

INTERNATIONAL COURT OF JUSTICE

THE PEACE PALACE
THE HAGUE, NETHERLANDS



**THE CASE CONCERNING
QUESTIONS RELATING TO SUBSISTENCE USE AND TROPHY HUNTING**

**GOVERNMENT OF ASTOR
(APPLICANT)**

v.

**GOVERNMENT OF RISKMAK
(RESPONDENT)**

MEMORIAL FOR THE APPLICANT

2024

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STATEMENT OF JURISDICTION

The Government of Astor (Astor) and the Government of Rishmak (Rishmak) have submitted by Special Agreement their differences concerning questions relating to subsistence use and trophy hunting 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.

QUESTIONS PRESENTED

I.

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

II.

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

STATEMENT OF FACTS

Astor and Rishmak are neighboring sovereign States in Central Asia, with the indigenous Dione Ginsu community residing in Rishmak (R.2,3). They are the only range states of the critically endangered Royal Markhor, a large wild goat listed under Convention on International Trade in Endangered Species (CITES), and the Convention on Migratory Species (CMS) Appendix I (R.1,7,8).

While both States strictly prohibit the taking of Royal Markhor, Dione Ginsu was granted an exception for the cultural significance of Royal Markhor's horns (R.14). However, when it was listed under CMS Appendix I, Rishmak instituted a lottery system allowing Dione Ginsu community to hunt only ten Royal Markhors annually (R.15). Since 2016, however, the community began not to use the horn for their traditions when they started to arbitrarily auction their hunting privileges to foreign nationals (R.16).

Meanwhile, the death of Cecil the Lion in Zimbabwe ignited global controversy, causing the Astor Society for the Humane Treatment of Animals (ASHTA) to launch a campaign opposing the importation of animal trophies (R.25). A public survey in Astor revealed nearly unanimous opposition to trophy hunting of internationally protected animals (R.29). In response, Astor adopted the importation prohibition of hunting trophies (R.30).

Rishmak argued that the ban constituted a prohibited quantitative restriction under the Astor-Rishmak Trade Agreement (ARTA) and hindered the Royal Markhor conservation by depriving the Dione Ginsu community's finances (R.32). Astor maintained that the auctions no longer served the original cultural purpose for granting the hunting exception, and the import ban on Royal Markhor trophies complies with ARTA and international law. After failed negotiations, both States agreed to submit the dispute to the Court (R.35).

SUMMARY OF ARGUMENTS

Rishmak violated international law by failing to protect the endangered Royal Markhor, listed under CMS and CITES Appendix I. While Dione Ginsu community was granted an exception to hunt Royal Markhor for cultural purposes, the community ceased practicing its rituals and auctioned its hunting privileges to foreign nationals, turning subsistence hunting into commercial exploitation. This violated CMS Article III, which allows taking only for traditional subsistence use, or conservation purposes among others.

Astor, in contrast, acted in compliance with international law and ARTA by prohibiting importation of Royal Markhor hunting trophies. Although the measure constitutes a quantitative restriction under ARTA Article 11, it is justified under Article 20(a) and 20(g) as (1) it protects public morals, demonstrated by overwhelming national opposition to trophy hunting, and (2) it aligns with domestic measures strictly prohibiting Royal Markhor hunting.

Astor's action reflects CITES principles, emphasizing state sovereignty to enact stricter regulations for species conservation. In compliance with international community's consensus regarding taking and trading dead animals' parts over economic considerations, Astor's action is justified as it upholds international conservation goals and ethical standards.

ARGUMENTS

I. THE TROPHY HUNTING OF ROYAL MARKHOR BY FOREIGNERS THROUGH THE AUCTION PROCESS VIOLATES CONVENTIONAL INTERNATIONAL LAW.

A. RISHMAK HAS ABSOLUTE RESPONSIBILITY TO PROTECT ROYAL MARKHOR.

International efforts to protect endangered species began with the 1972 Stockholm Conference on the Human Environment. Afterwards, participants adopted various principles for sound environmental management, including CMS.

CMS is the only global convention dedicated to the conservation of migratory species, their habitats, and migration routes. “Migratory species” refers to species that cyclically and predictably cross international borders¹, and States that exercise jurisdiction over any part of the migratory species’ range are designated as range states.² Recognizing the importance of conserving migratory species, CMS obligates range states to take appropriate and feasible actions to protect these species and their habitat, especially for those listed in the Appendixes.³ Specifically, Appendix I facilitates “concerted action” for the conservation of the listed species by range states.⁴ CMS requires parties to ensure *strict protections* under national laws, conserve habitats, and mitigate migration barriers, among other threats.⁵

¹ Convention on the Conservation of Migratory Species of Wild Animals art. I ¶ 1 (a), June 23, 1979, 1651 UNTS 333 [hereinafter *CMS*].

² *Id.* art. I ¶ 1 (h).

³ *Id.* art. II ¶ 1.

⁴ *Id.* art. III ¶ 1 - 2

⁵ Tanaya Rosen, *Policy Brief #33: Protecting Endangered Species*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT 5 (2022), https://www.iisd.org/system/files/2022-02/still-one-earth-endangered-species_0.pdf.

CMS mandates strict protection through Article III, paragraph 5, prohibiting the taking of Appendix I species, and exceptions apply *only if* taking is (b) to enhance the propagation or survival of the affected species; (c) to accommodate the needs of traditional subsistence users of such species; *provided* that such exceptions are precise as to content and limited in space and time.⁶ The use of “only if” underscores the restrictive nature of these exceptions⁷ to be exhaustive and complete, while “provided” creates condition precedent ensuring that the four exceptions are precisely limited in scope and do not harm the species involved.⁸ The languages of the relevant CMS text must be read narrowly and restrictively. Therefore, Astor and Riskmak, being the parties of CMS and range states of Royal Markhor listed in Appendix I, are subject to strict exceptions and narrow application of Article III, paragraph 5.

