

**Team Code: 56**

**IN THE INTERNATIONAL COURT OF JUSTICE AT THE PEACE PALACE,**

**THE HAGUE, NETHERLANDS**



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

**ASTOR  
(APPLICANT)**

**v.**

**RISHMAK  
(RESPONDENT)**

**MEMORIAL FOR THE RESPONDENT**

**THE 29<sup>TH</sup> ANNUAL STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT**

**COMPETITION 2024–2025**

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## **INDEX OF AUTHORITIES**

### **TREATIES AND CONVENTIONS**

The International Covenant on Economic, Social and Cultural Rights (“ICESCR”)

The International Covenant on Civil and Political Rights (ICCPR)

The Indigenous and Tribal People’s Convention, 1989 (No. 169)

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The General Agreement on Tariffs and Trade (GATT) 1994 (GATT)

Agreement Establishing the World Trade Organization (the WTO Agreement)

The Convention on Migratory Species (CMS)

The Convention on International Trade in Endangered Species (CITES)

The Rio Declaration on Environment and Development

Inter-American Convention for the Protection and Conservation of Sea Turtles, art.2, May 2, 2001, 2164 U.N.T.S.29.

### **UN DOCUMENTS**

José R. Martínez Cobo, *Study of the Problem of Discrimination Against Indigenous Populations*,

Vol. 5, Conclusions, Proposals and Recommendations, U.N. Doc. E/CN.4/Sub.2/1986/7 (1986).

Olivier De Schutter, *Report of the Special Rapporteur on the Right to Food*, U.N. GAOR, 65th Session., U.N. Doc. A/65/281, 3 (2010).

UN Committee on Economic, Social, and Cultural Rights, *General Comment No. 21*, E/C.12/GC/21., 32.

United Nations, ‘1983 Study of the Problem of Discrimination Against Indigenous Populations’ <https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html>.

## **NATIONAL LEGISLATION AND GOVERNMENT PUBLICATIONS**

Endangered Species Act 16 U.S.C 1531-1544 (2018) (United States)

Dept. of the Interior, Fish & Wildlife Serv. Endangered and Threatened Wildlife and Plants: Revision to the Section 4(d) Rule for the African Elephant, Part 17 Docket no. FWS-HQ-IA-2021-099 (May 1, 2024)

## **JUDICIAL AND TREATY BODY DECISIONS**

### **International Court of Justice**

East Timor (Port. v. Aus.) 1995 I.C.J. 90, 102

North Sea Continental Shelf (F.R.G./ Den.; F.R.G./ Netherlands.), 1969 I.C.J. 3 (Feb.20)

Saramaka People v. Suriname, 1975 I.C.J. 10.

Western Sahara, Advisory Opinion, 1975 I.C.J. 12 (Oct. 16)

### **Inter-American Court of Human Rights**

Garifuna Community of Cayos Cochinos and its Members v. Honduras, Inter-Am. Ct. H.R. Case No. 12.548, at 216, (Feb.21, 2013)

Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Inter-Am, Ct. H.R Case No.79 (August 31 2001)

## **GATT and WTO Appellate Bodies and Panels**

Brazil — *Certain Measures Concerning Taxation and Charges*, Report of the Appellate Body, WT/DS472/AB/R; WT/DS497/AB/R

Brazil — *Measures Affecting Imports of Re-treaded Tyres*, WT/DS332/R, Report of the Panel 12 June 2007

China — *Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, Report of the Panel, WT/DS363/R adopted 19 January 2010

China — *Measures related to the Exportation of Rare Earths, Tungsten and Molybdenum*, Report of the Appellate Body, WT/DS43, 29 August 2014

Colombia — *Measures Relating to the Importation of Textiles, Apparel and Footwear*, Report of the Appellate Body, WT/DS461/AB/R, 7 June 2016

European Communities — *Measures prohibiting the Importation and Marketing of Seal Products*, Report of the Appellate Body, WT/DS400/AB/R, WT/DS401/AB/R, 22 May 2014

United States — *Import Prohibition of Certain Shrimp and Shrimp Products*, Report of the Panel, WT/DS58/R, 15 May 1998

United States — *Import Prohibition on Certain Shrimp and Shrimp Products*, Recourse to Article 21.5 of the DSU by Malaysia, Report of the Appellate Body, 22 October 2001

United States — *Imports of Certain Automotive Spring Assemblies*, Report of the Panel, L/5333, 26 May 1983

United States — *Standards for Reformulated and Conventional Gasoline*, Report of the Appellate Body, WT/DS2/AB/R, 29 April 1996, (“Reformulated Gasoline Appellate Body Report”)

United States — *Standards for Reformulated and Conventional Gasoline*, Report of the Panel, WT/DS2/R, 29 January 1996 (“Reformulated Gasoline Panel Report”)

United States — *Taxes on Automobiles*, Report of the Panel, WT/DS31/R, 11 October 1994

### **National Caselaw**

Friends of Animals v. Bernhardt 961 F.3d 1197 (D.C. Cir. 2020) (US.)

Girjas Reindeer Herding Community v. Sweden, [HD] [Supreme Court] 2020-01-23 T853-18 (Swed.)

Members of the Yorta Yorta Aboriginal Community v State of Victoria (2001) 110 FCR 244 (Austl.)

Safari Club International v Zinke 878 F.3d 316 (D.C. Cir. 2017) (US.)

### **United Nations Human Rights Committee**

Apriana Mahuika et al. V. New Zealand, Communication No. 547/ 1993, Rep. of the United Nations Human Rights Committee, UN Doc. A/56/40 (Vol. II). 11-29 (Oct. 27, 2000)

### **BOOKS**

Alan Boyle and Catherine Redgwell, *Bernie, Boyle and Redgwell's International Law and the Environment*, 4 (Oxford University Press, 2021)

Erich Vranes. *Trade and the Environment: Fundamental Issues in International law*, WTO Law and Legal Theory. 1 (Oxford University Press, 2009)

John G. Sprankling, *The International Law of Property* (Oxford University Press, 2014)

Lipy Adhikari et al., *Community-based Trophy hunting programs secure bio-diversity and livelihoods: Learnings from Asia's high mountain communities and landscapes*,<sup>4</sup> Env'tal Challenges (2021), Elsevier

Lisa Rivera, *Subsistence Rights*, in *Encyclopaedia of Global Justice* 42-25 (D.K. Chatterjee ed., Springer 2011)

Matthias Herdegen, *Principles of International Economic Law* (Oxford University Press, 2016)

Phillips Sands et al. *Principles of International Environmental Law*, 4, (Cambridge University Press, 2018)

## **ESSAYS, ARTICLES, AND JOURNALS**

Alexa Herwig, *Indigenous Interests and the Chapeau of Article XX: Equality of What?* 108 AJIL (2017)

Alexander Gillespie, *The Slow Swim From Extinction: Saving Turtles in the South Pacific*, 21 INT'L J. MA

Alexander Gillespie, *Aboriginal Subsistence Whaling: A Critique of the Inter-Relationship Between International Law and the International Whaling Commission*, 21 COLO. J. INT'L ENVTL. L/ & POL'Y 79 (2001).

