.N.T.S. 72.

[39] International Whaling Commission, "Aboriginal Subsistence Whaling," https://iwc.int/management-and-conservation/whaling/aboriginal (last visited Nov. 13, 2024).

[40] *Id*.

Indigenous hunting practices are not mentioned anywhere in the text. Unlike the ICRW, the CMS does not restrict which party conducts the taking.

A more analogous treaty is the IAC. The subsistence exception in the IAC provides that the taking of sea turtles is allowed "to satisfy economic subsistence needs of traditional communities."[41] In that context, a binding IAC resolution granted a subsistence exception to the Ostional beach community in Costa Rica.[42] Ostional locals are rarely the primary consumers of the eggs—rather, the sale of eggs is crucial to their livelihoods.[43]

So too, here. The IAC's language of "economic subsistence needs of traditional communities" is analogous to the CMS "needs of traditional subsistence users." Unlike in the ICRW, neither the IAC nor the CMS qualifies the term "needs" with a cultural requirement. As the benefits of sea turtle egg sale to the Ostional community corroborate the objectives of the IAC, so should the economic subsistence of the Dione Ginsu align with the vision of the CMS.

2. Article III(5)(c) should be read in light of the object and purpose of Indigenous survival and poverty alleviation.

As provided above, the broad objective of the CMS is to effectively protect endangered species. More specifically, the purpose of Article III(5)(c) is to balance conservation with

---

[41] IAC, art. (4)(3)(a), opened for signature Dec. 1, 1996, O.A.S.T.S. No. 70, 2040 U.N.T.S. 243, entered into force May 2, 2001.

[42] IAC, 10th Conference of the Parties, Resolution CIT-COP10-2022-R5 (2022).

[43] Campbell, L. M., & Vainio-Mattila, A., "Use them or lose them? Conservation and the consumptive use of marine turtle eggs at Ostional, Costa Rica," Environmental Conservation 30, no. 3 (2003): 305–319, https://doi.org/10.1017/S0376892903000314.

Indigenous subsistence needs. Instruments of the CMS provide context for Indigenous subsistence as including poverty alleviation through trophy hunting auction revenue.

a. The CBNRM framework provides context for Article III(5)(c).

Article 31(3)(a) of the VCLT establishes that the context of a treaty includes "agreement between the parties regarding the interpretation of the treaty or the application of its provisions."[44] COP10 of the CMS explicitly forwarded the CBNRM model as the optimal framework for balancing the dual imperatives of conservation and localized poverty alleviation.[45] The parties prescribed the following principles to balance Indigenous subsistence with conservation:

(1) The right to manage local natural resources, including the exclusion of other users

(2) The right to retain and distribute all income and benefits from their management.[46]

This contextualizes "needs" and "subsistence" in Article III(5)(c). Traditional subsistence use is not limited to traditional ritual practices—it involves indigenous sovereignty, including an auction process that allows other parties to conduct the taking. And "needs" is contextualized by the objective of Indigenous poverty alleviation endorsed by the framers of the CMS.

---

[44] VCLT, art. 31(3)(a).

[45] CMS, "The Relevance of Community-Based Natural Resource Management (CBNRM) for Conservation and Sustainable Use," accessed November 11, 2024, https://www.cms.int/en/document/relevance-community-based-natural-resource-management-cbnrm-conservation-and-sustainable.

[46] *Id* at 6.

b. State practice pursuant to the CBNRM model provides further context for Article III(5)(c).

Article 31(3)(b) of the VCLT further establishes that the context of a treaty includes "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."[47] Consistent with the CMS, this broad framework for indigenous sovereignty is uncontested in well-established CBNRMs around the world. For instance, the Markhor trophy hunting systems in Pakistan and Tajikistan allow foreigners to win hunting permits in community-organized auctions.[48] Both systems have invested auction profits into Indigenous communities for poverty alleviation, while simultaneously increasing the population of Markhor species by nearly 150% in four years.[49]

As prescribed by COP10, the Pakistan and Tajikistan models balance conservation with a high level of Indigenous sovereignty. International courts have upheld a similar balance. For instance, the IACtHR in *Saramaka People v. Suriname* held that the "extraction of natural resources that are necessary for the survival of the Saramaka people" warranted logging concessions, given the Saramka cut wood for subsistence but were also "careful not to destroy

---

[47] VCLT, art. 31(3)(b).