Accordingly, the International Court of Justice must find that (1) the taking of Royal Markhor was not for enhancing its survival, rendering CMS Article III, paragraph 5(b) inapplicable; and (2) the taking of Royal Markhor by foreign nationals does not accommodate the needs of traditional subsistence users, making CMS Article III, paragraph 5(c) inapplicable.

B. THE PURPOSE OF “TAKING” MUST BE FOR ENHANCING THE SURVIVAL OF THE AFFECTED SPECIES.

Rishmak has failed its duty to protect Royal Markhor for two reasons: first, the killing of Royal Markhor by foreign nationals constitutes trophy hunting, which does not contribute to controlling the population of endangered species; and second, the primary purpose in auctioning was not to enhance the survival of Royal Markhor.

⁶ CMS, *supra* note 1, art. III ¶ 5.

⁷ *Wheeler v State of South Australia (SA)* [2012] SASFC 111 (Austl.).

⁸ *Hart v. Halifax (City)*, [1902] 35 N.S.R. 1 (Can. S.A.Sup. Ct.).

CMS Article III, paragraph 5(b) permits taking *only if* it serves “the” purpose of enhancing the propagation or survival of the affected species. “The” is a definite article, signifying specificity.⁹ Therefore, the exceptions in Article III, paragraph 5(b) must be narrowly construed to align with the treaty’s conservation goals.

a. Taking of Royal Markhor by foreign nationals was not for conservation purpose.

1. Taking itself generally does not preserve the endangered species.

Trophy hunting is fundamentally different from the “taking” under CMS. CMS defines “taking” as “taking, hunting, fishing, capturing, ... or attempting to engage in any such conduct.”¹⁰ In contrast, trophy hunting is an unethical industry built on cruelty of killing wildlife *for entertainment* and obtaining the animal’s body parts as trophies.¹¹ This practice directly undermines conservation efforts by exacerbating both direct and indirect threats to already imperiled species.¹² Trophy hunters often pay large money to kill *rare or charismatic* animals for sports; and over the past decade, 1.7 million animal “trophies” were taken home by hunters worldwide, wherein more than 200,000 of those were endangered animals.¹³ Moreover, according to the UK All-Party Parliamentary Group on Banning Trophy Hunting, trophy hunting is distinct from legitimate wildlife population control or management, which should be conducted.¹⁴

For instance, lions are widely targeted by hunters, both legally and illegally; and Dr. Jim Keen, a former U.S. Department of Agriculture scientist, has demonstrated how trophy hunting disrupts

⁹ *Using Articles*, PURDUE ONLINE WRITING LAB, https://owl.purdue.edu/owl/general_writing/grammar/using_articles.html.

¹⁰ CMS, *supra* note 1, at art. I ¶ 1 (i).

¹¹ *Trophy Hunting*, HUMANE SOCIETY INTERNATIONAL, <https://www.hsi.org/issues/trophy-hunting/>.

¹² *Id.*

¹³ *It's Time to End Trophy Hunting*, BAN TROPHY HUNTING, <https://bantrophyhunting.org/about-us/>.

¹⁴ *Id.*

the social structure of lion communities.¹⁵ His study indicates that targeting animals with relatively low reproductive output and low natural mortality rates can significantly affect the evolution of adult characteristics, particularly in prime-aged adults under sexual selection because hunting mortality is often substantially higher than natural mortality for adult game animals.¹⁶

For instance, an analysis on intense trophy hunting for 23 years revealed that selective hunting led to a reduction in horn length among bighorn sheep on Ram Mountain in Alberta.¹⁷ Over 43 years, the average horn size decreased by more than 20% due to hunters typically targeting rams with big horns.¹⁸ The research also proved that recovery of horn length through natural selection only occurred after artificial selection ceased.¹⁹

These findings, along with numerous other studies, demonstrate that taking itself generally does not enhance the survival of any species. More so, trophy hunting undermines effective conservation efforts by disrupting the natural selection process by targeting individuals with strong traits for entertainment.

2. The taking of Royal Markhor was not for enhancing its survival.

The foreign nationals' motivation for taking Royal Markhor was for entertainment.

There are very limited ways of taking animals for conservation, two of which are culling and

¹⁵ Kaleigh Harrison, *Trophy Hunting of Mountain Lions: Conservation Conundrum or Necessary Management?*, E+ELeader (July 19, 2024), <https://www.environmentenergyleader.com/stories/trophy-hunting-of-mountain-lions-conservation-conundrum-or-necessary-management,44882>.

¹⁶ Fred W. Allendorf & Jeffrey J. Hard, *Human-Induced Evolution Caused by Unnatural Selection Through Harvest of Wild Animals*, 106 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA Suppl 1 9987-9994 (2009), <https://doi.org/10.1073/pnas.0901069106>.

¹⁷ Jennifer Pascoe, *The Measure of a Ram*, UNIVERSITY OF ALBERTA-FACULTY OF SCIENCE (Jan. 20, 2016), <https://www.ualberta.ca/en/science/news/2016/january/the-measure-of-a-ram.html>.

¹⁸ *Id.*

¹⁹ Gabriel Pigeon et al., *Intense Selective Hunting Leads to Artificial Evolution in Horn Size*, 9(4) EVOLUTIONARY APPLICATIONS 519-530 (2016), <https://doi.org/10.1111/eva.12358>.

reintroduction. Culling reduces animal populations by selectively killing certain members to protect them from threats such as disease. For example, in North America, the prevalence of avian cholera since 1970 and lead poisoning have been significant causes of waterfowl mortality.²⁰ To combat these diseases, the United States Department of Interior Fish and Wildlife Service (FWS) established specific circumstances and conditions under which taking infected migratory birds was justified²¹ to stop the spread of disease and protect the species.

