

IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

THE CASE CONCERNING

SUBSISTENCE USE AND TROPHY HUNTING

ASTOR

APPLICANT

v.

RISHMAK

RESPONDENT

MEMORIAL FOR THE RESPONDENT

29th STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT

COMPETITION, 2024-2025

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QUESTION PRESENTED

- I. WHETHER THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH AN AUCTION PROCESS, BY HUNTERS WHO ARE NOT DIONE GINSU, COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW.

- II. WHETHER THE BAN ON THE IMPORTATION OF ROYAL MARKHOR HUNTING TROPHIES VIOLATES CONVENTIONAL INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

The sovereign state of Rishmak and the sovereign state of Astor submitted by Special Agreement their questions presented to the International Court of Justice pursuant to Article 40 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court's jurisdiction in the written or oral proceedings.

STATEMENT OF FACTS

Rishmak and Astor are sovereign states in central Asia that share a border.¹ With a population of only 3.5 million people, the World Bank classifies Rishmak as a low-income economy.² Poverty rates are the highest among the Dione Ginsu people, Rishmak's indigenous community of approximately 4,000 members.³ Conversely, Astor is a high-income country with a population of 220 million people and a well-diversified economy.⁴

In 2003, Rishmak and Astor ratified a bilateral trade agreement entitled Astor-Rishmak Trade Agreement [hereinafter ARTA] to strengthen bonds of friendship and cooperation, expand regional trade, and create a predictable framework for business and environmental conservation.⁵

Both Rishmak and Astor are home to the Royal Markhor (*Capra roylali*), a critically endangered species protected under Appendix I of the Convention on the Conservation of Migratory Species of Wild Animals (CMS).⁶ Royal Markhors reside in Rishmak during the fall and winter, then migrate to Astor during the warmer spring and summer.⁷

Rishmak law strictly prohibits the killing of Royal Markhor, with a limited exception for the Dione Ginsu community.⁸ The Dione Ginsu have shared a relationship with the Royal Markhor "since time immemorial," where traditionally, upon entering adulthood, all male members of the Dione Ginsu must hunt and kill a Royal Markhor.⁹ The Dione Ginsu are extremely resourceful with the hunted Royal Markhor; they share the meat to feed their community, and the horns are

¹ R. 6, p. 2-4.

² R. 6, p. 3.

³ *Id.*

⁴ R. 6, p. 2.

⁵ R. 7, p. 11-12.

⁶ R. 6, p. 1,8.

⁷ R. 6, p. 4.

⁸ R. 8, p. 14-15.

⁹ R. 8, p. 14.

often used in weddings and funerals because of their cultural and religious significance.¹⁰ After the CMS added the Royal Markhor to Appendix I in 2009, Rishmak instituted a lottery system for the Dione Ginsu to determine who may hunt a Royal Markhor and set the cap of ten (10) Royal Markhors to be taken per year.¹¹

In 2016, the Dione Ginsu community began to auction off their right to hunt Royal Markhors to foreign hunters to better their community.¹² The Dione Ginsu community used 30% of the profits for community housing expenses, 30% for community medical expenses, and 15% for community food expenses.¹³ Further, 15% percent was allocated for Royal Markhor conservation programs, and 10% was owed to the auction facilitators.¹⁴ The winning bidders were almost exclusively Astori nationals who paid around \$150,000 (USD) per Royal Markhor.¹⁵

In May of 2022, Astor addressed Rishmak regarding the Dione Ginsu's lottery system.¹⁶ Astor's diplomatic note stated that the Royal Markhor should be given the utmost protection under the CMS, with limited exceptions, such as for members of an indigenous community harvesting a species for "subsistence use."¹⁷ In Astor's view, hunting of Royal Markhors by non-indigenous, non-traditional subsistence users (including Astori nationals) is contrary to the text and purpose of the CMS.¹⁸

Rishmak responded in June of 2022, reminding Astor that the Dione Ginsu community has the right to hunt the Royal Markhor under international law.¹⁹ Further, Rishmak pointed out that

¹⁰ *Id.*

¹¹ R. 8, p. 15.

¹² R. 9, p. 16.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ R. 9, p. 17.

¹⁶ R. 9, p. 19.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ R. 10, p. 20.

the taking of a limited number of individual Royal Markhors provides “subsistence,” such as funds for food, housing, and medicine.²⁰

During the course of correspondence between the two States, multiple non-governmental Astori political groups began to protest and support both States.²¹ The Astor Society for the Humane Treatment of Animals (ASHTA) launched a protest called “Ban Trophy Hunting Now!”²² This protest called on Astor’s legislature to ban the importation of trophy animals.²³ Contrarily, the Responsible Hunters in Astor (RHINA) campaigned to defend trophy hunting, emphasizing that properly managed trophy hunting can provide demonstrable conservation benefits.²⁴

In December of 2022, the national legislature of Astor enacted a law prohibiting the importation of all hunting trophies, including the Royal Markhor.²⁵ Astori hunters demanded and received refunds from the Dione Ginsu for planned Royal Markhor hunts, as they were no longer permitted to import hunting trophies into Astor.²⁶ As a direct result of Astor’s ban on the importation of hunting trophies, the Dione Ginsu could not auction off the right to hunt the Royal Markhor.²⁷

In March of 2023, Rishmak explained to Astor the importation ban of Royal Markhor hunting trophies infringed the subsistence rights of the Dione Ginsu.²⁸ Further, Rishmak informed Astor the ban is counterproductive and deprives funding for the conservation of the Royal Markhor increases the probability the entire species will become extinct.²⁹

²⁰ *Id.*

²¹ R. 12, p. 24-26.