Christina Allard & Malin Brannstrom, *Girjas Reindeer Herding Community v. Sweden: Analysing the Merits of the Girjas case*, 12 Int'l L. & Pol'y 56, 56-79 (2021)

Daniel W.S Challender et al. *Evaluating key evidence and formulating regulatory alternatives regarding the UK's Hunting Trophies (Import Prohibition Bil)*, 5(10) Conservation Science and Practice (18 September 2024)

Hugh Webster et al., *Keeping Hunting Bans on Target*, Conservation Biology 36(4) (2022)

Michael 't Sas-Rolfe et al, *Legal hunting for conservation of highly threatened species: the case of African rhinos* (2022)



Michael t-Sas Rolfes & Richard Emslie, *African Rhino Conservation and the Interacting Influences of Property, Prices, and Policy*, 220 Ecological Econ. (2012)

Tania Voon, *Exploring the Meaning of Trade-Restrictiveness in the WTO*, 14, World Trade Review (2015)

## **MISCELLANEOUS**

International Whaling Commission, *Aboriginal Subsistence Whaling*, <https://iwc.int/management-and-conservation/whaling/aboriginal> (visited 15 Nov. 15, 2024).

IUCN, IUCN SSC Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (Int'l Union for Conservation of Nature 2012)

IUCN Species Survival Commission Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives (2012)

IUCN Policy Statement on Sustainable Use of Wild Living Resources, Res. 2.29 (Oct.2000).

## **STATEMENT OF JURISDICTION**

The States of Astor and Rishmak, being Members of the United Nations and parties to the Statute of the International Court of Justice, hereby submit to the International Court of Justice (“**the Court**”) their dispute concerning subsistence use and trophy hunting pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice.

The parties agree that the Court has jurisdiction to decide this matter and they will not dispute the Court’s jurisdiction in the written or oral proceedings. On the basis of the foregoing, the parties respectfully request for this Honourable Court to adjudge the dispute in accordance with the rules and principles of general international law, as well as any applicable treaties. The parties also request the Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgment on the questions presented in this matter.

## **QUESTIONS PRESENTED**

- (1) 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, and
- (2) Whether the ban on the importation of Royal Markhor hunting trophies violates or complies with conventional international law.

## **STATEMENT OF FACTS**

Astor and Rishmak are neighbouring states with a shared border. The states are parties to the bilateral Astor-Rishmak Trade Agreement (ARTA), resolving to strengthen cooperation among their people and contribute to the harmonious development of regional trade (R.11, R.12). Astor has a high-income, highly-diversified economy while Rishmak is considered to be a low-income economy. The Dione Ginsu are an indigenous community in Rishmak with the highest poverty levels in Rishmak (R.2,R.3). Astor and Rishmak are members of the United Nations (UN) and parties to CITES and CMS. Rishmak is a party to ILO Convention and voted in favour of UNDRIP.

The Royal Markhor is a critically endangered goat known for its distinctive iridescent spiral horns and red and pink fur (R.1). It once ranged over 6 countries, but now only resides in Astor and Rishmak, seasonally migrating over the shared border (R.4). The population decline is primarily attributed to disease (R.18) habitat loss and hunting (illegal and legal). The Royal Markhor is listed under CITES Appendix I and CMS Appendix II. The Dione Ginsu community have had a special relationship with the Royal Markhor since time immemorial (R.14). Traditionally upon reaching adulthood, a male member of the community hunts and kills a Royal Markhor, sharing the meat with the tribe. The horns are of special religious and cultural significance, used for ceremonial and display purposes (R.14).

Both States have national laws prohibiting the taking of the Royal Markhor, with Rishmak providing an exception for the Dione Ginsu community to hunt ten (10) Royal Markhor annually by a lottery system (R.14,R.15). Since 2016, the Dione Ginsu have auctioned the right to hunt to

foreign hunters to fund its community subsistence requirements. Each right is auctioned for between \$100,000-\$150,000. The winners are almost exclusively Astori nationals. The Dione Ginsu devote 75% of the funds for their community housing, medical and food expenses. They use 15% of the funds for Royal Markhor conservation programmes (R.16, R.18). The Dione Ginsu guide each hunt and the meat is shared with the community. The hide and horns of the animal were imported to Astor with the appropriate CITES permits (R.17).

In December 2022, Astor enacted an import ban against all hunting trophies into the country with immediate effect (R.29). Astor concedes the ban is a quantitative restriction, in contravention of Article 11 of ARTA (R.33). It did not enact accompanying legislation to ban domestic trophy hunting (R.30). The Dione Ginsu were required to refund the 2022/23 auction winners and have been unable to recoup this loss, impeding their ability to fund their community's basic needs.

In 2022, Astor objected to the Dione Ginsu's auctioning of hunting rights (R.19, R.23). In March 2023, Rishmak objected to Astor's import ban under ARTA (R.32). The Parties have not resolved the matters and have submitted them to the Court for determination.

## **SUMMARY OF THE ARGUMENTS**

Rishmak did not violate international law. The Dione Ginsu, as an indigenous community, enjoy the right to autonomy and self-determination under international law which encompasses the right to transfer their hunting rights via the auction. The auction system is a modern expression of the Dione Ginsu's subsistence needs and practices. The Dione Ginsu enjoy property rights to the land and resources which they have traditionally owned, occupied or used. The controlled hunting of the Royal Markhor aids in the propagation of the species.

The import ban imposed by Astor on hunting trophies is an unjustifiable breach of Astor's obligations under the ARTA.. In interpreting the ARTA in accordance with its terms (Article 25.2), the import ban is not justified as being "necessary to protect public morality" (Article 20(a)) nor as "relating to the conservation of an exhaustible natural resource if such measures are made effective in conjunction with restrictions on domestic production or consumption" (Article 20(g)). The measure is arbitrary and constitutes a disguised restriction on trade contrary to the requirements of the chapeau of Article 20.

## **ARGUMENTS ADVANCED**

### **I. TROPHY HUNTING VIA THE AUCTION PROCESS COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW**

**A. The Dione Ginsu, an indigenous community, are permitted to transfer their hunting rights via the auction by virtue of their right to self-determination under international law.**

#### **I. The Dione Ginsu are an indigenous community under international law.**

The United Nations, of which both parties are members, provides a working definition of “indigenous communities, peoples and nations” which includes the following:

“They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system.”<sup>1</sup>

The Dione Ginsu are identified in the record as an “Indigenous community” (R.3). They are non-dominant, making up only 0.114% of the Respondent’s entire population (R.3) and have their own cultural their cultural practices and patterns (R.14), one of which is the hunting of the Royal Markhor to meet their cultural and subsistence needs (R.14). Therefore, the Dione Ginsu qualify as an indigenous community.

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<sup>1</sup> United Nations, ‘1983 Study of the Problem of Discrimination Against Indigenous Populations’ <<https://www.un.org/development/desa/indigenouspeoples/publications/martinez-cobo-study.html>

***(i) Indigenous people's cultural practices are protected by International conventional law***

Article 15 of the ICESCR affirms the right of people to partake in cultural life, including the right to their cultural diversity, traditions, customs, religion, forms of education, languages, and other manifestations of their cultural identity and membership.<sup>2</sup> The right of people to freely enjoy their own culture is also recognised under article 27 of the ICCPR.<sup>3</sup> The ILO 169<sup>4</sup> and UNDRIP<sup>5</sup> recognise indigenous peoples' rights to practice and revitalise their cultural traditions, languages and ceremonies.