Additionally, reintroduction, *ex-situ* conservation, protects species outside their native habitat in human-controlled environment. Captive breeding programs are key approach, and through this, Scimitar-horned Oryx was reintroduced back into a region of its historical range in 2016.²²

Here, the taking of Royal Markhor belongs to neither of aforementioned categories. Dione Ginsu community auctioned off its privilege to hunt Royal Markhor in exchange for substantial fee (R.16). Although Royal Markhors are susceptible to *Mycoplasma Capricolum* infections, the taking was not targeted at eliminating or preventing infection (R.18). Furthermore, our case is distinguished from reintroduction efforts, as the taking of Royal Markhor was not aimed at controlling the species population to breed and safely reintroduce them into their historical range. Rather, the taking was motivated purely by entertainment, in the guise of conservation.

b. Auction was not for enhancing the Royal Markhor's survival or conservation.

Not only were Royal Markhors taken as trophies, but the Dione Ginsu community also auctioned off its hunting privileges to generate profits for themselves. Rishmak argues that the

²⁰ Milton Friend, 13.2.5. *Avian Cholera: A Major New Cause of Waterfowl Mortality*, 4 WATERFOWL MANAGEMENT HANDBOOK(1989), <https://digitalcommons.unl.edu/icwdmwfm/4>.

²¹ *Id.*

²² *Global Reintroduction Perspectives: 2018. Case Studies From Around the Globe*, ICUN (Pritpal S. Soorae ed. 2018), https://iucn-ctsg.org/wp-content/uploads/publications/34_2018_Scimitar-horned_Oryx_Chad.pdf.

auctions were primarily for the conservation of Royal Markhor. However, only 15% of the revenue was allocated to the conservation programs, while 85% was spent for other purposes (R.16). This shows that conservation was merely a nominal purpose for the auctions, with financial benefits of the community as the priority.

Pakistan and Tajikistan provide examples of how auction programs can genuinely support species conservation, making them distinguishable from Rishmak's case.

Pakistan and Tajikistan introduced trophy hunting with community participation in the late 1990s²³, acknowledging the economic benefits for local governments and communities. However, their primary focus was on conservation, seeking to combat illicit hunting and poaching for meat and money from pelts and trophies. Tajikistan allocated 50% of the revenue from trophy hunting program for Bocharian Markhor on species conservation.²⁴ In Pakistan, 30% of the revenue was allocated to support conservation activities²⁵; and this was in compliance with the International Union for Conservation of Nature's (IUCN) guidelines for the sustainable trophy hunting program.²⁶

When comparing Rishmak's allocation of 15% to the international revenue allocation examples above, Rishmak significantly falls short. If the true motivation had been conservation, a greater portion of the revenue should have been allocated for conservation programs. Therefore, the auction by Rishmak fails to comply with CMS Article III, paragraph 5(b).

²³ Lipy Adhikari et al., *Community-based Trophy Hunting Programs Secure Biodiversity and Livelihoods: Learnings From Asia's High Mountain Communities and Landscapes*, 4 ENVIRONMENTAL CHALLENGES (2021), <https://www.sciencedirect.com/science/article/pii/S2667010021001542>.

²⁴ *Id.* at 8.

²⁵ *Id.* at 7.

²⁶ *Guidelines for Streamlining the Community-Based Sustainable Trophy Hunting Programme in Gilgit-Baltistan*, IUCN, <https://fwegb.gov.pk/wp-content/uploads/2022/01/Trophy-Hunting-Guidelines-English.pdf>.²⁷ CMS, *supra* note 1, at art. III ¶ 5 (c).

C. TAKING OF ROYAL MARKHOR BY FOREIGN NATIONALS DOES NOT ACCOMMODATE THE TRADITIONAL SUBSISTENCE USE.

CMS Article III, paragraph 5(c) permits taking only when “the taking is to accommodate the needs of traditional subsistence users of such species.”²⁷ However, Riskmak’s auction and allowing foreign hunters to import the Royal Markhors’ horns and hide does not satisfy this requirement. Traditional subsistence users in this context exclusively refers to the Dione Ginsu community, and accommodating their needs specifically refers to enabling them to take Royal Markhor for their cultural rituals.

a. “Traditional subsistence users” exclusively refers to the Dione Ginsu community.

Subsistence is generally related to activities through which food is acquired, processed, prepared, and consumed.²⁸ According to Merriam-Webster, “subsisting” means “the minimum necessary to support life, or a source or means of obtaining necessities of life”.²⁹ Subsistence in indigenous contexts involves tribal tradition that preserves cultural heritage through food-sourcing practices rooted in traditional ecological knowledge, beliefs, and expertise passed down through generations.³⁰ The U.S. federal law defines subsistence as “the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation.”³¹

²⁷ CMS, *supra* note 1, at art. III ¶ 5 (c).

²⁸ Catherine E. Burnette et al., *“Living off the Land”: How Subsistence Promotes Well-Being and Resilience Among Indigenous Peoples of the Southeastern United States*, 92(3) SOCIAL SERVICE REVIEW 371 (2018), <https://www.journals.uchicago.edu/doi/10.1086/699287>.

²⁹ *Subsistence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/subsistence>.

³⁰ Catherine E. Burnette et al., *supra* note 28 at 375-376.

³¹ *Alaska Federal Subsistence*, BUREAU OF LAND MANAGEMENT, <https://www.blm.gov/programs/natural-resources/subsistence>.

Thus, “subsistence users” refer only to individuals who rely on the land to sustain their lives following traditional methods that preserve their cultural identity.

Here, foreigners traveled to Dione Ginsu territory to trophy hunt Royal Markhor (R.17). Their activities did not involve producing food for consumption, but instead sought to acquire Royal Markhor’s horns and hide. Furthermore, hunters’ use of rifles starkly contrasts with the traditional methods of the Dione Ginsu, which include handmade bows and arrows, or manufactured crossbows. The foreigners acted as trophy hunters maximizing their purchased “rights” and cannot be classified as traditional subsistence users.

b. Accommodating the needs of traditional subsistence users only refers to taking of Royal Markhor for Dione Ginsu’s traditional rituals.