²² R. 12, p. 25.

²³ *Id.*

²⁴ R. 12, p. 26.

²⁵ R. 13, p. 29.

²⁶ R. 13, p. 31.

²⁷ *Id.*

²⁸ R. 13, p. 32.

²⁹ *Id.*

In April of 2023, Astor responded that the ban was necessary “*to protect public morals.*”³⁰ Rishmak and Astor continued to negotiate but failed to resolve the dispute.³¹ Hence, the two States entered into a Special Agreement to institute proceedings within the International Court of Justice (ICJ).³² Rishmak and Astor agreed to submit the following questions to the ICJ: (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.³³

³⁰ R. 13, p. 33.

³¹ R. 14, p. 35.

³² *Id.*

³³ *Id.*

SUMMARY OF ARGUMENT

Rishmak did not violate international law. The indigenous people of Rishmak, the Dione Ginsu, have the right to hunt the Royal Markhor under the Convention on the Conservation of Migratory Species of Wild Animals.³⁴ The Dione Ginsu did not violate CMS by auctioning off this right to foreign hunters. Further, Rishmak's actions adhered to international law, principles of international trade, and benefit conservation efforts of the Royal Markhor.

Astor violated international law by imposing a blanket importation ban on trophy hunted specimens. Astor violated the Vienna Convention on International Treaties and ARTA, by imposing a ban that arbitrarily restricts trade through its domestic laws.³⁵ Astor attempted to justify its transgression using the public morality clause within ARTA. However, the public morality clause does not: (1) justify imposing domestic law contravening the treaty's text and (2) does not pass the "necessity" test propounded by the WTO.

In sum, Rishmak is in compliance with international law and may continue to auction off the opportunity to hunt a Royal Markhor. Also, Astor should lift the importation ban on hunting trophies because it violates international law and trade standards.

³⁴ Convention on the Conservation of Migratory Species of Wild Animals [hereinafter CMS], June 3, 1979, 1651 U.N.T.S. 333.

³⁵ Vienna Convention on the Law of Treaties [hereinafter Vienna Convention] art. 46, May 23, 1969, 1155 U.N.T.S. 331.

ARGUMENT

I. THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW.

A. As an initial matter, the Dione Ginsu community has the right to hunt the Royal Markhor under international law.

Rishmak is a party to the Indigenous and Tribal Peoples Convention, 1989,³⁶ the International Covenant on Economic Social and Cultural Rights,³⁷ and the CMS.³⁸ These treaties expressly grant Rishmak and the Dione Ginsu community the right to hunt the Royal Markhor in accordance with centuries old custom.³⁹

1. Hunting of the Royal Markhor is permitted under the Indigenous and Tribal Peoples Convention, 1989.

The International Labor Organization enacted the Indigenous and Tribal Peoples Convention of 1989 to assert that indigenous communities have the right to control their own practices, economic institutions, and customs.⁴⁰ The Convention recognizes that indigenous communities, like the Dione Ginsu, historically have diminished cultural autonomy compared to the states where they are located.⁴¹ Rishmak ratified this Convention, rendering its Articles binding. Article 23 of the Convention states, “[h]andicrafts, rural and community-based industries, and subsistence economy and traditional activities of the peoples concerned” must be recognized and upheld by state governments.⁴² Here, the hunting and use of the Royal Markhor satisfies each of these categories. The history of the Dione Ginsu is inextricably tied to the Royal Markhor and

³⁶ Indigenous and Tribal Peoples Convention, 1989 [hereinafter ILO Convention 169], 2007, 1650 U.N.T.S. 383.

³⁷ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 993 U.N.T.S. 3.

³⁸ CMS, *supra* note 34.

³⁹ R. 8, p. 14.

⁴⁰ ILO Convention 169, *supra* note 36, at 9.

⁴¹ *Id.* at 6.

⁴² *Id.* at 16.

the coming-of-age of the community's males.⁴³ Traditionally, the matured Dione Ginsu males performed a ceremonial hunt of a male Royal Markhor using handmade materials.⁴⁴ Following the rite, each part of the animal served a symbolic purpose to the Dione Ginsu.⁴⁵ The Dione Ginsu's right to such a history and culture should not be interfered with. Thus, Rishmak must afford this right the highest possible form of protection.

2. Hunting of the Royal Markhor is permitted under the UN Declaration on the Rights of Indigenous Peoples Article 26.

Both parties are bound by the UN Declaration on the Rights of Indigenous Peoples (DRIP).⁴⁶ DRIP denotes the rights of indigenous peoples to the lands, territories, and resources which they have traditionally owned, and affirms indigenous peoples' right to own, use, develop, and control these lands.⁴⁷ The Dione Ginsu's right to the Royal Markhor fits within DRIP and deserves outright protection. Astor voluntarily abstained from voting or participating in DRIP and cannot now raise objections to its principles.⁴⁸

B. The Dione Ginsu community did not violate international law in transferring their right to hunt the Royal Markhor.

The Dione Ginsu community has the right to auction off their right to hunt a Royal Markhor and acted in strict accordance with international law to its conservation. This decision was fueled by economic necessity.⁴⁹ The auction strikes a balance between the importance of protecting the Royal Markhor from various threats and the Dione Ginsu's right to cultural autonomy. Astor's

⁴³ R. 8, p. 14.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ G.A. Res. 61/295, United Nations Declaration on the Rights of Indigenous Peoples [hereinafter DRIP] (Sept. 13, 2007).