Thus, the Dione Ginsu's hunting of the Royal Markhor as a part of their cultural practices (R.14) is protected under the aforesaid conventions.

***(ii) The Respondent's exemption of the Dione Ginsu is a recognition of their rights***

Rishmak has a duty to protect the rights of the Dione Ginsu by virtue of provisions of the ICESCR<sup>6</sup>, ILO 169<sup>7</sup>, ICCPR and UNDRIP.<sup>8</sup> The Respondent, by allowing an exception to the ban on taking of the Royal Markhor (R.14) for the Dione Ginsu so that they can continue to exercise their cultural practices and fulfil their subsistence needs, has complied with the aforementioned duty.

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<sup>2</sup> U.N. Committee on Economic, Social, and Cultural Rights [UNCESCR] General Comment No. 21, E/C.12/GC/21., 32

<sup>3</sup> International Covenant on Civil and Political Rights [ICCPR], art. 27, Dec. 16, 1996, S. Treaty Doc. No. 95-20, 6 I.L.M.368 (1967), 999 U.N.T.S. 171.

<sup>4</sup> Indigenous and Tribal Peoples Convention [ILO 169] June 27, 1989, art.5, ILO No. 169, 28 I.L.M. 1382.

<sup>5</sup> United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP], arts. 11-13, G.A. Res. 61/295, U.N. Doc. A/ RES/61/295 (Sept.13, 2007,

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights [ICESCR], art. 2(1), Dec. 16, 1966, 993 U.N.T.S. 3.

<sup>7</sup> ILO 169, arts. 6,14, & 23.

<sup>8</sup> UNDRIP, arts.2, 26 and 3.



## II. The Dione Ginsu are afforded the right of Self-Determination

### *(i) Self-determination is a non-derogable jus cogens norm*

*Jus cogens* is a norm from which no derogation is permitted and can be modified only by a subsequent *jus cogens*.<sup>9</sup> *Jus cogens* norms are universally accepted principles that are fundamental to the international legal order, binding on all states regardless of their consent.<sup>10</sup>

The right of self-determination covers the freedom to pursue one's "economic, social and cultural development."<sup>11</sup> Self-determination is considered a *jus cogens* norm.<sup>12</sup> The character of *jus cogens* is an attribute of the principle of self-determination because it is a prerequisite for the exercise and effective realisation of human rights.<sup>13</sup> The status of self-determination as a *jus cogens* norm is evinced by its enshrinement in key international conventions such as the UN Charter<sup>14</sup>, the ICCPR<sup>15</sup> and the ICESCR.<sup>16</sup> Furthermore, case law of this Court<sup>17</sup> affirmed the universal and binding nature of the right of self-determination. As a non-derogable and *jus cogens* norm, it overrides conflicting treaties. Non-party states are obligated to respect the right of self-determination as its authority derives from universal recognition rather than specific treaty consent.

Accordingly, Astor must respect the Dione Ginsu's right of self-determination and cannot dictate how an indigenous community may manage their cultural practices. To do so would infringe upon

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<sup>9</sup> *Vienna Convention on the Law of Treaties [VCLT]*, art.53, May 23, 1969 1155 U.N.T.S. 331.

<sup>10</sup> *North Sea Continental Shelf (F.R.G./ Den.; F.R.G./ Netherlands.)*, 1969 I.C.J. 3 (Feb.20)

<sup>11</sup> *ICESCR*, art. 1

<sup>12</sup> *East Timor (Port. v. Aus.)* 1995 I.C.J. 90, 102, ¶29.

<sup>13</sup> Hector Gros Espiell, *The Right to Self-Determination: Implementation of United Nations Resolution*, U.N. Doc. 980 E/CN.4/Sub.2/405/Rev.1 (1980).

<sup>14</sup> *U.N. Charter*, art. 1(2).

<sup>15</sup> *ICCPR*, art.1.

<sup>16</sup> *ICESCR*, art.1.

<sup>17</sup> *Western Sahara*, Advisory Opinion, 1975 I.C.J. 12 (Oct. 16); *East Timor*, supra note 14.

the Dione Ginsu's right of self-determination and would be a breach of a *jus cogens* norm under international law.

***(ii) The Dione Ginsu, by virtue of their right to self-determination, may determine how best to preserve and develop their cultural practices and their relationship with the Royal Markhor***

International conventions, such as the ILO 169<sup>18</sup> and the UNDRIP<sup>19</sup> affirm the right of self-determination specifically for indigenous peoples, including the sustainable use of their lands and resources.

The Dione Ginsu, are entitled to 'decide their own priorities for the process of development and to exercise control over their own economic, social and cultural development.'<sup>20</sup> Furthermore, UNDRIP provides that 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'<sup>21</sup>

The Dione Ginsu, by virtue of their right to autonomy and self-determination, can choose how best to preserve their practices. They have chosen to do so via the auction process (R.16), therefore this decision is protected by virtue of their right of self-determination. The Applicant, in bringing proceedings in an attempt to prohibit the auctioning of hunting rights, is undermining the Dione Ginsu's right of self-determination to develop their cultural and economic development.

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<sup>18</sup> ILO 169, art.7.

<sup>19</sup> UNDRIP, art. 3.

<sup>20</sup> ILO 169, *supra* 18.

<sup>21</sup> UNDRIP, *supra* 21.

**III. The Dione Ginsu are permitted to transfer their hunting rights via the auction process as it is a legitimate exercise of their property rights and right to self-determination.**

***(i) Indigenous people have rights to resources which they have traditionally owned, occupied or used***

Indigenous peoples' rights to resources and control over them are intrinsic to their right to self-determination. This right encompasses the authority to manage lands and resources they have traditionally owned, occupied or used.<sup>22</sup>The ILO 169<sup>23</sup> mandates that Indigenous communities have the right to ownership and possession of lands and resources and to exercise exclusive control over them. The ICJ affirmed this principle in the Western Sahara Advisory Opinion<sup>24</sup>. Similarly, the Inter-American Court of Human Rights (IACHR) upheld these principles in *Saramaka People v Suriname*<sup>25</sup>, where the court ruled that indigenous communities have the right to effective control over their resources as a component of self-determination.

Ensuring enjoyment of lands and resources falls within the scope of the right to property and at the same time contributes to indigenous peoples' access to housing, food and water, the exercise of their culture and the improvement of their health and sanitation.<sup>26</sup> Property is related to the realisation of the rights to food, housing sanitation, a decent standard of living, non-discrimination and many other basic human rights.<sup>27</sup>

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<sup>22</sup> *UNDRIP*, art.26.

<sup>23</sup> *ILO 169*, arts. 13 & 14.

<sup>24</sup> *Western Sahara*, *supra* note 19, ¶16.

<sup>25</sup> *Saramaka People v. Suriname*, 1975 I.C.J. 10.

<sup>26</sup> Olivier De Schutter, *Report of the Special Rapporteur on the Right to Food*, U.N. GAOR, 65<sup>th</sup> Session., U.N. Doc. A/65/281, ¶3 (2010).

