

IN THE INTERNATIONAL COURT OF JUSTICE



AT THE PEACE PALACE
THE HAGUE, THE NETHERLANDS

QUESTIONS RELATING TO
SUBSISTENCE USE AND TROPHY HUNTING

General List No. 175

ASTOR
Applicant

v.

RISHMAK
Respondent

MEMORIAL FOR THE RESPONDENT

**THE TWENTY-NINTH ANNUAL
STETSON INTERNATIONAL ENVIRONMENTAL
MOOT COURT COMPETITION
2024 - 2025**

TABLE OF CONTENTS

TABLE OF CONTENTS	i
INDEX OF AUTHORITIES	iv
QUESTIONS PRESENTED	xiv
STATEMENT OF JURISDICTION	xv
STATEMENT OF FACTS	xvi
SUMMARY OF ARGUMENTS	xvii
ARGUMENTS	1
I. THE TROPHY HUNTING OF ROYAL MARKHORS THROUGH THE AUCTION PROCESS COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW.	1
A. THE TROPHY HUNTING OF THE ROYAL MARKHORS THROUGH THE AUCTION PROCESS COMPLIES WITH THE CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS (“CMS”).	1
1. Under the principle of effectiveness, the species survival exception in Article III(5)(b) of the CMS should be interpreted to recognize the role of community participation in species conservation.	2
a. <i>The context and object and purpose of the CMS consider the role of the Dione Ginsu community in the propagation or survival of the Royal Markhors.</i>	2
b. <i>Rishmak’s auction process is a species and community-based approach that considers the context and fulfills the object and purpose of the CMS.</i>	6
2. Under an evolutive interpretation, the subsistence exception in Article III(5)(c) should be interpreted to address the changing needs of the Dione Ginsu community.	7
a. <i>The term “needs” in Article III(5)(c) should cover the housing, medical, and food needs of the Dione Ginsu community.</i>	7
i. <u>Subsequent agreements by parties to the CMS support the evolutive interpretation of the terms of the exception.</u>	9
ii. <u>Subsequent practice by parties to the CMS supports the evolutive interpretation of the terms of the exception.</u>	10
b. <i>The term “accommodate” in Article III(5)(c) considers the Dione Ginsu’s right to transfer their hunting rights as an integral part of their autonomy that must be protected.</i>	12

c.	<i>The trophy hunting through the auction process qualifies as subsistence hunting, not commercial hunting, despite involving Astori nationals.</i>	13
3.	The trophy hunting through the auction process is controlled, limited in scope and time, and does not endanger the species' survival.	14
4.	In any event, Astor's silence on the trophy hunting establishes a pattern of tacit recognition of Rishmak's interpretation of the CMS.	15
B.	THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS COMPLIES WITH THE ILO CONVENTION NO. 169 AND THE ICESCR.	15
C.	THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS COMPLIES WITH THE CITES.	16
II.	THE BAN ON THE IMPORTATION OF ROYAL MARKHOR HUNTING TROPHIES VIOLATES CONVENTIONAL INTERNATIONAL LAW.	16
A.	THE BAN IS A VIOLATION OF ASTOR'S TREATY OBLIGATIONS UNDER CITES.	16
1.	Under a broad interpretation, Astor's ban violated its duty to cooperate under Article XIV of CITES, as clarified through CITES Resolution 6.7, by failing to consider mutual interests and alternatives.	17
a.	<i>As a subsequent agreement, CITES Resolution 6.7 provides that the right to impose stricter domestic measures includes the duty to cooperate in regulating the trade of species.</i>	17
b.	<i>The imposition of the Astori ban violated the duty to cooperate by compromising the conservation of the Royal Markhor and the needs of the Dione Ginsu.</i>	18
2.	Under a broad interpretation, Astor's refusal to accept the scientific findings of Rishmak violated Article III of CITES as clarified through CITES Resolution 2.11.	19
3.	Astor violated its general obligation to recognize the Dione Ginsu as protectors of their own wild fauna and flora as interpreted through the CITES Preamble and other pertinent resolutions.	20
B.	UNDER THE PRINCIPLE OF SYSTEMIC INTEGRATION, THE BAN DOES NOT SATISFY THE REQUIREMENTS OF THE GENERAL EXCEPTIONS UNDER ARTA'S ARTICLE 20(A) AND (G).	20
1.	The ban is not necessary to protect public morals under the WTO framework.	22
a.	<i>Preliminarily, no moral concern exists in Royal Markhor hunting.</i>	23