⁴⁷ *Id.* at 19.

⁴⁸ R. 6, p. 10.

⁴⁹ R. 9, p. 16.

attempts to further sanction an already vulnerable population and smother Rishmak's economic prosperity must stop.

1. A detailed reading of the Conservation of the CMS allows the taking of the Royal Markhor.

The use of the Royal Markhor is consistent both with Rishmak's responsibility to safeguard the Dione Ginsu's cultural autonomy and efforts to promote the conservation of endangered species. The Royal Markhor is an endangered species under Appendix I of the CMS.⁵⁰ CMS details guidelines for range states of endangered species, like Rishmak and Astor, must follow in their conservation efforts.⁵¹ Accordingly, Rishmak instituted a lottery system permitting only ten (10) Royal Markhors to be taken by the Dione Ginsu community annually.⁵²

The Dione Ginsu's lottery system is favorable to the Royal Markhor's conservation status under the CMS. "Conservation status of a migratory species" refers to the "sum of influences acting on the migratory species that may affect its long-term distribution and abundance."⁵³ This lottery system facilitates controlled taking of Royal Markhors and the funds raised are used directly to foster the species' long-term success.⁵⁴

CMS Article III permits the taking of an Appendix I species under a number of exceptions.⁵⁵ While only one exception must be met, Rishmak satisfies exceptions (b) the taking is for the purpose of enhancing the propagation or survival of the affected species and (c) the taking is to accommodate the needs of traditional subsistence users of such species.⁵⁶

⁵⁰ CMS, *supra* note 34.

⁵¹ *Id.*

⁵² R. 8, p. 16.

⁵³ CMS, *supra* note 34, art. I1(b).

⁵⁴ R. 9, p. 16,18.

⁵⁵ CMS, *supra* note 34, art. III(5).

⁵⁶ *Id.* art. III(5)(b)–(c).

First, the taking through the auction process is “for the purpose of enhancing the propagation or survival” of the Royal Markhor.⁵⁷ Around \$225,000 is raised through the auction annually to further the protection and conservation of the Royal Markhor.⁵⁸ The most significant threat to the longevity of the Royal Markhor is *Mycoplasma capricolum* infection, a respiratory infection with a mortality rate of 10-30%.⁵⁹ Rishmak uses funds from the auction to research the disease and develop a cure.⁶⁰ As an impoverished country, the money garnered through the auction process is the primary means available to Rishmak to save the Royal Markhor from this perilous disease.⁶¹

Astor urges for a reading requiring the taking to be for “the *primary* purpose” of conservation.⁶² CMS does not support this stance nor does the ordinary meaning of the text.⁶³ Further, the enumerated exceptions in Article III, paragraph 5 disclaims “such taking should not operate to the disadvantage of the species.”⁶⁴ In light of this disclaimer, it is clear Astor’s interpretation of this exception is erroneous. The requirement of a “*primary* purpose” reading, would render the disclaimer redundant. If a taking for the “primary purpose” of enhancing propagation or survival occurs, then it cannot operate to the disadvantage of the species.

Additionally, when a treaty has been authenticated in two or more languages, the text is equally authoritative in each language.⁶⁵ The CMS Articles are available in English, French, and Spanish.⁶⁶ When translated into French and Spanish, the provision reads that “the taking is carried

⁵⁷ *Id.* art. III(5)(b).

⁵⁸ R. 9, p. 16.

⁵⁹ R. 9, p. 18.

⁶⁰ *Id.*

⁶¹ R. 6, p. 3.

⁶² R. 11, p. 21.

⁶³ Vienna Convention, *supra* note 35.

⁶⁴ CMS, *supra* note 34, art. III(5).

⁶⁵ Vienna Convention, *supra* note 35, art. 31(1).

⁶⁶ CMS, *supra* note 34.

out with a view of improving the propagation or survival” and “when the capture is intended to improve the spread or survival,” respectively.⁶⁷ Thus, the permissive language of these Articles cannot be logically read to require the “purpose” be the sole or primary purpose, just *a* purpose.

Next, funds not used in direct conservation efforts accommodate the subsistence needs of the Dione Ginsu.⁶⁸ Satisfying one’s subsistence rights requires ensuring secure and sufficient food, shelter, clean water, medical care, and unpolluted surroundings.⁶⁹ Here, auctioning a limited number of Royal Markhors accommodates the subsistence needs of the Dione Ginsu community.⁷⁰ While the Dione Ginsu’s customary practice supports a taking of the Royal Markhor by each matured male, conservation efforts has required them to forgo these traditions.⁷¹ Since implementing the auction process, the Dione Ginsu community can afford necessary housing, medicine, and food; thus their subsistence needs, while by different methods, are nevertheless accommodated.⁷²

This Article may similarly be interpreted using the ordinary meaning of its text.⁷³ The text of exception (c) simply states the taking must accommodate the needs of traditional subsistence users of such species.⁷⁴ If the text was meant to require that the subsistence users be the ones to perform the taking, this language would have been added to the text. Also, while Astori citizens may bid and hunt for sport, the *effect* of that hunt serves to accommodate the needs of the traditional subsistence users, the Dione Ginsu.⁷⁵ Several countries permit similar exceptions on

⁶⁷ GOOGLE TRANSLATE (last visited Nov. 2, 2024), <https://translate.google.com>.