<sup>27</sup> *Id.*

The Dione Ginsu have traditionally occupied and used this land and the resources within the land, namely the Royal Markhor, and so the enjoyment of these lands and resources falls within the scope of their property rights. Furthermore, the auction of the hunting rights enables the realisation of their rights to food, housing, sanitation and a decent standard of living given that the funds from the auction are used for medical expenses, community housing and food expenses.

***(ii) Property rights are alienable and thus the Dione Ginsu can transfer their rights via auction***

The ICCPR<sup>28</sup> and the ICESCR<sup>29</sup> provide that “all peoples may, for their own ends, freely dispose of their natural wealth and resources” and further state that “[i]n no case may a people be deprived of its own means of subsistence”.<sup>30</sup> This is an extension of a people’s right to self-determination and right to decide their economic, social and cultural development (I.B.(I)). Furthermore, under international law, an owner is generally entitled to assign, bequeath, devise, give, sell, or otherwise transfer rights in movable and immovable things.<sup>31</sup>

Evidence of this right can be found in the *Girjas Reindeer Herding Community v Sweden*, in which the Supreme Court of Sweden ruled that the Sami district retains the sole right based on possession since time immemorial<sup>32</sup>. The Court recognised the community’s exclusive hunting and fishing

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<sup>28</sup> ICCPR, art.1(2).

<sup>29</sup> ICESCR, art. 1(2).

<sup>30</sup> *Id.*

<sup>31</sup> John G. Sprankling, *The International Law of Property* (Oxford Univ. Press 2014), ch. 14, “The Right to Transfer”, at 323-344.

<sup>32</sup> *Girjas Sameby v. Sweden*, 2020, Hogsta domstolen [Supreme Court], Case No. T 11648-18.

rights, including the right to lease these rights to others<sup>33</sup>. Similarly, the IACHR upheld the right of indigenous people to control over their resources and their property rights in a number of cases.<sup>34</sup>

Thus, the Dione Ginsu are entitled to dispose of their natural wealth and resources, in this case their right to hunt the Royal Markhor, as this practice falls within their rights of control and benefit over resources established under international law. As an Indigenous community, the Dione Ginsu have a legally recognised right not only to hunt the Royal Markhor for subsistence and cultural purposes<sup>35</sup> but also to determine the manner in which this right is exercised, including the right to transfer it to non-Indigenous individuals through controlled auctions.

In asserting that the Dione Ginsu cannot transfer their right to hunt, Astor disregards the internationally recognised right of Indigenous communities to self-determination and resource autonomy. The Dione Ginsu's right to transfer the hunting opportunity is integral to their sovereignty, economic stability and capacity to thrive within the modern landscape.

## **B. The auction process is permissible under Article III 5(b) of the CMS**

Article III (a-d) of the CMS provides for exceptions to the rule that "Parties that are Range States of a migratory specie so listed in Appendix I, shall prohibit the taking of animals belonging to such species."<sup>36</sup> Article III 5(b) provides an exception to the general obligation on Range States to prohibit the taking of Appendix I listed species where the "taking is for the purpose of enhancing

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<sup>33</sup> *Id.*

<sup>34</sup> *Awas Tingni Community v. Nicaragua*, 2001 Inter-Am. CT. H.R. (ser. C) No. 79; *Saramaka People*, *supra* 29, ¶ 18.

<sup>35</sup> *Convention on the Conservation of Migratory Species of Wild Animals [CMS]*, art. III, ¶5(c-d), Mar. 1979, 1651 U.N.T.S. 333.

<sup>36</sup> *Id.*

the propagation of the species.”<sup>37</sup> Hunting of Royal Markhors, as practiced by the Dione Ginsu through the auction process, complies with the exception under Article III, 5(b) of the CMS, as it directly contributes to the propagation and survival of this critically endangered species.

### **I. Controlled Trophy Hunting can serve as a conservation method of the Royal Markhor**

The auction-based hunting complies with the exception under Article III.5(b) CMS because trophy hunting can be used an effective conservation method and so it aids in the "propagation or survival" of the species.

According to the IUCN, well-managed trophy hunting can deliver conservation outcomes and stated that when well managed “may assist is furthering conservation objectives by relating the revenue and economic incentives for the management and conservation of the target species and its habitat, as well as supporting local livelihoods...”<sup>38</sup>

The African rhino case study<sup>39</sup> demonstrated that removing a small number of specific males can enhance population demography and genetic diversity, encourage range-expansion and generate meaningful socio-economic benefits to help fund effective conservation.<sup>40</sup> The hunting of the Royal Markhor is appropriately managed and regulated as only ten are permitted to be hunted annually and only males are permitted to be hunted (R.15), preserving the overall herd structure and reproductive viability.

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<sup>37</sup> *Id.*, 5(b).

<sup>38</sup> IUCN Species Survival Commission, *Guiding Principles on Trophy Hunting as a Tool for Creating Conservation Incentives* (2012).

<sup>39</sup> Michael t-Sas Rolfes & Richard Emslie, *African Rhino Conservation and the Interacting Influences of Property, Prices, and Policy*, 220 Ecological Econ. (2012).

<sup>40</sup> *Id.*

Hunters are required to hire Dione Ginsu guides and rifles are used for hunting (R.17) and can rely on their experience and expertise to ensure that the hunting is properly managed and is carried out in a responsible and humane way. Therefore, the controlled hunting of the Royal Markhor is properly conducted and can be regarded as a viable conservation tactic.

Similarly, the Markhor (*Capra falconeri*), the national animal of Pakistan, is globally recognised as endangered.<sup>41</sup> A study conducted in the Kohistan district of Pakistan, concluded that controlled hunting with strict management was beneficial for conservation of markhor. CTHP showed an evident impact on the conservation of CITES-listed markhor populations in Gilgit-Baltistan.<sup>42</sup> Controlled-hunting programmes are also a significant source of income for the local communities, other forms of hunting are fully restricted, and poaching has reduced significantly in all community conservation areas.

The controlled hunting of the Royal Markhor via the auction process is similarly a community-led controlled hunting programme which provides for populations management. It provides a source of income for the local communities, ensures that local hunting is kept to a minimum and provides funds for the provision of education for the Dione Ginsu community about the importance of ensuring that domestic goats are not permitted to roam free (or escape) in order to reduce the risk of transmission of *Mycoplasma capricolum*, to which the species is particularly susceptible.

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<sup>41</sup> Since 1976, kabul (*C. falconeri megaceros*), straight-horned (*C. falconeri jerdoni*), and chithan markhor (*C. falconeri chiltanensis*), have been declared endangered by the USFWS. In addition, *C. falconeri* was classified as endangered and conservation-dependant in 1996 by the IUCN.

<sup>42</sup> Lipy Adhikari et al., *Community-based Trophy hunting programs secure bio-diversity and livelihoods: Learnings from Asia's high mountain communities and landscapes*,<sup>4</sup> Env'tal Challenges (2021), Elsevier.

## **II. Funds from the auction are directed to conservation efforts and therefore aid in the propagation of the species.**

Funds from the auction process are allocated to conservation programs which are principally used for research to develop vaccines and other treatments to respond to *Mycoplasma capricolum*, and other diseases which pose a serious threat to the Royal Markhor (R.18). A portion of the funds are directed towards workshops to educate the Dione Ginsu community about the importance of keeping domestic goats separate from the Royal Markhors in order to educate the community about the risk of cross-species transmission of *Mycoplasma capricolum* (R.18). These funds are therefore used to aid in enhancing the survival and conservation of species.