[48] Adhikari, L., et al. (2021). Community-based trophy hunting programs secure biodiversity and livelihoods: Learnings from Asia's high mountain communities and landscapes. Environmental Challenges, 4(100175), 100175. https://doi.org/10.1016/j.envc.2021.100175

[49] *Id.*

the environment."[50] That same balance — of resource extraction, conservation, and Indigenous subsistence — undergirds the application of Article III(5)(c) in this case.

3. The taking of the Royal Markhor provides for the food, housing, and medical needs of the Dione Ginsu, which satisfies Article III(5)(c).

As provided above, Article III(5)(c) allows for taking to accommodate the needs of the Dione Ginsu, who have the highest poverty rates of any community within Rishmak's low-income economy.[51] Housing, medicine, and food are all "needs" by any sense of the term. 75% of profits from the hunting of the Royal Markhor, totaling around USD $1,125,000 per year, provides for these needs.[52] This is a significant and meaningful contribution towards the subsistence of an Indigenous community, and it falls within Article III(5)(c). The auction process is aligned with the CBNRM framework, which emphasizes Indigenous poverty alleviation. As such, Rishmak meets the Article III(5)(c) exception.

4. Rishmak's Article III(5)(c) exception is precise and limited in scope.

As previously argued, Rishmak allows no more than 10 adult male Royal Markhors to be hunted each year within the Rishmak's territorial borders, which fulfills the final requirement to attain an Article III(5) exception.[53] Pursuant to Article III(5)(c), Rishmak complies with the CMS.

---

[50] *Saramaka People v. Suriname*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007) ¶ 144, 145.

[51] R.6.

[52] R.9.

[53] R.8.

II. The Astori Ban on the Importation of Royal Markhor Hunting Trophies Violates International Law.

A. The Astori Ban is an Impermissible Quantitative Restrictions in Violation of ARTA.

ARTA was established as an instrument to facilitate the "harmonious development and expansion of regional trade" between Astor and Rishmak "in a manner that is consistent with environmental protection and conservation."[54] Actions pursuant to these objectives should be done cooperatively.[55] The one-sided Astori ban does not accomplish those objectives, and it constitutes a breach of Astor's treaty obligations under ARTA.

1. The plain meaning of ARTA must be interpreted in line with GATT and WTO decisions.

Article 31 of the VCLT requires that "a treaty shall be interpreted in ... accordance with the ordinary meaning to be given to the terms of the treaty in their context."[56] The terms of the ARTA are identical to that of relevant provisions of GATT 1994: ARTA Article 11 is identical to GATT Article XI(1), and ARTA Article 20(a) and (g) are identical to that of GATT Article XX(a) and (g).[57] The terms of the treaties are the same, so it follows that their ordinary meaning and interpretation are the same.

---

[54] R.7.

[55] *Id.*

[56] VCLT, art. 31.

[57] GATT, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Article XI, XX, 1867 U.N.T.S. 187, 33 I.L.M. 1153 (1994); R.7,8.

ARTA Article 25 also states that "decisions by GATT and WTO panels or appellate bodies shall be considered subsidiary sources of law with respect to the interpretation of terms of the Agreement."[58] Additionally, the ICJ recognizes international customs, international conventions, and general principles of law to be sources of international law.[59] The WTO and its decisions are a direct reflection of all three elements.[60] Thus, an interpretation of the ARTA in-line with VCLT standards must afford full respect to GATT and WTO decisions.

2. ARTA Article 11 Explicitly Prohibits Quantitative Restrictions like the Astori Ban.

ARTA Article 11 proscribes prohibitions or restrictions other than duties, taxes, or similar charges on the importation of any product from the territory of any party.[61] As conceded by the Government of Astor, the Astori trophy hunting ban is one such quantitative restriction.[62] Barring an exception under ARTA Article 20, ARTA Article 11 expressly forbids the Astori ban.

3. ARTA Article 20 does not permit the Astori Ban.

The chapeau of ARTA Article 20 states that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures, so long as such

---

[58] R.8.

[59] Statute of the ICJ, art. 38, June 26, 1945, 59 Stat. 1031, T.S. No. 993.

[60] P. Lamy, *The Place of the WTO and its Law in the International Legal Order*, 17 European Journal of International Law 969 (2006), https://academic.oup.com/ejil/article/17/5/969/2756295\.

[61] R.7.