	<i>b. The ban is not necessary because it is not the least restrictive measure.</i>	23
	<i>c. The ban is not necessary because Rishmak's alternative of controlled hunting already achieves the goal of regulating the taking of the Royal Markhor.</i>	23
2.	The ban is not related to the conservation of exhaustible natural resources under the WTO framework.	24
3.	In any case, the ban is arbitrary under the chapeau in ARTA's Article 20.	24
CONCLUSION		26

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13

QUESTIONS PRESENTED

[I] Whether the trophy hunting of the Royal Markhor through the auction process, by hunters who are not Dione Ginsu, violates or complies with conventional international law.

[II] Whether the ban on the importation of Royal Markhor hunting trophies violates or complies with conventional international law.

STATEMENT OF JURISDICTION

On 01 July 2024, Astor and Rishmak submitted to the International Court of Justice, by Special Agreement, the above-titled differences between them concerning questions relating to subsistence use and trophy hunting pursuant to Article 40(1) of the Statute of the ICJ. The Registrar of the Court acknowledges receipt of this joint notification on 01 July 2024. Astor and Rishmak have accepted the jurisdiction of the ICJ pursuant to Article 36(1) of the Statute and request this Honorable Court to adjudge the dispute in accordance with the rules and principles of international law, including any applicable treaties.

Astor and Rishmak have agreed to accept this Honorable Court's Judgment as final and binding and shall execute it in its entirety and in good faith.

STATEMENT OF FACTS

Astor is a high-income country, while its neighbor, Rishmak, is a low-income nation with widespread poverty, particularly among the Dione Ginsu Indigenous community. Both States are part of the Astor-Rishmak Trade Agreement (“ARTA”) and share a border that serves as a migration route for the critically endangered Royal Markhor, a wild goat species.

The Royal Markhor is a protected species under the Convention on the Conservation of Migratory Species of Wild Animals (“CMS”) and is subject to strict trade regulations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”). Both Astor and Rishmak prohibit hunting the Royal Markhors, except for the Dione Ginsu due to their cultural ties to the species. A lottery system permits the community to hunt ten Royal Markhors each year.

Since 2016, the Dione Ginsu has auctioned the right to hunt Royal Markhor. Most winning bidders are Astori nationals. The funds are used by the Dione Ginsu for housing, medical care, food, and conservation programs for the Royal Markhors. In June 2022, Astor raised concerns in a diplomatic note to Rishmak, claiming that allowing non-Indigenous people to hunt the Royal Markhor violates the text and purpose of the CMS. Rishmak argues that its auction system supports the needs of the Dione Ginsu and complies with the exceptions outlined in CMS Article III(5).

Following public outcry against trophy hunting, Astor banned trophy hunting imports, asserting that the ban is permitted by CITES and falls under ARTA’s general exceptions. Rishmak argued that the ban breaches Astor’s treaty obligations under CITES and constitutes an impermissible restriction under the ARTA.

Despite attempts to negotiate, the dispute remained unresolved, and both States have agreed to bring the matter before the International Court of Justice (“ICJ”).

SUMMARY OF ARGUMENTS

First, Rishmak's trophy hunting of the Royal Markhor through the auction process complies with conventional international law. The taking of the Royal Markhors is necessary for species survival and for accommodating the needs of the Dione Ginsu. CMS should be interpreted broadly and evolutively to align with its conservation objectives while respecting Indigenous welfare. The trophy hunting is limited, regulated, and poses no threat to the species' survival. Furthermore, since Astor is a non-party to the ILO Convention No. 169 and the ICESCR, Astor lacks legal standing. Regardless, Rishmak complies with its obligations under both ILO Convention No. 169 and CITES.