Without this income the Dione Ginsu lack the resources to implement these vital conservation measures (including vaccine-development), which places the species at a greater risk of decline. Therefore, in enhancing the survival of the species by providing such vital funding, the auction fulfils the exception under Article III.5(b).

### **C. The auction process is permissible under Article III (5)(c) of the CMS**

CMS Article III.5(c) provides an exception to the taking of endangered species where the taking is necessary to “meet the needs of traditional subsistence users of such species.”<sup>43</sup> The Dione Ginsu are traditional subsistence users of the Royal Markhor and so the taking of the species is permissible to meet their needs.

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<sup>43</sup> CMS, art. III, (5)(c).



## **I. A broad interpretation of subsistence can be used in the reading of the CMS**

A broad interpretation of “subsistence use” in international law extends further than natural resources necessary for food or shelter. Satisfying a person’s subsistence rights requires ensuring that they securely possess enough food, shelter, clean water, medical care and unpolluted surroundings to lead a decent life,<sup>44</sup> as per IESCR’s recognition of an adequate standard of living.<sup>45</sup> Subsistence includes economic measures that ensure these rights. The auction process is such an economic measure as it provides vital funds for the Dione Ginsu community for these essential provisions for survival (R.16). Without the auction process, the Dione Ginsu are deprived of the income necessary to fulfil their subsistence needs and thereby satisfy their right to an adequate standard of living, under international law.<sup>46</sup>

## **II. Hunting via the auction process continues to constitute indigenous hunting**

This Court has established that hunting via the auction process continues to be considered indigenous hunting. Subsistence whaling exemplifies this, practiced globally including in Denmark, Russia, Alaska and the Grenadines. The International Whaling Commission (IWC) recognised that indigenous subsistence whaling is not the same as commercial whaling, where indigenous whaling is not for the maximisation of catches or profit. The IWC’s objectives for management of aboriginal subsistence whaling are to ensure that hunted whale populations are maintained at, or returned to, healthy levels.<sup>47</sup>

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<sup>44</sup> Lisa Rivera, *Subsistence Rights*, in *Encyclopaedia of Global Justice* 42-25 (D.K. Chatterjee ed., Springer 2011).

<sup>45</sup> *ICESCR*, art.11.

<sup>46</sup> *Id.*

<sup>47</sup> International Whaling Commission, *Aboriginal Subsistence Whaling*, <https://iwc.int/management-and-conservation/whaling/aboriginal> (visited 15 Nov. 15, 2024).

The hunting of the Royal Markhor can be accurately classified as indigenous hunting even though the hunting is being conducted by foreign hunters, as it does not seek to maximise profit or catches. The hunting is limited to specific quotas and there is no profit involved, instead the proceeds are apportioned exactly to relevant purposes, the majority of which are to meet subsistence needs, community development and conservation efforts (R.16).

### **III. Subsistence practices can be modernised to meet contemporary challenges**

State practice indicates that cultural rights are not limited to customary uses that prevailed in ancient times and can be adapted or modernised.<sup>48</sup> Accordingly, the Dione Ginsu can modernise and develop their practices as a means of fulfilling their subsistence needs.

The auctioning of hunting rights for the Royal Markhor has become a critical mechanism for subsistence, providing revenue that funds housing, medical care and food security. Traditionally the Dione Ginsu hunt the Royal Markhor to fulfil cultural and subsistence requirements, obtaining meat and using horns as vital symbols of strength and prosperity (R.14). In response to contemporary challenges—including poverty and limited access to essential services—the community has adapted these practice through adopting the auction process. This was necessitated by their poor economic conditions (R.3) to ensure the survival of the community. This is not only permissible under international conventional law, but a necessary evolution of the Dione Ginsu's right to meet their subsistence needs in a way that aligns with both tradition and the demands of the present. It reflects their legitimate right to self-determination, autonomy and survival.

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<sup>48</sup> *Members of the Yorta Yorta Aboriginal Community v. State of Victoria* (2001) 110 FCR 244 (Austl.); *Garifuna Community of Cayos Cochinos and its Members v. Honduras*, Inter-Am. Ct. H.R. Case No. 12.548, at 216, (Feb.21, 2013); *Apriana Mahuika et al. V. New Zealand*, Communication No. 547/ 1993, Rep. of the United Nations Human Rights Committee, UN Doc. A/56/40 (Vol. II). 11-29 (Oct. 27, 2000).

#### **IV. The CMS does not require the taking to be carried out by the traditional subsistence users**

The wording of Article 5(c)<sup>49</sup> requires the taking of the Royal Markhor is done to “accommodate the needs of traditional subsistence users” and does not specify that traditional subsistence must carry out the act. The taking by non-indigenous hunters continues to be under the objective of providing subsistence to traditional users, including food, housing and medical expenses, as well as the consumption of the meat (R.16,R.17). The auction process still therefore complies with the exception set out under (5)(b).

#### **V. The protection of the Dione Ginsu’s cultural-subsistence rights prevail over the parties’ obligations to protect the environment or endangered species**

The principle of sustainable development establishes the necessity to support facilitate the needs of traditional subsistence users is well recognised in international law, as a basic principle.<sup>50</sup>

International instruments, including the IUCN<sup>51</sup> and the Inter-American Convention for the Protection and Conservation of Sea-Turtles<sup>52</sup>, provide exemptions on the basis of the cultural-subsistence needs of traditional users of sea-turtles, when regarding its conservation.<sup>53</sup> Rishmak’s obligation to protect the rights of the Dione Ginsu international law must be interpreted with consideration of their subsistence practices. The right to self-determination (as established in

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<sup>49</sup> CMS, *supra* 53,

<sup>50</sup>Alexander Gillespie, *Aboriginal Subsistence Whaling: A Critique of the Inter-Relationship Between International Law and the International Whaling Commission*, 21 COLO. J. INT’L ENVTL. L/ & POL’Y 79 (2001).

<sup>51</sup> IUCN Policy Statement on Sustainable Use of Wild Living Resources, Res. 2.29 (Oct.2000).

<sup>52</sup> Art.2, May 2, 2001, 2164 U.N.T.S.29.

<sup>53</sup> Alexander Gillespie, *The Slow Swim From Extinction: Saving Turtles in the South Pacific*, 21 INT’L J. MARINE & COASTAL L. 57, 69 (2006).

(I.A.III (i))) is a *jus cogens norm* and so it is an overriding principle of international law which takes priority over other laws. The subsistence rights of the Dione Ginsu are an extension of their right of self-determination. Thus, protection of the Royal Markhor as an endangered species, must not be employed to the detriment of the Dione Ginsu's subsistence rights.