⁶⁸ R. 9, p. 16.

⁶⁹ ENCYCLOPEDIA OF GLOBAL JUSTICE 1042 (Deen Chatterjee) (Springer) (2011).

⁷⁰ R. 9, p. 16.

⁷¹ *Id.*

⁷² *Id.*

⁷³ Vienna Convention, *supra* note 35, art. 31(1).

⁷⁴ *Id.*

⁷⁵ R. 9, p. 16-17.

hunting when its result supports the economic subsistence needs of its traditional communities.⁷⁶ Astor relies on the International Convention for the Regulation of Whaling, which bans commercial whaling with an exception permitting aboriginal groups to take whales.⁷⁷ Commercial whaling is defined as “the hunting and killing of whales for the purpose of selling and trading their meat and other products derived from them.”⁷⁸ However, Astor’s stance ignores an important exception in the Convention, wherein the taking is permitted “by aborigines or a Contracting Government *on behalf of aborigines*” and only when the output of the taking is “to be used exclusively *for local consumption* by the aborigines.”⁷⁹ The auction of the hunting rights to the Royal Markhor by the Dione Ginsu squares with the Contracting Government exception. The Dione Ginsu directly licenses the taking to the hunters and it provides direct benefits to the community members.⁸⁰

2. Rishmak’s actions comport with the general principles of international law.

Rishmak acted in accordance with the duty to cooperate.⁸¹ This duty is a binding principle of international law that requires states to cooperate with one another to solve international issues.⁸²

Rishmak has not caused transboundary harm.⁸³ This principle demands that states have the “sovereign right to exploit their own resources pursuant to their own environmental and

⁷⁶ See, e.g., Inter-American Convention for the Protection and Conservation of Sea Turtles, Resolution CIT-COP10-2022-R3 (June 15, 2022); Resolution CIT-COP10-2022-R4; Resolution CIT-COP10-2022-R5.

⁷⁷ International Convention for the Regulation of Whaling [hereinafter ICRW], Dec. 2, 1946, 161 U.N.T.S. 74.

⁷⁸ Lauren Evans, *Commercial Whaling 101*, NDRC (May 6, 2020), <https://www.nrdc.org/stories/commercial-whaling-101>.

⁷⁹ ICRW, *supra* note 77, § III(13)(b)(2).

⁸⁰ R. 9, p. 16.

⁸¹ DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAEKE, *INTERNATIONAL ENVIRONMENTAL LAW AND POLICY*, 491 (4th. Ed. 2011).

⁸² *Id.*

⁸³ Rio Declaration on Environment and Development, Principle 2, UN Doc.A/CONF. 151/26 (1992).

developmental policies, and ... to ensure that activities within their jurisdiction or control do not cause damage to the environment.”⁸⁴

3. Hunting through the auction process is beneficial to the conservation of the Royal Markhor.

Royal Markhor trophy hunting is carefully regulated and does not cause harm.⁸⁵ In Rishmak, auctioning a trophy hunt is beneficial for the Dione Ginsu and the conservation of the Royal Markhor.⁸⁶ Astori organization, RHINA supports this stance, noting that well-controlled trophy hunting benefits the endangered species, the economy, and the climate.⁸⁷

The auction process bolsters the economy of Rishmak and the Dione Ginsu.⁸⁸ The revenue generated by the auction process allows the Dione Ginsu countless opportunities that it otherwise could not afford such as: the annual expenditure of around \$450,000 for community housing, \$450,000 for medical expenses, and \$225,000 for community food expenses.⁸⁹ Additionally, the hunters employ Dione Ginsu guides and share the meat from the hunt with community members.⁹⁰ Low-income, indigenous communities like the Dione Ginsu often have few alternative sources of income and no other legal source of Royal Markhor meat.⁹¹ Various international studies show other countries allow trophy hunting when the majority of funds go to local community

⁸⁴ *Id.*

⁸⁵ *Informing Decisions on Trophy Hunting*, IUCN (Apr. 2016), https://wwfint.awsassets.panda.org/downloads/iucn_informingdecisionsontrophyhuntingv1_1.pdf.

⁸⁶ *Id.*

⁸⁷ R. 12, p. 26.

⁸⁸ R. 9, p. 16.

⁸⁹ *Id.*

⁹⁰ R. 9, p. 17.

⁹¹ *Informing Decisions on Trophy Hunting*, *supra* note 85.

programs.⁹² Further, well-regulated trophy hunting consistently helps with “resource mobili[z]ation and ensures ownership of the local communities of these precious resources.”⁹³

The auction process provides benefits to the conservation of the Royal Markhor. Funds not distributed directly to the Dione Ginsu are allocated towards conservation efforts.⁹⁴ These efforts include research, vaccine development, and local education programs to help fight the *Mycoplasma capricolum* infection, which is the most significant threat to the long-term survival of the Royal Markhor.⁹⁵ While the auction process allows the taking of just ten (10) Royal Markhors annually, this disease threatens to kill upwards of 650 of the Royal Markhors that become infected.⁹⁶ The auction process of the Royal Markhors directly funds this conservation research, while Astor’s call for a complete ban on trophy hunting is an outright refusal to acknowledge the real and imminent threats facing the Royal Markhor.