Indigenous and Tribal Peoples Convention, 1989 (ILO 169) Article 14 recognizes the peoples’ right of ownership and possession over the lands which they traditionally occupy, mandating measures to safeguard their rights for subsistence and traditional activities.³² Furthermore, Article 17, paragraph 3 ensures that outsiders cannot exploit indigenous customs for personal gains.³³ Importantly, while ILO 169 recognizes indigenous rights to land and territories, the degree of ownership depends on specific circumstances, ranging up to the highest level of land ownership acknowledged by the domestic legal system.³⁴

The ICCPR expands on civil and political rights from the Universal Declaration of Human Rights. Human Rights Committee (HRC) affirms through Article 27 that minorities have the

³² Convention (No. 169) Concerning Indigenous and Tribal People in Independent Countries art. 14, ¶1, Jun. 27, 1989, 1650 U.N.T.S. 383 [hereinafter *Indigenous and Tribal Peoples Convention*].

³³ *Id.* art. 17 ¶ 3.

³⁴ Fergus MacKay, *A Guide to Indigenous Peoples’ Rights in the International Labour Organization*, FOREST PEOPLES PROGRAMME 17 (2003), <https://www.forestpeoples.org/sites/default/files/publication/2010/09/iloguideiprightsjul02eng.pdf>.

right to enjoy their culture and practice their religion.³⁵ In *Diergaardt et al. v. Namibia*, the HRC clarified that Article 27 safeguards ways of life tied to land use through economic activities like hunting and fishing, particularly for indigenous peoples, emphasizing that land occupation and resource use must relate to their unique cultural practices.³⁶

Here, the Dione Ginsu community was granted the privilege to take Royal Markhor specifically for cultural purposes. Traditionally, male members who reached adulthood hunted male Royal Markhors using bows and arrows. The meat was consumed; and the horns were displayed at home, symbolized strength and prosperity, and used in marriage and death ceremonies (R.14).

However, since 2016, the Dione Ginsu allowed the foreign hunters to take with them the horns and hides, not pursuing any of their traditional rituals (R.17). As a result, the Dione Ginsu undermined the very purpose of the granted privilege and rendered the process of auction incompatible with cultural preservation.

Further exacerbating the problem is the contamination of meat hunted with rifles. Lead core rifle bullets release millions of undetectable fragments upon impact, leading to lead-contaminated meat posing severe health risks.³⁷ Studies indicate a strong association between the consumption of such meat and lead toxicity, raising concerns about its safety for human consumption.³⁸ In

³⁵ Unofficial Summary of *The International Covenant on Civil and Political Rights*, COUNCIL OF EUROPE, <https://www.coe.int/en/web/compass/the-international-covenant-on-civil-and-political-rights>; International Covenant on Civil and Political Rights art. 27, Mar. 23, 1976, 999 U.N.T.S. 171.

³⁶ J.G.A. Diergaardt et al. v. Namibia, Communication 760/1996, Human Rights Committee, ¶ 10.6, (Jul. 25, 2000).

³⁷ Samantha Toton et al., *Biting the Bullet: A Call for Action on Lead-Contaminated Meat in Food Banks*, 112 (Supp. 7) AM. JOURNAL OF PUBLIC HEALTH S651-54 (2022), <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2022.307069>.

³⁸ Vernon George Thomas et al., *Increasing the Awareness of Health Risks From Lead-contaminated Game Meat Among International and National Human Health Organizations*, 6(2) EUROPEAN JOURNAL OF ENVIRONMENT AND PUBLIC HEALTH (2022), <https://www.ejeph.com/download/increasing-the-awareness-of-health-risks-from-lead-contaminated-game-meat-among-international-and-12043.pdf>.

UK, retailer Waitrose introduced labels, advising vulnerable groups to avoid wild game due to potential lead shot residue.³⁹

Rishmak may argue that sharing the hunted meat with the Dione Ginsu community justifies the participation of foreign nationals as satisfying subsistence use. However, lead contamination makes the meat unsafe for consumption, undermining the rationale of subsistence use, which requires safety and feasibility for the community.

1. Accommodating traditional subsistence users' needs via subsistence hunting is different from commercial hunting.

Ahmed Djoghlaif, the Executive Secretary of the Convention of Biodiversity Diversity stated, “We see legitimate subsistence hunting being replaced by commercial hunting.”⁴⁰

International Whaling Commission (IWC), aiming to ensure the proper conservation of whale stocks, permits whaling by “aborigines” *exclusive for local consumption*, whose cultural and subsistence need for whaling has been recognized.⁴¹ In contrast, commercial whaling is defined as killing whales using massive cannons and harpoons for trading their meat and other derived products.⁴² Aboriginal subsistence hunting is fundamentally distinct from commercial whaling because it does not seek to maximize catches or profits.⁴³ The distinction became clearer at the IWC 67th meeting where the importance of maintaining moratorium on commercial whaling was

³⁹ *Id.*

⁴⁰ Press Release, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Faced with “Empty Forests”, Experts Urge Better Regulation of Bushmeat Trade (Jan. 12, 2021), https://cites.org/eng/news/pr/2011/20110610_bushmeat.shtml.

⁴¹ 1946 International Convention for the Regulation of Whaling, 1946 Schedule, Feb. 12, 1946, 161 UNTS 72.

⁴² Lauren Evans, Commercial Whaling 101 Natural Resources Defense Council (2020), <https://www.nrdc.org/stories/commercial-whaling-101>.