## **II. THE IMPORT BAN ON HUNTING TROPHIES IS AN UNJUSTIFIABLE BREACH OF ASTOR'S OBLIGATIONS UNDER ARTA**

The import ban implemented by Astor is a quantitative restriction contrary to its fundamental obligation to maintain free trade with Rishmak pursuant to article 11 of the ARTA.<sup>54</sup> Astor claims the measure is justified under Article 20, namely as “necessary to protect public morals” (Art.20(a)) and “relating to the conservation of an exhaustible natural resources” (Art.20(g)).<sup>55</sup> Article 20 is analogous to article XX of GATT, and its law and its interpretations are a subsidiary source of law for interpreting ARTA.<sup>56</sup> Article XX is strictly construed and limited in its application, providing a narrow scope for trade-restrictive measures to be justified.<sup>57</sup> The interpretation of article XX requires a two-tiered analysis, firstly requiring a trade measure is justified under a named exception and secondly requiring analysis under the introductory paragraph (the chapeau) of the article, ensuring the measure is not arbitrary or a disguised restriction on trade in its application<sup>58</sup>

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<sup>54</sup> Conceded by Astor (R.33)

<sup>55</sup> (R.33)

<sup>56</sup> 25(2) ARTA

<sup>57</sup> Daniel Rangel, WTO General Exceptions: Trade Law's Faulty Ivory Tower, Public Citizen (Oct. 10, 2024), <https://www.citizen.org/article/wto-general-exceptions-trade-laws-faulty-ivory-tower/>.

<sup>58</sup> Phillips Sands et al. *Principles of International Environmental Law*, 4, (Cambridge, 2018), p854-860

### **A. The import ban is not justified under Article 20(a)**

Article 20(a) provides that an otherwise impermissible quantitative restriction will be justified where it is “necessary to protect public morals”. Public morals are those “standards of right and wrong conduct maintained by or on behalf of a community or nation”.<sup>59</sup> The test of necessity under GATT Article XX, involves the weighing and balancing of certain factors, including (i) the relative importance of the objective, (ii) the contribution of the measure to that objective, (iii) and the trade restrictiveness of the measure, followed by a comparison with a less restrictive and equally effective alternative.<sup>60</sup> This “holistic” weighing and balancing exercise “involves putting all the variables of the equation together and evaluating them in relation to each other after having examined them individually, in order to reach an overall judgement.”<sup>61</sup> Applying this analysis to the import ban demonstrates that it is not “necessary to protect public morals” within the meaning of Article 20(a).<sup>37</sup>

#### ***I. The importance of the objective does not necessitate a general import ban***

The importance of the societal interest being protected (not its status as a public moral objective) is to be assessed.<sup>62</sup> The societal interest sought to be protected by Astor appears to be the protection of its citizens from exposure to/participation in trade in hunting-trophies (R.33). Accordingly, Astor may seek to justify the ban by reference animal welfare concerns as was recognised to fall under Article XX(a) in *EC — Seals*(R.33). The animal welfare concerns in *EC—Seals* were related,

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<sup>59</sup> Panel Report, *China — Publications and Audiovisual Products*, para.7.759; Panel Report, *EC — Seal Products*, para. 7.380

<sup>60</sup> Appellate Body, *Colombia—Textiles*, para. 5.77, citing AB Reports, *EC — Seal Products*, para. 5.169

<sup>61</sup> Appellate Body, *Colombia—Textiles*, para. 5.75.

<sup>62</sup> Panel Report, *Brazil—Taxation*, paras. 7.591-7.592.

however, to the avoidable pain, distress, fear and suffering experienced by seals during the killing and skinning process,<sup>63</sup> and not to the intended use of the seal products. No moral distinction was made between meat, on the one hand, and articles of clothing or accessories on the other.<sup>64</sup> Astor centres its the public moral concerns on the purpose of the trophy-hunting and the limited chance of escape for the hunted animal (R.25). Neither involve inhumane treatment of the kind considered in *EC— Seals*. Dedicated task-groups in many countries, such as the Suurrista Virka-Apu in Finland, provide official assistance in ensuring that injured animals are killed quickly and humanely and not left to suffer their injuries in the wild. The limited animal-welfare component of the public moral concerns in respect of trophy hunting, diminishes its importance relative to the other factors in the necessity test.

## **II. The import ban measure does not sufficiently contribute to the objective of protecting public morality**

There is no general pre-determined threshold for a measure's contribution.<sup>65</sup> Rather it will depend on the other factors of the necessity analysis (i.e., the relative importance of the objective, the restrictiveness of the trade measure, and potential alternative measures), and on the nature, quantity, and quality of evidence, and whether the analysis is performed in quantitative or qualitative terms.<sup>66</sup> For a measure as restrictive as an import ban to be found "necessary", it should be "apt to produce a material contribution to the achievement of its objective".<sup>67</sup> From an evidential point of view, the contribution of the import ban to the objective should be readily discernible

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<sup>63</sup> *EC-Seal Products* para. 5.153.

<sup>64</sup> Panel Report, *EC-Seals*, para. 2.6 — Seal products derived and sold from the hunting include meet, skins and articles (such as clothing, accessories and omega 3 capsules).

<sup>65</sup> Appellate Body, *Colombia—Textiles*, paras. 5.72.

<sup>66</sup> Appellate Body, *EC—Seal Products*, paras. 5.213-5.214.

<sup>67</sup> Appellate Body, *Brazil—Retreaded Tyres*, para. 151.

since it does not form part of a broader policy scheme.<sup>68</sup> It is highly unlikely, however, that the import ban will meet this threshold. As regards general hunting trophies, Astor has not implemented any domestic-restriction on the trade of hunting trophies undermines the contribution of the measure to the objective.<sup>69</sup> As regards Royal Markhor hunting-trophies, the import ban removes a maximum of ten hunting-trophies from entry into Astor while simultaneously blocking the import of all other hunting trophies into the state and depriving an impoverished Indigenous community of funding for their subsistence and conservation efforts.

### **III. The measure is not the least trade restrictive measure available to Astor**

There are less heavy-handed and more effective means of ensuring that hunting trophies imported into Astor do not jeopardise Astori public morals. One such alternative is the adoption of a “smart ban” which selectively prohibits the import of hunting-trophies associated with bad practice, such as hunting operations which do not provide an equitable share of hunting-proceeds to local communities, hunting operations which do not observe sustainable hunting quotas or hunting-operations which employ or permit inhumane hunting methods.<sup>70</sup> Such an alternative is not “merely theoretical” as it would not entail prohibitive costs or substantial technical difficulties for Astor as a high-income country. For example, the EU commission banned the importation of animal-pelts unless the country of origin banned leghold traps or used a trapping method which met “internationally agreed humane trapping standards”.<sup>71</sup> The onus is on Astor to demonstrate that this proposed alternative measure is not “reasonably available to it”.

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<sup>68</sup> EC Seals - AB report

<sup>69</sup> Panel Report, *EC-Seal Products*, para. 7.460.

<sup>70</sup> Hugh Webster et al., *Keeping Hunting Bans on Target*, *Conservation Biology* 36(4) (2022)

<sup>71</sup> Council Decision 97/602, 1997 O.J. (L 242); Commission Regulation 3254/91, art. 3, 1991 O.J. (L 308).

## **B. The Import Ban is Not Justified under Article 20(g)**

Article 20(g) ARTA provides that an otherwise impermissible quantitative restriction will be justified where it “relat[es] to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption”, so long as it is neither arbitrary nor a disguised restriction on international trade. Astor relies on the bare assertion that commercial hunting “can” increase the incidence of poaching to justify a blanket prohibition on the importation of all hunting trophies (all hunting trophies (whether commercial or otherwise) without regard to conservation effects of a given type of trophy hunting and without implementing any restrictions (R.33).