Second, Astor's ban on importing Royal Markhor hunting trophies violates conventional international law. Under a broad interpretation of the treaty, Astor breached its obligations under CITES by failing to cooperate, by disregarding Rishmak's scientific findings, and by failing to recognize that States and peoples are the primary protectors of their own wild fauna and flora. Applying the principle of systemic integration, Astor's ban does not meet ARTA's exceptions, as it is neither necessary to protect public morals nor related to conserving exhaustible natural resources. Furthermore, the ban was enacted arbitrarily, with no efforts made to negotiate or reach an agreement with either Rishmak or the Dione Ginsu.

ARGUMENTS

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

The controlled trophy hunting of the Royal Markhors through the auction process is a fully practical and sustainable approach towards conservation of the species. The controlled hunting complies with Rishmak's obligations under the Convention on the Conservation of Migratory Species of Wild Animals ("CMS") [A]; the International Labour Convention ("ILO") No. 169 and the International Covenant on Economic, Social and Cultural Rights ("ICESCR") [B]; and the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") [C].

A. THE TROPHY HUNTING OF THE ROYAL MARKHORS THROUGH THE AUCTION PROCESS COMPLIES WITH THE CONVENTION ON THE CONSERVATION OF MIGRATORY SPECIES OF WILD ANIMALS ("CMS").

Preliminarily, Rishmak accepts the legal standing of Astor under *erga omnes partes*,¹ as both States are parties to the CMS.

Although Article III(5) of the CMS generally prohibits taking Appendix I species like the Royal Markhors, it provides for specific exceptions.² Under the principle of effectiveness, the species survival exception in Article III(5)(b) of the CMS should be interpreted to recognize the role of community participation in species conservation [1], and under an evolutive interpretation,

¹ Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), Judgment, 2012 I.C.J. 422, ¶¶ 68-69 (July 20).

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

the subsistence exception in Article III(5)(c) should be interpreted to address the changing needs of the Dione Ginsu community [2].

Also, the trophy hunting through the auction process is controlled, limited in scope and time, and does not endanger the species' survival [3]. In any event, Astor's silence on the trophy hunting establishes a pattern of tacit recognition of Rishmak's interpretation of the CMS [4].

1. Under the principle of effectiveness, the species survival exception in Article III(5)(b) of the CMS should be interpreted to recognize the role of community participation in species conservation.

Astor contends that the use of "the" in paragraph 5(b) suggests that taking must solely aim to enhance survival of the species, so the proceeds from the auction process should primarily fund efforts for survival, not the food, housing, and medical expenses of the Dione Ginsu (R.21). However, this narrow interpretation conflicts with the broader conservation goals of the CMS.

Under the principle of effectiveness, "treaties are to be interpreted with reference to their declared or apparent objects and purposes; and particular provisions are to be interpreted so as to give them their fullest weight and effect consistent with the normal sense of the words."³

Here, the context, object, and purpose of the CMS consider the role of the Dione Ginsu community in the propagation or survival of the Royal Markhors [a], and this is fulfilled by Rishmak's species and community-based auction process [b].

a. The context and object and purpose of the CMS consider the role of the Dione Ginsu community in the propagation or survival of the Royal Markhors.

³ MALGOSIA FITZMAURICE ET AL., TREATY INTERPRETATION AND THE VIENNA CONVENTION ON THE LAW OF TREATIES: 30 YEARS ON, 155 (Martinus Nijhoff 2010); Sir Humphrey Waldock, *Third Report on the Law of Treaties*, U.N. Doc. A/CN.4/167 & Add.1-3, 55 (1964).

In treaty interpretation, the terms of the treaty should be interpreted to give effect to the parties' intentions.⁴ A treaty's preamble establishes the context for interpretation,⁵ reflects the intentions of the parties,⁶ and is necessary to understand the treaty's object and purpose.⁷

The *CMS Preamble* emphasizes that conservation efforts must remain "conscious" of values across various "points of view"—environmental, cultural, social, and economic.⁸ Moreover, the CMS is unique among environmental law regimes because its conservation approach is ecosystem-based rather than merely species-based.⁹

⁴ The Corfu Channel (U.K. v. Alb.), Judgment, Compensation, 1949 I.C.J. 244, 24-25 (Apr. 9); Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ. Fed.), Preliminary Objections, Judgment, 2011, I.C.J. 70, 133-34 (Apr. 1).