The cap on the taking of Royal Markhors is consistent with other nations’ conservation programs, some of which require that the hunt not exceed 2% of the total population, with considerations of keeping a favorable female to male sex ratio.⁹⁷ Applied here, the taking of 10 Royal Markhors annually amounts to 0.45% of the total population, paling in comparison to the 30% of the total population at risk of dying from the *Mycoplasma capricolum* infection.⁹⁸ Also, the Dione Ginsu’s hunting quota specifies that only male Royal Markhors may be hunted to help foster population growth.⁹⁹ Further, the allowance of trophy hunting in Rishmak is more

⁹² See, e.g., PERVAZE SHEIKH, CONG. RSCH. SERV., R45615, INTERNATIONAL TROPHY HUNTING (2019).

⁹³ Muhammad Khurshid, *Transforming Trophy Hunting in G-B and Chitral*, THE EXPRESS TRIBUNE (Feb. 19, 2024), <https://tribune.com.pk/story/2456876/transforming-trophy-hunting-in-g-b-and-chitral>.

⁹⁴ R. 9, p. 16,18.

⁹⁵ R. 9, p. 18.

⁹⁶ *Id.*

⁹⁷ Lipy Adhikari et al, *Community-Based Trophy Hunting Programs Secure Biodiversity and Livelihoods: Learning from Asia’s High Mountain Communities and Landscapes*, 4 ENVIRONMENTAL CHALLENGES 1 (2021).

⁹⁸ R. 9, p. 18.

⁹⁹ R. 9, p. 17.

environmentally sustainable than alternative forms of wildlife tourism because “hunting has the potential to provide relatively large financial inputs to specific areas with little need for additional infrastructure.”¹⁰⁰

The use of regulated trophy hunting will decrease illegal hunting. It is undisputed that poaching threatens Royal Markhors.¹⁰¹ Other countries found regulated trophy hunting, in coordination with local communities, provides greater incentives to protect the species against poaching.¹⁰² Some nations even find “a sizeable increase in wildlife population” as “community members have been converted into sort of watchers looking after markhors against illegal poaching.”¹⁰³

Critics of trophy hunting point to ethical concerns. However, the taking of the Royal Markhors in Rishmak is closely monitored and humane. For instance, as part of the hunting process, the Dione Ginsu community captures and collects urine samples from female Royal Markhors.¹⁰⁴ No harm is done to the animal during this process, and it is subsequently released back into its natural habitat.¹⁰⁵ “Although the image of a dead animal may be distressing to non-hunters, well-managed hunter harvests are almost inconsequential from a biological viewpoint.”¹⁰⁶ Rishmak ensures successful hunter harvests through the mandatory use of a Dione Ginsu guide, who acts as an expert for the hunters in the methods, and manners of humanely killing the Royal Markhor.¹⁰⁷

¹⁰⁰ Gerhard Damm, *Recreational Trophy Hunting: “What do we Know and What Should we do?”* INTERNATIONAL COUNCIL FOR GAME AND WILDLIFE CONSERVATION [C.I.C.] 5 (2008).

¹⁰¹ R. 6, p. 1.

¹⁰² Shams Uddin, *Trophy Hunting in Chitral, Pakistan*, MEMBERS’ BLOG (Oct. 10, 2010), <https://ecoclub.com/blogs/trophy-hunting-in-chitral-pakistan>.

¹⁰³ *Id.*

¹⁰⁴ C.R. p. 1.

¹⁰⁵ *Id.*

¹⁰⁶ Damm, *supra* note 100, at 8.

¹⁰⁷ R. 9, p. 17.

Trophy hunting is an Astori problem. While Astor pins the responsibility to stop trophy hunting on Rishmak, the practice remains rampant within their own borders.¹⁰⁸ Astor repeatedly takes advantage of a law that bans the hunting of the species that lives within its own country, and instead comes to Rishmak to do the same. Astor nationals circumvent the law that bans the killing of the Royal Markhor in their own country by exploiting Rishmak's economic vulnerabilities. The rights of indigenous communities like the Dione Ginsu peoples must not be held to a lower standard than those of Astori nationals.

II. ASTOR IS VIOLATING CONVENTIONAL INTERNATIONAL LAW BY BANNING THE IMPORTATION OF ROYAL MARKHOR.

A. Astor's Ban on the Importation of the Royal Markhor Violates CITES.

Astor violates the Convention on International Trade in Endangered Species of Wild Fauna or Flora¹⁰⁹ and ARTA, by disabling the Dione Ginsu people from lucrative conservation efforts.

Under Article III of CITES, countries of export may authorize trade under Conf. 2.11 and grant export permits.¹¹⁰ Under Article III, an import permit shall be granted when a Management Authority of import is satisfied that the specimen's usage is not for a primary commercial purpose.¹¹¹ Additionally, under Conf. 10.15, a trophy hunt is not a primary commercial purpose when the owner acquires the trophy in the country of export and imports it as a personal item

¹⁰⁸ R. 12, p. 25.

¹⁰⁹ Convention on International Trade in Endangered Species of Wild Fauna or Flora [hereinafter CITES], March 3, 1973, 993 U.N.T.S. 243.

¹¹⁰ Convention on International Trade in Endangered Species of Wild Fauna or Flora, *Trade in hunting trophies of species listed in Appendix I*, ¶, U.N.T.S 243 /CONF. 2.11/Rev. (1994) [hereinafter Conf. 2.11].