[62] R.13.

measures are not arbitrary and do not constitute a disguised restriction on international trade."[63] The ICJ defines arbitrary in the *ELSI* case as "a willful disregard of due process of law, an act which shocks, or at least surprises, a sense of juridical propriety."[64] The result of the Astori ban is to deprive the Dione Ginsu of their right to Indigenous subsistence.[65] Therefore, the Astori ban is arbitrary and directly forbidden under ARTA Article 20.

Even if not arbitrary, the Astori ban does not qualify for a general exception under ARTA Article 20(a) or (g).

a. The Astori does not fulfill the requirements for a public morals exception under ARTA Article 20(a).

ARTA Article 20(a) permits quantitative restrictions in violation of Article 11 if such measures are "necessary to protect public morals."[66] The Astori ban is neither necessary for nor protective of public morals.

---

[63] R.8.

[64] *Elettronica Sicula S.p.A. (ELSI) (U.S. v. Italy)*, Judgment, 1989 I.C.J. 15 (July 20).

[65] R.10.

[66] R.8.

i. There is insufficient evidence to substantiate a public morals argument.

Public morals denote "standards of right and wrong conduct maintained by or on behalf of a nation or country."[67] In the WTO Panel Report in *Gambling*, the Panel looked at domestic regulations, regional practice, and historical evidence for broad international agreement to substantiate a public morals argument.[68] The Panel in *Gambling* found that at least two other states had restricted gambling on comparable moral grounds, eleven countries were developing frameworks, and five countries had restricted the practice entirely.[69] No similar showing can be made for a blanket trophy hunting ban like the Astori ban.

No country has ever passed a blanket ban on trophy hunting. In fact, a blanket ban was rejected in both the UK and France.[70] Five countries have trophy hunting bans, none of them a

---

[67] Appellate Body Report, United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, ¶296, WTO Doc. WT/DS285/AB/R, at 99 (adopted Apr. 20, 2005). Hereinafter *Gambling Report*.

[68] Panel Report, United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services, ¶¶ 6.465, 6.473 n.914, WTO Doc. WT/DS285/R (Nov. 10, 2004). Hereinafter *Gambling Panel.*

[69] *Id.* at 6.473 n.914.

[70] Resource Africa, *Proposed French hunting import and export ban defeated, for now*, RESOURCE AFRICA (2024), https://www.resourceafrica.net/french-hunting-and-import-ban-defeated/;

blanket ban.[71] Trophy hunting bans have been proposed but rejected in the UK, Italy, and the US.[72] The US and Australia only have restrictions on trophy hunting imports.[73] The earliest trophy hunting ban was a recent 2015 French ban on only lions.[74] Further, domestic regulations, regional practice, and historical evidence do not demonstrate broad international agreement. Instead, 85 countries remain in the International Council for Game and Wildlife Conservation (CIC), which promotes hunter-led conservation and sustainable use[75] — not blanket bans.

The WTO has recognized that states "should be given some scope to define and apply for themselves the concept ... of 'public morals' ... in their respective territories, according to their

---

Elena Ares & Richard Kelly, *Hunting Trophies (Import Prohibition) Bill 2023-24*, HOUSE OF COMMONS LIBRARY (2024), https://commonslibrary.parliament.uk/research-briefings/cbp-9991/.

[71] *Ending Trophy Hunting Imports - Humane Society International (HSI)*, HUMANE SOCIETY INTERNATIONAL (HSI) (2024), https://hsi.org.au/international-wildlife/ending-trophy-hunting-imports.

[72] *Id.*; Center for Biological Diversity, *U.S. Tightens African Elephant Import Rules, Stops Short of Banning Trade*, CENTER FOR BIOLOGICAL DIVERSITY (2024).

[73] *Id.*

[74] Kristin Stone, *HSI's campaign against trophy hunting in Europe*, HUMANE SOCIETY INTERNATIONAL (2022), https://www.hsi.org/news-resources/hsis-campaign-against-trophy-hunting-in-europe/.

[75] Membership - International Council for Game and Wildlife Conservation (CIC), (2024), https://www.cic-wildlife.org/the-cic/membership/#.

own systems and scales of values."[76] However, a reasonable interpretation still requires states to provide substantial evidence of historical practice, legislation, and public support.[77] Astor lacks such evidence. Despite passing an import ban on hunting trophies, a domestic ban failed to receive majority votes in either chamber of the national legislature of Astor.[78] The winning bidders at the auctions held by Dione Ginsu have been almost exclusively Astori nationals since the start in 2016.[79] Like the CIC, Responsible Hunters in Astor (RHINA) is a prominent Astori organization supporting sustainable hunting practices.[80] Astor cannot make a definitive showing of public morals with historical practice or legislation.