⁴³ *Id.*

reaffirmed.⁴⁴

In alignment with the IWC's instance, thirteen Torres Strait island communities applied to the court to assert a right to fish within the Strait's waters for commercial purposes without a license under the Native Title Act 1993, claiming that requiring a license for commercial fishing extinguished native rights.⁴⁵ The court acknowledged that subsistence hunting by aboriginal people is exempt from licensing requirements.⁴⁶ However, it held that legislative prohibition on unlicensed commercial fishing is not extinguished by native title rights, which cease to be native title rights when used for trade or sale.⁴⁷

In our case, the main purpose of hunting and auctioning was to generate profit. The Dione Ginsu community received significant compensation from these hunts, yet the horns and hides – traditionally used for religious rituals – were taken by foreign hunters. Therefore, such hunting constitutes commercial hunting and cannot be considered an exercise of indigenous rights.

c. Rights granted by CMS Article III, paragraph 5 are limited if their practice threatens the endangered species.

Although CMS Article III, paragraph 5(c) permits taking to accommodate traditional subsistence users' needs, this is not absolute and may be overridden.

⁴⁴ *IWC-67 Amends Aboriginal Subsistence Whaling Schedule, Reaffirms Moratorium on Commercial Whaling*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, <https://sdg.iisd.org/news/iwc-67-amends-aboriginal-subsistence-whaling-schedule-reaffirms-moratorium-on-commercial-whaling/>.

⁴⁵ *Leo Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth* (CLR) [2013] 250 CLR 209 (Austl.), <https://leap.unep.org/en/countries/au/national-case-law/leo-akiba-behalf-torres-strait-regional-seas-claim-group-v>.

⁴⁶ *Id.*

⁴⁷ *Id.*

Makah Indian Tribe hunted gray whales for subsistence over 1,500 years.⁴⁸ For them, whaling was integral to their cultural and social life, establishing social order and holding ceremonial significance through rituals requiring physical and spiritual readiness.⁴⁹ Acknowledging this, the U.S. government expressly guaranteed the Makah tribe's right to whaling.⁵⁰ However, in the early 1900s, commercial whaling industry had dramatically reduced the gray whale population from approximately 27,000 to 13,000⁵¹, leading to the gray whales' listing under the U.S. Endangered Species Act (ESA).⁵² Consequently, Makah Tribe was prohibited from engaging in their traditional whaling practices.⁵³ The tribe was able to re-exercise their whaling rights 70 years later by obtaining permits, which was only after the gray whale population recovered.⁵⁴

Similarly, with the current population of Royal Markhor being approximately 2,200, and considering the drastic reduction in its historical population range, a *de facto* prohibition must be created, even for the Dione Ginsu community. Such a right is not an inalienable priority for indigenous communities, but rather a generous societal consideration. Indigenous community must comply with broader societal and conservation efforts to protect nature and their tradition.

⁴⁸ *Description of the USA Aboriginal Subsistence Hunt: Makah Tribe*, INTERNATIONAL WHALING COMMISSION, <https://iwc.int/management-and-conservation/whaling/aboriginal/usa/makah-tribe>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Gray Whale Population Abundance*, NOAA FISHERIES (2024), <https://www.fisheries.noaa.gov/west-coast/science-data/gray-whale-population-abundance>.

⁵² Internal Whaling Commission, *supra* note 48.

⁵³ *Id.*

⁵⁴ *Id.*

**II. BAN ON THE IMPORTATION OF ROYAL MARKHOR HUNTING TROPHIES
COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW.**

**A. ASTOR DID NOT BREACH ARTA BECAUSE QUANTITATIVE RESTRICTION
IS JUSTIFIED UNDER ARTA ARTICLE 20(a) AND 20(g).**

ARTA is a bilateral trade agreement signed and ratified by Astor and Rishmak in 2003. ARTA stipulates that both States will (1) contribute to the harmonious development and expansion of regional trade and provide a catalyst to broader international cooperation, and (2) undertake proceedings in a manner that is “consistent with environmental protection and conservation.” Moreover, while ARTA Article 11 prohibits trade restrictions between Astor and Rishmak, Article 20 allows specific exceptions to this rule (R.12).

Astor enacted a law prohibiting the importation of hunting trophies in 2022, and Rishmak claims that this enactment constitutes a breach of ARTA Article 11. Although it may be a quantitative restriction on trade, it is justified under ARTA Articles 20(a) and 20(g). This measure was unanimously deemed necessary by Astor’s public and government to conserve the Royal Markhor, an exhaustible natural resource.

**a. Quantitative restriction on importation of hunting trophies is justified because
it was to protect Astori nationals’ public morals.**

1. Public moral concerns displayed via Cecil the Lion are similar to our case.

In July 2015, Cecil, a well-known lion in Zimbabwe, was lured out of a national park, wounded with a crossbow, and suffered for 10 to 12 hours before being fatally shot.⁵⁵ This

⁵⁵ *Cecil the Lion: A Tragic Tale of Trophy Hunting*, WORLD ANIMAL PROTECTION (2022), <https://www.worldanimalprotection.org/latest/blogs/cecil-lion/>.

incident sparked one of the largest global responses in wildlife conservation, leading several countries to impose restrictions on the importation of hunting trophies.⁵⁶

In response, Australia imposed a complete ban on the trade of African lion hunting trophies,⁵⁷ while France prohibited the import of lion heads, paws, and skins as trophies.⁵⁸ Moreover, the United States enacted the Conserving Ecosystems by Ceasing the Importation of Large Animal Trophies Act (CECIL Act), prohibiting trophy hunters from importing parts of any species proposed or listed as threatened or endangered under ESA.⁵⁹ Following this measure, the number of imported lion trophies in the U.S. dropped significantly, from 790 in 2015 to just 60 in 2018.⁶⁰

Public concerns regarding trophy hunting grew significantly in Astor after the Cecil the Lion incident. ASHTA launched a campaign to raise awareness, urging the government to ban the importation of hunting trophies (R.24,25). Furthermore, a public survey conducted in Astor showed that 79% opposed trophy hunting of wild animals abroad, 90% opposed hunting of protected species, and 91% opposed importing animal trophies (R.28). These circumstances demonstrate that the majority of Astori nationals held strong moral concerns regarding trophy hunting and the importation of animal trophies. Consequently, Astor had a compelling moral basis for implementing quantitative restrictions on these imports on public morals.