¹¹¹ *Id.*

without the intention of selling it.¹¹² Legislation of the country of origin must authorize the export and each owner may not import more than one trophy per year.¹¹³

Under CITES, hunting Royal Markhor is not being used as a primary commercial purpose. While most hunters are foreign nationals importing to their home country, there is no evidence indicating hunters are selling the horns.¹¹⁴ Rishmak's legislation authorizes the export of the Royal Markhor and the hunt occurs only once per year pursuant to the quota established by Rishmak.¹¹⁵ An exporting Scientific Authority will determine if export is a 'sustainable use,' if used "in a way and at a rate that does not lead to the long-term decline [of biological diversity]" and "maintain[s] the potential to meet the needs and aspirations of present and future generations."¹¹⁶

Presently, the quota of Royal Markhor taken in annual hunts meets the requirements of sustainable use and is not detrimental to the species population.¹¹⁷ By mandating an export quota, an exporting country can effectively meet the requirement of CITES to make a non-detriment finding for species found in Appendix I and "ensure[s] that the species is maintained throughout its range at a level consistent with its role in the ecosystems in which it occurs."¹¹⁸ When a Scientific Authority determines an export quota "meets the requirement to make a non detriment finding," it is a sustainable use.¹¹⁹ Rishmak's Scientific Authority advised the quota would not be detrimental, thereby satisfying the non detriment finding required by CITES.¹²⁰ According to Conf.

¹¹² Convention on International Trade in Endangered Species of Wild Fauna or Flora, *Establishment of quotas for markhor hunting trophies*, ¶ U.N.T.S /CONF. 10.15/Rev. (2007) [hereinafter Conf. 10.15].

¹¹³ *Id.*

¹¹⁴ R. 9, p. 16.

¹¹⁵ R. 9, p. 15, 32-33.

¹¹⁶ Convention on International Trade in Endangered Species of Wild Fauna or Flora, *Sustainable use of biodiversity: Addis and Ababa Principles and Guidelines*, ¶ U.N.T.S /CONF. 13.12/Rev. (2007) [hereinafter Conf. 13.12].

¹¹⁷ R. 13, p. 32.

¹¹⁸ Convention on International Trade in Endangered Species of Wild Fauna or Flora, *Management of nationally established export quotas*, ¶ U.N.T.S /CONF. 14.7./Rev. (2016) [hereinafter Conf. 14.7].

¹¹⁹ *Id.*

¹²⁰ R. 13, p. 32.

2.11, the Scientific Authority of Astor must accept the importation of the hunting trophy unless there is data to indicate the import will be detrimental to the survival of the species.¹²¹ While Astor could present data asserting the limited quota is detrimental to the Royal Markhor to supplant this opinion, no such data exists.¹²²

Banning the importation of Royal Markhors suffocated a lucrative revenue source for conservation efforts.¹²³ Without this hunting excursion, Rishmak lost approximately \$250,000 which would typically go toward conservation efforts.¹²⁴ The current greatest threat to the Royal Markhor population is not the yearly hunting of 10 adult males, it is the cureless disease that kills up to 660 a year.¹²⁵ Under Article III of CITES, the impact of taking less than 0.1% of the population is not enough to upset the ecosystem's balance per Rishmak's non detriment findings of its practices.¹²⁶

B. Astor Violates the UN Declaration of the Rights of Indigenous People.

Astor cites the public morality exception in Article 20 of ARTA as justification for its importation ban.¹²⁷ Astor cites a singular survey from 2022 reporting broadly on public attitudes in Astor regarding trophy hunting, but the survey fails to include nuanced details differentiating the highly regulated Royal Markhor hunts from other hunts.¹²⁸ Furthermore, Astor refers to ASHTA which has 12 million members, triple the total population of Rishmak,¹²⁹ and campaigns against trophy hunting.¹³⁰ The campaign condemns the mindless killing of thousands of animals,

¹²¹ Conf. 2.11, *supra* note 110.

¹²² *Id.*

¹²³ R. 9, p. 16.

¹²⁴ *Id.*

¹²⁵ R. 9, p. 18.

¹²⁶ R. 13, p. 32.

¹²⁷ R. 13, p. 33.

¹²⁸ R. 12, p. 28.

¹²⁹ R. 6, p. 3.

¹³⁰ R. 12, p. 25-27.

hunters merely taking body parts, participating in “canned hunts,” or disrupting the ecosystem. ASHTA’s celebrity lead campaign degrades the indigenous practices of the Dione Ginsu people to “bragging rights” and just for “fun.”¹³¹

Public mockery of the practices of the Dione Ginsu people, is in direct contravention of the text of DRIP which states, “[i]ndigenous peoples have the right to practise and revitalize their cultural traditions and customs.”¹³²

The Royal Markhor are endangered primarily due to habitat loss and disease, not from the ceremonial practices of the Dione Ginsu.¹³³ Additionally, public attitudes towards trophy hunting fail to consider the immensely small number of Royal Markhor hunted with consent of the Dione Ginsu people.¹³⁴ In comparison, under Con. 10.15, CITES explicitly authorized Pakistan the export of twelve (12) Markhors per year, which is two (2) more than the Dione Ginsu people hunt per year.¹³⁵ Lastly, the hunt is not simply for “fun” or “bragging rights,” because the hunters shared the Royal Markhor meat with the Dione Ginsu for subsistence purposes.¹³⁶

The Dione Ginsu have close cultural ties to the Royal Markhor, and pursuant to DRIP, the Dione Ginsu have the right to revitalize their cultural customs as they see fit, which includes taking the meat of the animal and using the horns as actual means of prosperity rather than a symbolic item.¹³⁷ Just as in time immemorial, the Dione Ginsu continue to participate in hunting the male Royal Markhor. This modern interpretation of their tradition still brings together community and

¹³¹ *Id.*

¹³² DRIP, *supra* note 46, at 5.