The Astori polls fail to meet the level of specificity required by the WTO to single-handedly substantiate a public morals argument. In the WTO Appellate Body's decision in *Seals*, the WTO required that surveys be specific 1) wording and 2) applicability.[81] First, in *Seals*, the WTO held it was insufficient that polls referred to "livelihood hunting" and "animals" rather

---

[76] Gambling Panel, ¶ 6.465.

[77] Jeremy C. Marwell. *Trade and Morality: The WTO Public Morals Exception After Gambling.* 81 N.Y.U. L. Rev. 2 (2006).

[78] R.13.

[79] R.9.

[80] R.12.

[81] Panel Report, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, ¶¶ 7.345 n.573, 7.410 n.676, WTO Doc. WT/DS400/R (Nov. 25, 2013). Hereinafter *Seals Panel.*

than "commercial and Indigenous hunting," which was at issue.[82] Only one of the four Astori polls mentioned imports and refers to "dead animals," not hunting, Royal Markhor, or import bans.[83] Second, the WTO regards polls for which the Panel was not given survey information — such as the target audience and formulation of survey questions — to be of limited probative value.[84] The only information given regarding the Astori survey was that it was weighted to be nationally representative.[85] That is insufficient. Substantial diversity in surveys, even in those weighted to be representative, can lead to different survey outcomes.[86] Nonresponse bias can also meaningfully distort parameters of interest.[87] By WTO standards, the Astori poll is inadequately specific to provide evidence of a public morals consensus.

The WTO requires the party who is under scrutiny to provide evidence in support of their general exceptions claims.[88] Astor has failed to meet that burden. Therefore, the public morals exception under ARTA Article 20(a) does not apply.

---

[82] *Id.*

[83] R.13.

[84] *Seals Panel*. ¶ 7.410 n.676

[85] R.12.

[86] Carrie Blazina, *Does public opinion polling about issues still work?*, PEW RESEARCH CENTER (2022), https://www.pewresearch.org/short-reads/2022/09/21/does-public-opinion-polling-about-issues-still-work/.

[87] R Michael Alvarez & Carla VanBeselaere, *Web-Based Survey*, ELSEVIER EBOOKS 955 (2005), https://www.sciencedirect.com/topics/nursing-and-health-professions/nonresponse-bias.

[88] *Gambling Report*. ¶ 310.

ii. Even if there is a public moral concern, Astor's ban is not necessary not sufficiently narrow.

The WTO has established in *Korea – Beef* [89] and its subsequent line of cases[90] a balancing test used in evaluation of whether a measure is truly "necessary" to protect public morals. In *Gambling*, the WTO Panel evaluated the vitality of interests protected, the overall effect on trade, and the extent to which the measure contributes to the goal.[91] As established in the prior section, the public moral concern is of limited vitality and consistency in Astor. The measure is also a significant disruption to Astor-Rishmak trade that deprives the Dione Ginsu of subsistence.[92]

What remains is the extent to which the Astori ban contributes to its goal. The stated goals of the Astor Society for the Humane Treatment of Animals (ASHTA) include preventing cruel canned hunts and protecting the "delicate balance of our natural ecosystems."[93] Astor has

---

[89] Appellate Body Report, Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef, ¶162-164, WTO Doc. WT/DS161/AB/R, at 50 (adopted Apr. 20, 2005).

[90] See Appellate Body Report, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products, WTO Doc. WT/D363/AB/R (adopted Dec. 21, 2009); *Seals Panel*.

[91] *Gambling Panel*. ¶ 6.488.

[92] R.14.

[93] R.12.

mistakenly conflated trophy hunting with canned hunting or cruel hunting practices,[94] which are not at issue here. Furthermore, the IUCN finds no evidence that trophy hunting bans would improve conservation outcomes.[95] Rather, well-managed trophy hunting programs "promote population recovery, protection, and maintenance of habitat," and it is a misconception that trophy hunting has driven declines in local species declines.[96] In fact, both the Scientific Authority of Rishmak and Astor, as well as the CITES Secretariat,[97] have concluded that the hunting of a mere ten Royal Markhor a year is not detrimental to their survival.[98] And conversely, as noted by the IUCN, trophy hunting import bans reduce revenue for conservation programs.[99] At best, the measure only minimally contributes to conservation goals.