⁵⁶ *Why Did the Death of Cecil the Lion Cause Such an Uproar?*, THE GUARDIAN, <https://www.theguardian.com/environment/2016/may/05/why-did-death-of-a-single-lion-cecil-cause-such-an-uproar>.

⁵⁷ *Regulate the Import and Export of African Lion Items*, AUSTRALIAN GOVERNMENT: DEPARTMENT OF CLIMATE CHANGE, ENERGY, THE ENVIRONMENT AND WATER (DCCEEW), <https://www.dcceew.gov.au/environment/wildlife-trade/cites/stricter-measures/african-lion#why-did-the-government-ban-trade-in-all-african-lion-specimens-if-the-issue-is-only-with-canned-hunted-lions>.

⁵⁸ Adam Vaughan, *France Bans Imports of Lion Hunt Trophies*, THE GUARDIAN (2015), <https://www.theguardian.com/environment/2015/nov/19/france-bans-imports-of-lion-hunt-trophies>.

⁵⁹ H.R. REP. NO. 116-680, pt. 1, at 1 (2020).

⁶⁰ THE ROLE OF THE UNITED STATES IN INTERNATIONAL TROPHY HUNTING: IMPORT AND EXPORT OF HUNTING TROPHIES OF CITES-LISTED MAMMAL SPECIES BETWEEN 2014 AND 2018, HUMANE SOCIETY INTERNATIONAL 16 (2023) https://www.hsi.org/wp-content/uploads/2023/05/DIGITAL_2023-United-States-Trophy-Hunting-by-the-Numbers-Report-compressed.pdf [hereinafter *Humane Society International*].

2. WTO Appellate Body's (AB) decision on measures prohibiting the importation and marketing of seal products supports Astor's prohibition of Royal Markhor hunting trophies importation.

European Union (EU) enacted the EU Seal Regime, prohibiting the importation and marketing of seal products based on *public moral concerns* regarding the perceived inhumane killing of seals.⁶¹ One of the exceptions was "IC exception" which included seal products obtained through hunting by Inuit or other indigenous communities.⁶² Canada and Norway challenged, arguing that EU was inconsistent in applying equivalent restrictions across all contexts. EU, however, defended the regulation as justified by public moral concerns.

A. WTO AB's opinion and similarity to our case

The WTO AB defined 'public moral' as a standard of right and wrong conduct maintained by or on behalf of a community or nation.⁶³ It acknowledged that states have the right to determine the appropriate level of protection for public morals and may adopt stricter measures than other nations, even for similar interests of moral concern.⁶⁴ AB also concluded that EU's seal welfare concerns primarily motivated the measure and that exceptions, like the IC exception, were designed to mitigate the EU Seal Regime's impact.⁶⁵

Similarly, Astor's ban on the importation of hunting trophies reflects the protection of public moral concerns of its nationals, as evidenced by public survey campaigns like those led by ASHTA.

⁶¹ Appellate Body Report, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products, ¶ 5.161-7, WTO Doc. WT/DS400/AB/R; WT/DS401/AB/R (adopted May 22, 2024).

⁶² *Id.* at ¶ 1.4.

⁶³ *Id.* at ¶ 5.199.

⁶⁴ *Id.* at ¶ 5.200.

⁶⁵ *Id.* at ¶ 5.146.

Astor has the right to adopt measures protecting public morals, even if stricter than those of neighboring countries.

B. Significant difference between hunting by Dione Ginsu community and non-indigenous hunters.

Rishmak oversimplifies the WTO AB's findings and the unique circumstances of Royal Markhor by claiming that the distinction between crossbows and rifles is insignificant.

In the *Seal Products* case, WTO AB ruled against EU because EU failed to adequately differentiate traditional hunting from commercial hunting, both of which caused “various pain and suffering” to seals.⁶⁶

In contrast, the commercial hunting of Royal Markhor by foreign nationals clearly inflicts greater suffering and harm compared to traditional hunting methods. Traditional Royal Markhor hunting likely involved the “spot-and-stalk” method, where hunters rely on optics and carefully approach suitable males to hunt using handmade bows and arrows, or, manufactured crossbows.⁶⁷ In contrast, commercial trophy hunting involves practices such as luring male Royal Markhor using the scent of captured females (R.17).

Short-term captivity poses numerous problems for animals. A study found that captive environments impose spatial restrictions and reduce habitat diversity, leading to chronic stress in animals.⁶⁸ Another study showed that among the 23 different species of animals in captive, 61%

⁶⁶ *Id.* at ¶ 5.320.

⁶⁷ *Astor Markhor; Hunting Methods*, BOOKYOURHUNT, <https://www.bookyourhunt.com/en/astor-markhor-hunting> (last visited Nov. 14, 2024).

⁶⁸ Clifford Warwick et al., *Defining Short-term Accommodation for Animals*, 13(4) ANIMALS 732 (2023),

never regained their lost weight, 42% exhibited higher glucocorticoid levels than their wild counterparts, and 74% experienced inhibited reproductive capacity.⁶⁹

Here, female Royal Markhor are confined for two weeks in facilities with sloped, cement floors to collect their urine (C.Q3). This imposes significant physical and psychological stress on female Royal Markhor during captivity. Such practices stand in stark contrast to traditional hunting methods and exacerbate the suffering of the species.

Thus, our case should be concluded differently from the conclusion of *Seal Products* and recognize the protection of public moral concerns as a legitimate basis for establishing stricter regulation.

b. Astor's quantitative restriction made in conjunction with domestic measures.

ARTA Article 20(g) allows quantitative restriction if such measures relate to the conservation of exhaustible natural resources, implemented in conjunction with domestic regulations.