## **I. The Import ban does not primarily relate to the conservation of an exhaustible natural resource as it is too broad in scope and indiscriminate in effect.**

The nexus of “related to” under Article XX(g) has been interpreted as meaning “primarily related to” which excludes “measures with only a collateral relationship to conservation.”<sup>72</sup> In *US-Shrimp*, a “simple, blanket prohibition of the importation of shrimp imposed without regard to the consequences (or lack thereof) of the mode of harvesting employed upon the incidental capture and mortality of sea turtles”, was considered “disproportionately wide in its scope and reach in relation to the policy objective”.<sup>73</sup> The means of such an expansive measure would not be “reasonably related to the ends”. In applying the importation ban indiscriminately to all animals regardless of the conservation-consequences of the mode of hunting on a given species is not “reasonably related to its ends” and cannot be justified under Article 20(g) ARTA.

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<sup>72</sup> Steve Charnovitz, *Exploring the Environmental Exceptions in GATT Article XX*, (1991) 25 J.W.T. 37 at 50

<sup>73</sup> Appellate Body, *US –Shrimp/Turtle*, para.137.



## **II. The import ban is counterproductive in effect and so does not primarily relate to the conservation of an exhaustible natural resource**

The trade measure is counterproductive to its stated objective of combating poaching and without furthering that objective it cannot be “primarily aimed” at such conservation.<sup>74</sup> The WTO Special Studies Report Special Studies Report “Trade and the Environment” warns against the use of import bans for environmental matters and advises that such “putative trade remedies may even aggravate the problems.”<sup>75</sup> The import ban aggravates the “problem” of controlled hunting, as it does not impact the number of licences granted by the Rishmak government annually, but merely removes a source of income for the communities engaging in conservation practices of the Royal Markhor.

Properly managed conservation hunting, as conducted by the Dione Ginsu can support the species’ conservation. The community wildlife management of Markhor in Tajikistan, using trophy hunting, has helped drive species-conservation and provides important local livelihood benefits.<sup>76</sup> Another example is provided by the Bighorn Sheep trophy hunting and trade which has been found to provide powerful incentives to reduce poaching, engage communities in anti-poaching and conservation, rebuild species populations and conserve habitats, while providing important economic and social benefits for indigenous and local communities.<sup>[56]</sup> Removing essential income from the Dione Ginsu ensures Astors import ban is counterproductive to its stated aim, and cannot be provisionally justified under article 20(g). cannot be provisionally justified under article 20(g).

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<sup>74</sup> Panel Report, US –*Automobiles*, para.5.60.

<sup>75</sup> [WTO, Special Studies: Trade and the Environment](#), pg. 7

<sup>76</sup> Partnerships (both among conservancies and with other supporters); and a focus on transparency [fact sheet](#) and [full report](#).

**III. The import ban does not satisfy Article 20(g) because it is not “made effective in conjunction with restrictions on domestic production or consumption”**

The requirement that a restrictive trade measure be “made effective in conjunction with restrictions on domestic production” requires that the *measure concerned* impose such restrictions.<sup>77</sup> However, the import ban is completely unilateral in effect with domestic hunting in Astor continuing unabated since its introduction. The burden of this measure is entirely borne by foreign producers and, in line with the view of the AB in *China - Rare Earths*, is highly unlikely to satisfy Article 20(g).<sup>78</sup> The unfairness of the conservation burden is even more pronounced in respect of the Royal Markhor. Both Astor and Rishmak (as the sole range states for the species) strictly prohibit the commercial hunting of the Royal Markhor, subject to the limited hunting rights of the Dione Ginsu (R.14). The import ban, insofar as it could be characterised as a measure to conserve the Royal Markhor only impacts the rights of the Dione Ginsu, with no tangible link to its conservation since the limited taking of the Royal Markhor within Rishmak is still permitted. The unfairness of the unilateral nature of the measure is brought into harsh relief by the comparative economic positions of the two states: Under the World Bank’s classification system, Astor is a high-income country with a highly diversified economy, whereas Rishmak, its closest neighbour, is a low-income economy, with poverty rates highest in the indigenous Dione Ginsu community (which is heavily reliant on the controlled and sustainable hunting of the Royal Markhor) (R.3). In the absence of conjunctive restrictions on domestic production or consumption, the import ban cannot be provisionally justified under Article 20(g).

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<sup>77</sup> Appellate Body, US –*Gasoline*, para.20.

<sup>78</sup> Appellate Body, China – *Rare Earths*, para.5.134.

### **C. The Import Ban is an Arbitrary Measure and fails under the Chapeau of Article 20.**

The import ban on hunting trophies imposed by Astor is an arbitrary and unjustified measure contrary to the chapeau of Article 20 ARTA. The Chapeau is the second element of the Article 20 analysis, requiring that any measure not only be justified under one of the listed exceptions, but ensures it is not arbitrary and does not constitute a disguised restriction on international trade.<sup>79</sup> The chapeau guards against the abuse or illegitimate use of Article 20 in practice,<sup>80</sup> and ensures a balance is struck between the right of a party to invoke exceptions to Article 11 and the rights of other members under the ARTA.<sup>81</sup> Astor acted unilaterally in its implementation of the import ban, without prior consultation with Rishmak, imposing a “single, rigid and unbending”<sup>82</sup> quantitative trade measure, amounting to an arbitrary and excessive restriction on inter-state trade contrary to the chapeau. A measure which is not justified under the exceptions of article 20 cannot be saved by the chapeau, nor can a breach of the chapeau be justified by reference to the listed exceptions.

#### **I. The Import Ban is a unilateral trade restriction**

Astor enacted the import ban unilaterally without efforts for prior communication, coordination or consideration of other affected states, and with immediate effect (R.28). Unilateral action amounts to a disguised restriction on trade under the chapeau<sup>83</sup>. States must pursue the possibility of entering into cooperative arrangements with foreign governments and consider unilateral measures only as a last resort where governments are unwilling to cooperate.<sup>84</sup> *Shrimp/Turtle* introduced requirements of due process, specifying that states must allow for the formal possibility of

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<sup>79</sup> Brandon L. Bowen, *The World Trade Organization and Its Interpretation of the Article XX Exceptions to the General Agreement on Tariffs and Trade, In Light of Recent Developments*, 29 181 GA J. Intl & Comp L. (2001)

<sup>80</sup> Adopting the WTO approach to the Chapeau of GATT Article XX, AB Report, US - Spring Assemblies, para 56

<sup>81</sup> Appellate Body *Shrimp/Turtle*, para.159, Appellate Body, EC –*Seal Products*, para.5.301.

<sup>82</sup> Id, p.177-78

<sup>83</sup> Appellate Body *US-Gasoline*, para.28

<sup>84</sup> Appellate Body, *US-Gasoline*, para.631

applicant countries to be heard prior to the implementation of trade-restrictive measures.<sup>85</sup> Astor's unilateral action does not comply with this standard.