In the Appellate Body Report in *Gambling*, the WTO also evaluated whether measures more aligned with WTO principles were reasonably available.[100] In *Seals*, the WTO explained that measures cannot be more trade restrictive than required to fulfill a legitimate goal.[101] A blanket ban is far more restrictive than is required to prevent animal cruelty and promote

---

[94] IUCN, *Informing Decisions on Trophy Hunting*, Briefing Paper (2016), at 3. Hereinafter IUCN Paper.

[95] IUCN Paper, at 9.

[96] *Id.*

[97] CITES, art. XIII, Mar. 3, 1973, 27 U.S.T. 1087, 993 U.N.T.S. 243.,

[98] R.13.

[99] IUCN Paper, at 5.

[100] *Gambling Report.* ¶ 166.

[101] *Seals Panel.* ¶ 7.2.

conservation.[102] Alternative methods include requirements for exporting countries and stricter conservation guidelines.[103] The Astori ban is thus not "necessary" under ARTA Article 20(a).

b. The ban is not eligible for a natural resources exception under ARTA Article 20(g).

ARTA Article 20(g) permits "measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production."[104] As established above, Astor has no blanket prohibition on domestic trophy hunting.[105] Therefore, the exception outlined in ARTA Article 20(g) does not apply to Astor.

B. CITES Does Not Authorize The Astori Ban.

Astor and Rishmak are both parties to CITES, under which the Royal Markhor is classified as Appendix I.[106] CITES Article 1 defines Appendix I species as those whose existence may be threatened by trade.[107] Appendix I species are subject to strict regulation and their trade

---

[102] R.12-13.

[103] Service Strengthens Measures to Enhance Conservation and Protections for African Elephants | U.S. Fish & Wildlife Service, FWS.GOV (2024), https://www.fws.gov/press-release/2024-03/service-strengthens-measures-enhance-conservation-and-protections-african.

[104] R.8.

[105] R.13.

[106] R.6.

[107] CITES, art. I.

may only be authorized by the granting of permits after evaluations by the Scientific Authorities of both the importing and exporting states.[108]

1. CITES Article XIV(1)(a) does not permit Astor to violate ARTA.

CITES Article XIV(1)(a) states that the provisions of the convention do not prevent adoption of "stricter domestic measures regarding the conditions for trade, taking, possession or transport ... or the complete prohibition thereof" of Appendix I species.[109] Though the article permits stricter domestic regulations, it does not provide justification for states to pass regulations that are in violation of their other treaty obligations.

a. VCLT Article 30 requires Astor comply with CITES only to the extent that it is compatible with ARTA.

VCLT Article 30 specifies that "when all the parties to the earlier treaty are also parties to the later treaty but the earlier treaty is not terminated or suspended ... the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty."[110] CITES was passed in 1973.[111] ARTA was ratified in 2003.[112] Therefore, CITES only applies to the extent that it is compatible with ARTA. The Astori ban is an impermissible violation of the ARTA, so CITES XIV(a) does not permit the Astori ban.

---

[108] CITES, art. I and III.

[109] CITES, art. XIV.

[110] VCLT, art. 30.

[111] CITES.

[112] R.7.

2. CITES Article XIV(2) and (3) oblige Astor to uphold domestic obligations required by ARTA.

CITES Article XIV(2) states that "the provisions of the present Convention shall in no way affect the provisions of any domestic measures or the obligations of Parties deriving from any treaty, convention, or international agreement relating to other aspects of trade, taking, possession or transport" of species regulated by the Convention."[113] Article XIV(3) states that "the provisions of the present Convention shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement."[114]

ARTA is a regional trade agreement that governs the bilateral trade between Astor and Rishmak, including the trade of the Royal Markhor.[115] Thus, CITES expressly rejects Astor's contention that the ban is excused under the Convention.

---

[113] CITES, art. XIV.

[114] *Id.*

[115] R.7.

Conclusion

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

(1) The trophy hunting of the Royal Markhor through the auction process, by hunters who are not Dione Ginsu, complies with conventional international law.

(2) Astor's ban on the importation of Royal Markhor hunting trophies violates conventional international law.

Respectfully submitted,

AGENTS FOR RESPONDENT