⁵ RICHARD GARDINER, *TREATY INTERPRETATION* (2d ed. Oxford Univ. Press 2015), 205 [hereinafter GARDINER].

⁶ *Documents of the second part of the seventeenth session and of the eighteenth session including the reports of the Commission to the General Assembly*, Y.B. Int'l L. Comm'n 175, 220, U.N. Doc. A/CN.4/SER.A/1966/Add.1.

⁷ Rights of National of the United States of America in Morocco (Fr. v U.S.), Judgment, 1952 I.C.J. 176, 183-184, 197-198 (Aug. 27).

⁸ CMS, *supra* note 2, preamble.

⁹ Nikolas Sellheim & Jochen Schumacher, *Increasing the Effectiveness of the Bonn Convention on the Conservation of Migratory Species*, 29(3) J. INT'L WILDLIFE L. & POL'Y 218, 369 (2022).

Local communities, with their unique knowledge systems,¹⁰ interests,¹¹ and values,¹² play a crucial role in environmental conservation. Indigenous peoples are recognized as effective stewards of the environment¹³ due to their sustainable practices that align with conserving endangered species and ecosystems.¹⁴

CMS Resolution 14.17 emphasizes that involving these communities in conservation efforts significantly enhances wildlife protection,¹⁵ as their participation helps reduce human-

¹⁰ Louise Guibrunet et al., *Beyond Participation: How to Achieve the Recognition of Local Communities' Value-Systems in Conservation? Some Insights from Mexico*, 3 PEOPLE NAT. 528, 530 (2021).

¹¹ Ian Leiper et al., *Quantifying Current and Potential Contributions of Australian Indigenous Peoples to Threatened Species Management*, 32 CONSERV. BIOL. 1, 7 (2018).

¹² Eduardo S. Brondízio et al., *Locally Based, Regionally Manifested, and Globally Relevant: Indigenous and Local Knowledge, Values, and Practices for Nature*, 46 ANN. REV. ENV'T & RESOURCES 481, 498 (2021).

¹³ Victoria Reyes-García et al., *The Contributions of Indigenous Peoples and Local Communities to Ecological Restoration*, 27 RESTORATION ECOLOGY 3, 3-8 (2019).

¹⁴ Alejandro Estrada et al., *Global importance of Indigenous Peoples, their lands, and knowledge systems for saving the world's primates from extinction*, 8(32) SCI. ADV. 1, 13-14 (2022).

¹⁵ Conference of the Parties to the Convention on Migratory Species, *Communities and Livelihoods*, UNEP/CMS/Resolution 14.17, 14th Meeting, Samarkand, 1 (Feb. 2024).

wildlife conflict,¹⁶ especially in less-developed regions.¹⁷ Consequently, ignoring the perspectives of local communities can lead to policy failure¹⁸ and contribute to biodiversity loss, particularly in areas with high levels of economic inequality.¹⁹ As the best custodians of species' habitats,²⁰ local

¹⁶ Ernest Nkansah-Dwamena, *Lessons Learned from Community Engagement and Participation in Fostering Coexistence and Minimizing Human-Wildlife Conflict in Ghana*, 14 TREES, FORESTS & PEOPLE 2 (2023); Sapta Suhardono et al., *Community-Centric Importance and Performance Evaluation of Human-Orangutan Conflict Management in Aceh, Indonesia*, 15(100510) TREES, FORESTS & PEOPLE 1, 7 (2024).

¹⁷ Yuling Zhang et al., *How Important is Community Participation to Eco-Environmental Conservation in Protected Areas? From the Perspective of Predicting Locals' Pro-Environmental Behaviours*, 739 SCI. TOTAL ENV'T 139889, 27-28 (2020).