¹³³ R. 6-8, p. 1,14,15.

¹³⁴ R. 8, p. 15.

¹³⁵ Conf. 10.15, *supra* note 112.

¹³⁶ R. 9, p. 16-17.

¹³⁷ DRIP, *supra* note 46, art. 11.

provides strength and prosperity to their people, through community housing, community medical expenses, community food expenses, and conservation efforts of the Royal Markhor.¹³⁸

C. Astor's Importation Ban Violates the Vienna Convention.

The Vienna Convention establishes methods of interpretation for treaties, likewise parties shall interpret treaty language according to its ordinary meaning and within the context of its objective and purpose including the entire treaty's text.¹³⁹ Only if the treaty is ambiguous, obscure, or leads to a "manifestly absurd or unreasonable" result, the parties may use supplementary means of interpretation.¹⁴⁰

Here, ARTA falls within the Vienna Conventions definition of treaty and both parties are subject to the Vienna Convention's text.¹⁴¹ ARTA's language and is clear and unambiguous and the context of its creation is apparent: it intends to strengthen the countries' bonds of friendship, expand each other's regional trade, "consistent with environmental protection and conservation," while enhancing and enforcing environmental laws and regulation to preserve the ability of the countries to reduce poverty and safeguard public welfare.¹⁴²

The importation ban directly impacts the economic viability and growth of the Dione Ginsu people and the conservation of the Royal Markhor in Rishmak. By prohibiting the Royal Markhor's importation to Astor, Astor violates the very heart of ARTA by weakening the countries' ties, diminishing trade, and disabling Rishmak's conservation efforts of the Royal Markhor.

¹³⁸ R. 9, p. 16.

¹³⁹ *Id.* art. 33(1).

¹⁴⁰ *Id.* art. 32.

¹⁴¹ R. 6, p. 6.

¹⁴² R. 7, p. 12.

Astor's decision to ban the import of trophy hunted Royal Markhors directly violates ARTA and Article 27 of the Vienna Convention.¹⁴³ Under ARTA, the parties agreed to refrain from arbitrary measures, disguised as restrictions on trade. Restrictive measures on domestic production or consumption are allowed, only if the restrictive measures are necessary to protect public morals or relate to the exhaustible natural resources.¹⁴⁴

Additionally, Article 46 of the Vienna Convention asserts, "A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance."¹⁴⁵ By banning importation of hunting trophies, Astor invokes its domestic law to supersede ARTA in direct violation of the Vienna Convention.¹⁴⁶ Although Astor attempts to justify its import ban on ARTA's "public morality" clause, this claim fails to legitimize the ban.

Astor's import ban on the Royal Markhor is a violation of Article 11 of ARTA, which prevents any prohibitions on importation through quotas, import or export license, or other means for any product.¹⁴⁷ Astor claims this prohibition is legal under Article 20(a) of ARTA, which provides an exception to Article 11 if the prohibition is "necessary to protect public morals."¹⁴⁸ Furthermore, Astor asserts that CITES authorizes its ban.¹⁴⁹ Astor's argument that the importation ban is a legitimate exception fails for two reasons: (1) Astor's public morality exception claim

¹⁴³ Vienna Convention, *supra* note 35, art. 27.

¹⁴⁴ R. 8, p. art 20.

¹⁴⁵ Vienna Convention, *supra* note 35, art. 46.

¹⁴⁶ R. 14, p. 34.

¹⁴⁷ R. 7, art. 11.

¹⁴⁸ R. 14, art. 20(a).

¹⁴⁹ R. 13, p. 33.

succumbs under the GATT/WTO's "necessity test" and (2) Astor is violating multiple treaties by imposing a blanket importation ban.

**D. Astor's Import Ban Violates ARTA because it Fails GATT/WTO's
"Necessity Test."**

GATT/WTO panels determine if an action is justified by considering if the adopted measure protects public morals and if that measure is "necessary."¹⁵⁰ To determine a measure's necessity, a panel will weigh and balance factors, including: "the importance of the objective, the contribution of the measure to that objective, and the trade-restrictiveness of the measure."¹⁵¹ Additionally, a comparison between the challenged measure and possible alternatives should be considered.¹⁵² While the burden of proving the measure's necessity lies with the respondent, the complaining party should identify alternative measures to achieve its objective.¹⁵³

First, the court must balance the importance of Astor's objective, the contribution of the measure to its objective, and then the trade restrictiveness of the measure. Here, Astor's objective is to generally protect the public from the immorality of trophy hunting.¹⁵⁴ While Astor presents some evidence that prior to the importation ban's passage Astori citizens were generally concerned about trophy hunting, it does not show that Rishmak's highly limited and regulated annual hunt is immoral.¹⁵⁵ Rishmak does not kill thousands of Royal Markhors, use the animal for display, or disrupt the ecosystem.¹⁵⁶

¹⁵⁰ Appellate Body Reports, *European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ WT/DS400/AB/R / WT/DS401/AB/R, (adopted June 18, 2014) [hereinafter EC- Seal Products].

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ R. 12, p. 27.

¹⁵⁵ R. 12, p. 25-28.

¹⁵⁶ R. 12, p. 25.