Astor was aware of the Dione Ginsu's auction practice (R.23) and thus recognised that Rishmak would be impacted by a unilateral measure yet did not engage in negotiation. The arbitrary effect of the measures therefore "must have been foreseen and [were] not merely inadvertent or unavoidable".<sup>86</sup>

The duty on Astor to cooperate with Rishmak is reinforced by the migratory nature of the Royal Markhor, . The Appellate Body in *Shrimp/Turtle* found that "migratory species inherently require internationally coordinated efforts for their protection and different environmental instruments recognise this"<sup>87</sup>. For transboundary matters, an environmental objective cannot be deemed to be properly pursued if the measure is unilateral and does not account for the circumstances in the states in which the species also reside, or the laws by which it would be affected.<sup>88</sup> In its failure to attempt to engage with Rishmak in "serious, across the board negotiations, with the objective of concluding bilateral agreements for the protection and conservation of [the Royal Markhor], before enforcing the import prohibition"<sup>89</sup>, the measure imposed by Astor is an arbitrary trade restriction failing under the chapeau.

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<sup>85</sup> para.178-83

<sup>86</sup> Appellate Body, *US-Gasoline* para.28

<sup>87</sup> *Id.* para.168

<sup>88</sup> Appellate Body, *US-Shrimp/Turtle*., para.178-13

<sup>89</sup> *Id.*, para.166

## **II. The Import Ban is an inflexible measure which does not consider the prevailing conditions in Rishmak**

The import ban applied by Astor creates a blanket prohibition on all hunting trophies and fails to account for the varying environmental and socio-economic contexts within which hunting occurs, imposing a rigid and arbitrary measure. The Appellate Body in *US-Shrimp (Malaysia)* established that a restrictive measure must have the flexibility to account for the differing conditions prevailing in exporting states.<sup>90</sup> The US Revised Guidelines to permit a degree of flexibility enabling them to consider the particular conditions prevailing in the importing state, allowing them to apply for certification.<sup>91</sup> Astor's import ban does not, however, discern between importing states on the basis of relevant environmental and socio-economic factors.

In both the formation of the import ban and in its blanket application, Astor failed to account for the Dione Ginsu community. Under Article 27 of the ICCPR, positive measures may be necessary to safeguard the rights of minority people, who are acting with the objective of maintaining their connection with their culture.<sup>92</sup> In *Apirana Mahuika vs. New Zealand*<sup>93</sup>, the UNHR established that under Article 27 of ICCPR that where the economic activities are an essential element of the culture of a community, their right to adapt these means to modern way of life is a protected right. It confirmed, "in the case of indigenous peoples the enjoyment of the right to one's own culture may require positive legal measures of protections by a State Party".<sup>94</sup> The WTO emphasised this

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<sup>90</sup> para.146-7

<sup>91</sup> para.148

<sup>92</sup> CCPR General Comment No. 23: Article 27 (Rights of Minorities) Adopted at the Fiftieth Session of the Human Rights Committee, on 8 April 1994 CCPR/C/21/Rev.1/Add.5, General Comment No. 23. (General Comments).

<sup>93</sup> *Supra*. 55

<sup>94</sup> *Id.* para 9.5

in *US-Shrimp*, faulting the EU for their failure to pursue cooperative arrangements with the Canadian Inuit that would facilitate the access to the exception and therefore support the trade of a minority community.<sup>95</sup> A measure in practice should preserve the equalities of competitive opportunities.<sup>96</sup> The import ban's blanket prohibition is arbitrary, and fails to consider the Indigenous communities and creates an unjustifiable trade restriction against Rishmak.

### III. The Import Ban is not the least restrictive trade measure

The imposition of a complete ban on imports is “by design as trade restrictive as can be”<sup>97</sup> and is “ordinarily, the heaviest ‘weapon’ in a member’s armoury of trade measures”.<sup>98</sup> Astor adopted the highest level of trade-restriction in enacting the import ban, which in practice removes Rishmak’s market access to Astor and had the effect of removing the necessary income of an indigenous community (R.31). The chapeau assesses the restrictive impact of the application of the measure and requires also an assessment of the “restrictive effect [the measure has] on those wishing to engage in importing, in particular their right to trade”.<sup>99</sup> In practice, the effect is that “banning the import of sport-hunted trophies could deprive range countries of revenue for conservation purposes, without necessarily affecting the number of animals removed from herds”<sup>100</sup> Astor failed to account for its impact on Rishmak’s right to trade. Alternative measures were reasonably available to Astor, which account for the impact on other States and allow for a balance of rights

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<sup>95</sup> Appellate Body, *US-Shrimp/Turtle* para 7.316

<sup>96</sup> Alexa Herwig, *Indigenous Interests and the Chapeau of Article XX: Equality of What?* 108 AJIL (2017)

<sup>97</sup> Appellate Body, *Brazil-Retreated Tyres*, para.150

<sup>98</sup>

*Id.*

<sup>99</sup> China – Publications and AV Products, para 7.788

<sup>100</sup> Dept. Of the Interior Fish & Wildlife Serv. *Endangered and Threatened Wildlife and Plants: Revision to the Section 4(d) Rule for the African Elephant*, Part 17 Docket no. FWS-HQ-IA-2021-099 (May 1 2024)

and obligations to be struck between States as required under the chapeau<sup>101</sup>. Smart Bans, (introduced in II.A.iii), apply permissible trade-restrictions while ensuring protection and remuneration for the communities who enforce conservation practices. Smart Bans amplify the benefits of sustainable benefits to communities by implementing IUCN guidelines while simultaneously increasing regulation on legal hunting activities.<sup>102</sup> The United States have rejected introducing an import ban on African elephant hunting trophies, in favour of a case-by-case basis approach considering sustainable management programmes<sup>103</sup>. The Endangered Species Act (ESA), reviewed in 2024, determines imports of the African elephant hunting trophies based on individual applications requiring all Importing countries are CITES compliant and to ensure the investment of hunting fees go into the conservation of the species and/or improve local communities.<sup>104</sup> In practice, it “provides incentives to meaningful action to conserve the species and invest much needed revenue” to local communities supporting conservation. The failure to account for mitigating provisions and imposing a blanket ban on all imports, is an arbitrary action. Astor’s import ban is an unjustifiable trade restriction under ARTA and has the effect of depriving the Dione Ginsu of necessary funding for their community.

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<sup>101</sup> Appellate Body, US-Shrimp/Turtle, para 152-9

<sup>102</sup> IUCN, IUCN SSC Guiding Principles On Trophy Hunting As A Tool For Creating Conservation Incentives (Int’l Union for Conservation of Nature 2012).

<sup>103</sup> Safari Club International v Zinke 878 F.3d 316 (D.C. Cir. 2017), and Friends of Animals v. Bernhardt 961 F.3d 1197 (D.C. Cir. 2020)

<sup>104</sup> Endangered Species Act 16 U.S.C 1531-1544 (2018), Section 4(d)

### **CONCLUSION AND PRAYER**

For the foregoing reasons, the Sovereign State of Rishmak respectfully requests that this Honourable Court:

- (1) Declare that trophy hunting of the Royal Markhor through the auction process, by hunters who are not Dione Ginsu complies with conventional international law, and
- (2) Declare that the ban on the importation of Royal Markhor hunting trophies violates conventional international law.