¹⁸ Samuel Hofmann, *Challenges and Opportunities of Area-Based Conservation in Reaching Biodiversity and Sustainability Goals*, 31 BIODIVERSITY & CONSERVATION 325, 327-329 (2022); William M. Adams et al., *Biodiversity Conservation and the Eradication of Poverty*, 306(5699) SCIENCE 1146, 1147 (2004).

¹⁹ Ida Kubiszewski et al., *The Complex Relationships Between Economic Inequality and Biodiversity: A Scoping Review*, 11(1) ANTHROPOCENE Rev. 49, 52 (2024).

²⁰ Helen Kopnina et al., *The Inclusion of Biodiversity into Environmental, Social, and Governance (ESG) Framework: A Strategic Integration of Ecocentric Extinction Accounting*, 351(119808) J. ENV'T MGMT. 1, 4 (2024); see also MANUEL RUIZ & RONNIE VERNOOY, *THE CUSTODIANS OF BIODIVERSITY: SHARING ACCESS TO AND BENEFITS OF GENETIC RESOURCES* (Routledge 2012).

communities and their sustainable practices²¹ are in harmony with endangered species laws²² and effectively ensure long-term conservation success. Economic benefit also creates within the community a vested interest in the protection of the species' habitat, reinforcing their role as effective environmental stewards.²³

b. Rishmak's auction process is a species and community-based approach that considers the context and fulfills the object and purpose of the CMS.

Although Astor argues that dedicating only 15% of auction proceeds to conservation does not satisfy the exception on species survival (R.21), this view is overly restrictive considering the auction's economic purpose.

In Pakistan, the government's decision to allocate 20% of the proceeds from trophy hunting to the conservation of the *Capra falconeri* Markhors' habitat, with the rest extended as economic benefits to local communities, fostered positive attitudes towards wildlife conservation.²⁴

²¹ Azlan Abas et al., *A Systematic Review on the Local Wisdom of Indigenous People in Nature Conservation*, 14(3415) SUSTAINABILITY 1, 10-11 (2022).

²² Clayton T. Lamb et al., *Braiding Indigenous Rights and Endangered Species Law*, 380 SCIENCE 694, 696 (2023).

²³ Syed Fazal Baqi Kakakhel, *A Review on Markhor (Capra falconeri falconeri Wagner 1839) Population Trends (2016-2019) and Community-Based Conservation in Toshi Shasha, Gehrait Goleen, Kaigah Kohistan Conservancies, and Chitral Gol National Park, Khyber Pakhtunkhwa, Pakistan*, 3 AM. J. NAT. SCI. 1, 9-11 (2020).

²⁴ Haidar Ali et al., *Socio-economic benefits of community based trophy hunting programs*, 6(1) ENVIRONMENTAL ECONOMICS 9, 9 (2017).

Similarly, the auction process serves multiple purposes (R.16). **First**, its proceeds help combat *Mycoplasma capricolum*, a deadly respiratory disease that threatens the Royal Markhor with a 10-30% mortality risk (R.18). **Second**, its proceeds are also used to restore and manage habitats to address habitat loss, one of the species' key survival threats (R.18). **Third**, educating the Dione Ginsu community on preventing disease transmission supports the species' long-term survival (R.18). Collectively, these serve to achieve the objective of conservation, both by direct conservation efforts and by accommodating the economic needs of the Dione Ginsu community.

2. Under an evolutive interpretation, the subsistence exception in Article III(5)(c) should be interpreted to address the changing needs of the Dione Ginsu community.

The “generic” nature of the terms in the CMS,²⁵ with the parties having “been aware that the meaning was likely to evolve over time,” and that “the treaty has been entered into for a very long period,”²⁶ warrants an evolutive interpretation of its terms.

The terms under the exception in Article III(5)(c) must be interpreted to cover the housing, medical, and food needs of the Dione Ginsu [a], to consider the right of the Dione Ginsu to transfer their hunting rights [b], and to qualify the trophy hunting through the auction process as subsistence hunting, despite involving Astori nationals [c].

a. The term “needs” in Article III(5)(c) should cover the housing, medical, and food needs of the Dione Ginsu community.