The United States, having world's largest trophy hunting organization,⁷⁰ applies various regulations to balance trophy hunting with species conservation. For species listed on CITES Appendix I, FWS strictly requires hunters to submit a request of authorization application.⁷¹ Moreover, to ensure no harm to the species, FWS often requests additional documentation, such

https://www.researchgate.net/publication/368675138_Defining_Short-Term_Accommodation_for_Animals/fulltext/63f4cad90cf1030a563e9906/Defining-Short-Term-Accommodation-for-Animals.pdf?_tp=eyJjb250ZXh0Ijp7ImZpcnN0UGFnZSI6InB1YmxpY2F0aW9uIiwicGFnZSI6InB1YmxpY2F0aW9uIn19.

⁶⁹ Clare P. Fischer & Michael Romero, *Chronic Captivity Stress in Wild Animals is Highly Species-specific*, 7(1) CONSERVATION PHYSIOLOGY (2018), <https://pmc.ncbi.nlm.nih.gov/articles/PMC6892464/pdf/coz093.pdf>.

⁷⁰ Humane Society International, *supra* note 60 at 2.

⁷¹ 3-200-20: *Import of Sport-Hunted Trophies under CITES and the ESA*, U.S. FISH & WILDLIFE SERVICE, <https://www.fws.gov/service/3-200-20-import-sport-hunted-trophies-under-cites-and-esa>.

as proof that a portion of the hunting fees supports conservation efforts.⁷² According to Humane Society International (HSI), these strict regulations led to a drastic decrease in trophy imports - by an average of 500 trophies overall - between 2014 and 2018 for species listed as Vulnerable, Endangered, and Critically Endangered.⁷³

For 'least concerned' species, however, the U.S. applies more lenient regulations, allowing individual states to set their hunting quotas. For example, Washington permits hunters to take up to five White-tailed Buck per season, whereas in Alabama, three per hunter is allowed.⁷⁴ HSI further indicates that during the same period as above, the number of granted permits for non-endangered animals remained steady, demonstrating the distinction between stricter controls for endangered species and looser regulations for others.⁷⁵ Similarly, Australia permits kangaroo hunting while strictly banning the taking of African lions.⁷⁶

Here, Astor enacted a regulation prohibiting the importation of Royal Markhor hunting trophies, consistent with its domestic law banning the taking of Royal Markhor (R.14). As Royal Markhor is listed on CITES Appendix I, this measure aligns with Astor's commitment to species conservation. Furthermore, while Astor permits hunting of non-endangered species (C.Q7), this distinction mirrors the U.S. and Australia's approach of tailoring restrictions based on the conservation status of the species.

⁷² *Id.*

⁷³ Humane Society International, *supra* note 60, at 16.

⁷⁴ *Washington: Big Game Hunting Regulations 2024*, WASHINGTON DEPARTMENT OF FISH & WILDLIFE (2024), <https://www.eregulations.com/washington/hunting/pdf/>; *Alabama Regulations 2023-2024*, DIVISION OF WILDLIFE AND FRESHWATER FISHERIES (2023), <https://www.outdooralabama.com/sites/default/files/Enforcement/2023-2024%20REGULATION%20BOOK%20FINAL.pdf>.

⁷⁵ Humane Society International, *supra* note 60, at 16.

⁷⁶ DCCEEW, *supra* note 58; *Kangaroo Harvesting*, VICTORIA STATE GOVERNMENT, <https://djsir.vic.gov.au/game-hunting/kangaroo-harvesting>.

In conclusion, Astor's prohibition on the importation of Royal Markhor hunting trophies constitutes a quantitative restriction. However, it is justified under ARTA Article 20(g) because (1) it was necessary to protect public morals, reflecting widespread national opposition to trophy hunting; and (2) it relates to conservation of an exhaustible natural resource, implemented in conjunction with strict domestic restriction.

B. BAN ON IMPORTATION OF ROYAL MARKOR TROPHIES IS CONSISTENT WITH CITES.

a. CITES strictly regulates trade of Appendix I specimens.

CITES is an international agreement among IUCN member States seeking to prevent species extinction by regulating global trade in wildlife and plant specimens.⁷⁷ All imports, exports, re-exports, and introductions from the sea of species under the Convention must be approved through CITES' licensing system.⁷⁸

CITES Appendix I lists endangered species that are threatened with extinction. To ensure the highest level of protection, CITES imposes stringent regulations, allowing trade, only under specific and narrowly defined exceptions, and mandates a permit or certificate for all transactions involving Appendix I.⁷⁹

⁷⁷ *What is CITES?*, CITES, <https://cites.org/eng/disc/what.php>.

⁷⁸ *How CITES works*, CITES, <https://cites.org/eng/disc/how.php>.

⁷⁹ Convention on International Trade in Endangered Species of Wild Fauna and Flora art. III, Mar. 3, 1973, 27 UST 1087, 993 UNTS 243 [Hereinafter *CITES*].

b. CITES BESTOWS UPON STATE THE RIGHT TO IMPOSE STRICTER DOMESTIC MEASURES.

United Nations Charter Article 2, paragraph 1 establishes that States possess an inherent sovereign right to act independently in their interests, free from external influences; and this principle forms the foundation of state independence in international relations.⁸⁰

CITES also recognizes this sovereignty through Article 14, paragraph 1(a), indicating that CITES Convention shall in no way affect the right of the parties to *adopt stricter domestic measures* regarding the conditions for trade of specimens of species included in Appendices, or *the complete prohibition thereof*.⁸¹ This provision respects States' autonomous right to regulate trade in alignment with national priorities, including the adoption of stricter measures or outright prohibitions.