While Astor passed a ban on the importation of trophy hunts, it failed to pass an equivalent domestic hunting ban.¹⁵⁷ Unlike Rishmak, there is no evidence Astor has made any concerted conservation efforts to protect the Royal Markhor. Rishmak used proceeds from its highly regulated yearly hunt to invest in conservation efforts and research to end *Mycoplasma capricolum* and make the Royal Markhor's future population growth possible.¹⁵⁸ Yet, Astor, instead of investing in similar conservation efforts, in the name of public morality, claims Rishmak condones immoral indifference to animal welfare.¹⁵⁹

1. Astor Fails the GATT Necessity Test because the Importation Ban does not Protect Public Morals.

Astor's importation ban does not protect public morals because it does not stop trophy hunting, it merely discourages international trophy hunting for Astori citizens.¹⁶⁰ In *EC- Seal Products*, the WTO determined the European Union's ban on "inhumanely produced" seal products was valid.¹⁶¹ The WTO reasoned the import ban affirmatively protected public morals because it reduced the global market for seal products and diminished incidences of inhumanely killed seals.¹⁶²

Astor's ban on trophy hunting imports does not impact public morals, such as the amount of specimens killed or the method used in the hunt. Astor has not banned trophy hunting by its citizens or within its own borders.¹⁶³ There is no guarantee the amount of animals hunted for sport will diminish, only that they will not be imported after the hunt concludes. Further, Rishmak imposes a strict limitation on the amount of Royal Markhors taken per year, thus a ban on

¹⁵⁷ R. 13, p. 29-30.

¹⁵⁸ R. 9, p. 16.

¹⁵⁹ R. 13, p. 33.

¹⁶⁰ R. 13, p. 29-30.

¹⁶¹ *EC-Seal Products*, *supra* note 150.

¹⁶² *Id.* at 161.

¹⁶³ R. 13, p. 29-30.

importation cannot decrease the number of Royal Markhors taken.¹⁶⁴ Under the *EC- Seal Products*, the WTO found that the use of rifles was not per se inhumane.¹⁶⁵ Consequently, Astor failed to prove Rishmak’s highly regulated and humane annual hunt is unnecessary under the “necessity” test put forth by GATT.

2. Astor’s Ban on the Importation of the Royal Markhor is Unnecessarily Restrictive.

Astor’s blanket importation ban is unnecessarily restrictive and contrary to guidance provided by *EC- Seal Products*.¹⁶⁶ Additionally, under *Brazil — Retreaded Tyres*, an importation ban may not be arbitrarily or unjustifiably discriminatory and a “disguised restriction” on international trade in light of the measure’s objective.¹⁶⁷ According to the World Bank, Rishmak’s average Gross Net Income Per Capita is less than \$1,145.¹⁶⁸ With only 4,000 members, conservatively, the Dione Ginsu grossed a mere \$4,540,000 per year, with approximately \$1,500,000 generated by auctioning off the opportunity to hunt a Royal Markhor.¹⁶⁹ Consequently, Astor’s import ban decreases the amount of gross net income for the Dione Ginsu by a third. It damages the already impoverished community’s opportunity for financial growth and stunts its ability to care for its members’ food, housing, and medical needs. Thus, the importation ban unjustifiably discriminates against Rishmak by crippling its indigenous peoples’ efforts for financial stability, in direct defiance of ARTA, and without tangibly achieving its objective of “protecting public morals.” Pursuant to *Brazil- Bearded Tyres*, this restriction is unnecessary.¹⁷⁰

¹⁶⁴ R. 8, p. 15.

¹⁶⁵ *EC-Seal Products*, *supra* note 150, at 160.

¹⁶⁶ *Id.*

¹⁶⁷ Appellate Body Reports, *European Communities – Brazil — Retreaded Tyres*, ¶ WT/DS332/16/ AB/R, (adopted Oct. 3, 2009) [hereinafter *Brazil- Bearded Tyres*].

¹⁶⁸ *World Bank Country and Lending Groups*, WBG (Nov. 12, 2024, 12:15 PM), <https://datahelpdesk.worldbank.org/knowledgebase/articles/906519>.

¹⁶⁹ R. 6, p. 3,16.

¹⁷⁰ *Brazil- Bearded Tyres*, *supra* note 167.

3. Astor's Importation Ban Could Have Used A Less Trade Restrictive Alternative.

Under *Brazil-Bearded Tyres*, the Panel considered whether an importation ban could accomplish its objective through less trade restrictive measures and if the ban was consistent with Article XX(b).¹⁷¹ The Panel concluded there were not “reasonably available” alternatives to achieve the ban’s objective.¹⁷² Unlike *Brazil-Bearded Tyres*, Astor has a reasonably available alternative: including an exception in its legislation dictating trophy hunting may occur as long as it is consistent with exceptions enumerated in CITES and CMS. Firstly, an exception achieves the goal of protecting public morality. Restricting its citizens from participating in trophy hunting abroad by existing standards potentially decreases the amount of trophy hunted animals abroad. Secondly, it sets tangible guidelines for its citizens because of the explicit restrictions regarding inhumane or cruel hunting excursions. Lastly, this exception would not hamper international trade because Rishmak is also required to comply with the treaties’ standards.

¹⁷¹ *Id.*

¹⁷² *Id.*

CONCLUSION AND PRAYER

For the foregoing reasons, Rishmak respectfully requests that this Honorable Court:

1. Declare Rishmak complied with international law in regard to the trophy hunting of the Royal Markhor through auction.
2. Declare Astor violated international law by banning the importation of the Royal Markhor hunting trophies.

Respectfully Submitted,

AGENTS FOR RESPONDENT