²⁵ Aegean Sea Continental Shelf (Grc. v. Turk.), Judgment, 1978 I.C.J. 3, ¶ 77 (December 19).

²⁶ Dispute Regarding Navigational and Related Rights (Cost. v. Nicar.), Judgment, 2009 I.C.J. 213, ¶ 64 (July 13) [hereinafter Navigational and Related Rights].

The needs of subsistence users in modern contexts extend beyond food and culture.²⁷ For the Dione Ginsu community, who have long depended on the Royal Markhors for cultural and spiritual practices, the auction system is also a practical²⁸ and effective²⁹ adaptation. It enables them to finance essential needs like housing, healthcare, and food while still safeguarding species survival (R.16, 20).

States such as Canada, Peru, Philippines, Senegal, and South Africa have recognized Indigenous needs in meeting conservation goals.³⁰ This recognition is further reflected in the draft recommendation of the Convention on Biological Diversity's Post-2020 Global Biodiversity Framework.³¹ International bodies, including the International Union for Conservation of Nature,

²⁷ Erik Andersson et al., *Enabling Green and Blue Infrastructure to Improve Contributions to Human Well-being and Equity in Urban Systems*, 69 BIOSCIENCE 566, 569 (2019); see ULRICH BECK, *RISK SOCIETY: TOWARDS A NEW MODERNITY* (Sage Publications 1992).

²⁸ Shingirai S. Mugambiwa, *Adaptation Measures to Sustain Indigenous Practices and the Use of Indigenous Knowledge Systems to Adapt to Climate Change in Mutoko Rural District of Zimbabwe*, 10(388) J. DISASTER RISK STUD. 1, 4 (2018).

²⁹ Johan A. Oldekop et al., *A Global Assessment of the Social and Conservation Outcomes of Protected Areas*, 30 CONSERV. BIOL. 133, 137 (2016).

³⁰ Tanya C. Tran et al., *A Review of Successes, Challenges, and Lessons from Indigenous Protected and Conserved Areas*, 241(108271) BIOL. CONSERVATION 1, 4 (2020).

³¹ Convention on Biological Diversity, *Post-2020 Global Biodiversity Framework, Draft Recommendation on the Post-2020 Global Biodiversity Framework*, U.N. Doc. CBD/WG2020/5/L.2, 9-11 (2022).

have also supported a non-restrictive interpretation of international treaty obligations to meet Indigenous needs.³²

To buttress this evolutive interpretation, the use of subsequent agreements under Article 31(3)(a) of the Vienna Convention on the Law of Treaties (“VCLT”) [i] and subsequent practice under Article 31(3)(b) thereof [ii] clarifies the nature of the evolving terms in the exception.³³

i. Subsequent agreements by parties to the CMS support the evolutive interpretation of the terms of the exception.

Even without formal treaty procedures,³⁴ parties may reach subsequent agreements regarding the interpretation of the treaty.³⁵

The CMS empowers its parties to review implementation and issue interpretative resolutions.³⁶ One key implementation tool is the National Biodiversity Strategies and Action Plans, which aims to protect and restore ecosystems while considering the needs of Indigenous communities.³⁷

³² International Union for Conservation of Nature, *Environmental & Social Management System (ESMS) Standard on Indigenous Peoples*, Version 2.1, 16 (Dec. 2019).

³³ Navigational and Related Rights, *supra* note 26, at ¶ 64.

³⁴ GARDINER, *supra* note 5, at 247.

³⁵ Kasikili/Sedudu Island (Bots./Nam.), Judgment, 1999 I.C.J. 1045, ¶ 48-49 (Dec. 13).

³⁶ CMS, *supra* note 2, art. 7(5)(g).

³⁷ Conference of the Parties to the Convention on Migratory Species, *Guidelines on the Integration of Migratory Species into National Biodiversity Strategies and Action Plans (NBSAPs)*, UNEP/CMS/Conf.10.27, 16 (June 24, 2011).