In the 1980s, stricter domestic measures played a significant role in advancing the objectives of CITES.⁸² For example, bans on the importation of African elephant ivory by the United States, Japan, and EU helped curb the rapid decline of African elephant population; and these measures catalyzed efforts to list African elephants under CITES Appendix I.⁸³ Moreover, such actions further supported Standing Committee's recommendations to implement compliance measures, including trade suspensions, when countries fail to meet CITES obligations.⁸⁴

Furthermore, EU's ban on importation of wild-caught birds showed that import-related stricter

⁸⁰ U.N. Charter art. 2, ¶ 1.

⁸¹ CITES, *supra* note 79, art. XIV.

⁸² Erica Thorson & Chris Wold, Back to Basics: An Analysis of the Object and Purpose of CITES and a Blueprint for Implementation, International Environmental Law Project, March 9, 2010, <https://www.lclark.edu/live/files/4620>.

⁸³ *Id.*

⁸⁴ *Id.*

domestic measures are actually found to be not infringing upon other state's sovereign rights to utilize its natural resources.⁸⁵ EU was able to opt out without interfering the management practices of exporting countries when it used to account for 92% of the global market for wild-caught birds.⁸⁶ This incident demonstrated that even when an importing country imposes restrictions – even those that condition market access on meeting specific environmental standards – it does not impede the exporting state's ability to exploit its resources or trade with other nations.⁸⁷ Instead, the importing state is exercising its sovereign right to regulate trade within its own territory seeking to avoid contributing to harmful exploitation of species.⁸⁸

Astor, being a sovereign State, possesses the right to regulate trade in alignment with its national priorities while fulfilling its responsibilities as a range state of the Royal Markhor. Astor's adoption of stricter domestic measures is consistent with CITES obligations. Therefore, under Article 14, Astor's measure does not infringe upon Rishmak's sovereign rights. Instead, it represents Astor's legitimate exercise of sovereign authority to ensure conservation and prevent harmful exploitation of endangered species within its jurisdiction.

c. CITES Article 14(3) is in compliance with ARTA and ILO 169.

CITES Article 14, paragraph 3 explicitly states that CITES does not affect provisions or obligations deriving other agreements, including regional trade agreements like ARTA.⁸⁹ However, Rishmak claims that Astor is violating ARTA by invoking CITES, and it is unfounded. CITES, ARTA, ILO 169, and even the United Declaration on the Rights of Indigenous Peoples

⁸⁵ *Id.* at 54.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ CITES, *supra* note 79, art. XIV ¶ 3.

(UNDRIP) are complementary, as they all recognize State sovereignty and allow for stricter domestic measures to achieve environmental ethical objectives.

ARTA, the bilateral trade pact between Astor and Rishmak, promotes the harmonious development and expansion of regional trade while emphasizing environmental protection and conservation (R.12). It also highlights the importance of corporate social responsibility standards, encouraging environmentally and socially responsible practices alongside economic benefits (R.12).

Accordingly, Astor's import ban should be evaluated with a balanced perspective that considers the developmental goals, environmental concerns, and ethical standards of each country. Astor's importation ban was primarily implemented for environment protection and conservation, following CITES and ARTA, and upholding the shared responsibility to ensure the survival of Royal Markhor. Therefore, Astor's ban on hunting trophies aligns with both ARTA and CITES.

Moreover, while Astor is not a party to the ILO 169 (R.9), if applicable, supports State sovereignty by granting flexibility in implementing measures. ILO 169, Article 34 states that the nature and scope of the measures shall be determined flexibly, considering the unique conditions of each country.⁹⁰ This flexibility allows individual countries as Astor have discretion in tailoring their actions in a manner that aligns with their unique social, economic, and cultural circumstances.⁹¹ However, these instruments do not allow individuals or groups to commercially transfer or auction off their inherent rights for a short-term gain, which may undermine collective

⁹⁰ Indigenous and Tribal Peoples Convention, *supra* note 32, art. 34.

⁹¹ Fergus MacKay, *supra* note 34.

ownership or long-term stewardship responsibilities.⁹²

d. CITES favors regulating trade of endangered species.

The outcomes of the 17th CITES Conference of the Parties (COP17) support Astor's ban on importation of trophies of endangered species. At COP17, Swaziland submitted a proposal to "allow limited and regulated trade in white rhino horn collected from natural deaths, recovered from poached Swazi horn, and harvested from live white rhino in the future."⁹³ However, Asian rhino range states opposed, arguing that the potential impact of opening international trade on tiny population of rhinos was uncertain.⁹⁴ Ultimately, CITES overwhelmingly rejected Swaziland's proposal and upheld the ban on rhino horn trade.⁹⁵ This decision reflects a consensus among nations that the rhino horn trade should remain prohibited until clear evidence demonstrates its benefits for wild rhino conservation. Furthermore, organizations like International Rhino Foundation argue that legalizing trade could harm conservation without proven effectiveness.⁹⁶ This decision establishes that while some States support hunting trophy trade, the international community remains reserved about its potential harm, even involving dead animals.

In our case, Royal Markhor has a population size smaller than certain rhino species, such as the Great one-horned rhino. Rhino case's outcome thus reinforces the position of Astor, where prioritizing strict measures to protect endangered species over potential economic benefits is critical.

⁹² *Id.*; see also Indigenous and Tribal Peoples Convention, *supra* note 32, art. 17 ¶ 3

⁹³ *CITES and Rhinos: Outcomes of COP 17*, INTERNATIONAL RHINO FOUNDATION, <https://rhinos.org/blog/cites-and-rhinos-outcomes-of-cop17/>.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

In conclusion, Astor's autonomy to enact stricter measures, including ban on Royal Markhor trophy imports, is consistent with its obligations under CITES, ARTA, and the principles embodied in ILO and UNDRIP.

CONCLUSION

Astor respectfully requests the Court to adjudge that:

1. Rishmak violated conventional international law by trophy hunting Royal Markhor through auction process; and
2. Astor's ban on the importation of Royal Markhor hunting trophies complies with conventional international law.

Respectfully submitted,

AGENTS FOR APPLICANT