Notably, *CMS Resolution 12.6* promotes a “One Health” approach, emphasizing the interconnectedness of human, wildlife and environmental health in achieving conservation goals.³⁸ In addition, *CMS Resolution 14.1* endorses a rights-based approach, recognizing the importance of addressing needs beyond just food to promote a holistic view of conservation efforts.³⁹

ii. **Subsequent practice by parties to the CMS supports the evolutive interpretation of the terms of the exception.**

To avoid restricting general terms to a single interpretation⁴⁰ and to take into account changes in interpretation over time,⁴¹ Article 31(3)(b) of the VCLT allows interpretation through subsequent practice by the parties.

³⁸ Conference of the Parties to the Convention on Migratory Species, *Wildlife Health and Migratory Species*, UNEP/CMS, Resolution 12.6, 3 (Rev. COP14 2023) (Feb. 2024).

³⁹ Conference of the Parties to the Convention on Migratory Species, *Samarkand Strategic Plan for Migratory Species 2024-2032*, UNEP/CMS, Resolution 14.1 (Feb. 2024).

⁴⁰ Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, 1951 I.C.J. 15, 25 (May 28).

⁴¹ Vienna Convention on the Law of Treaties art. 31(3)(b), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT]; Malgosia Fitzmaurice, *Dynamic (Evolutive) Interpretation of Treaties, Part I*, 21 Hague Y.B. Int'l L. 101, 101 (2008).

The term “subsistence” encompasses dynamic economic practices that sustain traditional communities⁴² and is often synonymous with “survival of the community.”⁴³ For example, the Inter-American Convention for the Protection and Conservation of Sea Turtles defines “subsistence” to include economic activities like selling wildlife resources, provided that these align with conservation goals.⁴⁴ In the practice of Namibia, Zimbabwe, and Pakistan, proceeds from trophy hunting are allocated to community development projects, such as funding schools and clinics, and to conservation efforts, including wildlife management and protection.⁴⁵

In a similar vein, the Dione Ginsu’s auction process meets subsistence needs by generating funds essential for services that support both conservation and community welfare (R.16). This interpretation aligns with Article 23 of ILO Convention No. 169, which affirms that traditional

⁴² Victor K. Muposhi et al., *Trophy Hunting, Conservation, and Rural Development in Zimbabwe: Issues, Options, and Implications*, 2016 INT’L J. BIODIVERSITY 1, 1-11 (2016).

⁴³ James Summers, *Property Rights and the Protection of Subsistence in Article 1 (2) of the Human Rights Covenants*, 26(2) INT’L J. ON MINORITY & GROUP RTS 157, 1, 15 (2019); *Saramaka People v. Suriname*, Ser. C. No. 172, Inter-Am. Comm’n H.R., Preliminary Objections, Merits, Reparations, Costs, ¶ 90 (2007).

⁴⁴ Inter-American Convention for the Protection and Conservation of Sea Turtles art. IV(3)(a), Dec. 1, 1996, S. Treaty Doc. No. 105-48.

⁴⁵ Int’l Union for Conservation of Nature [IUCN], *Informing Decisions on Trophy Hunting: A Briefing Paper for European Union Decision-Makers in Relation to Possible Restrictions on the Import of Hunting Trophies*, Briefing Paper, 6, 13-14 (2016).

practices like hunting promote Indigenous self-reliance.⁴⁶ Thus, the auction process respects the cultural and economic autonomy of the Dione Ginsu while meeting subsistence purposes.

b. The term “accommodate” in Article III(5)(c) considers the Dione Ginsu’s right to transfer their hunting rights as an integral part of their autonomy that must be protected.

The Dione Ginsu community’s right to hunt the Royal Markhor is firmly protected under international law. Both Article 23 of the ILO Convention No. 169⁴⁷ and Article 20 of the United Nations (“UN”) Declaration on the Rights of Indigenous Peoples⁴⁸ affirm the rights of Indigenous peoples to maintain their traditional practices, including subsistence hunting.

Since hunting rights constitute a form of economic rights,⁴⁹ Rishmak qualifies as a “specially affected state”⁵⁰ because it sanctions the exercise of these rights by the Dione Ginsu

⁴⁶ International Labour Organization Convention No. 169 art. 23, June 27, 1989, 28 I.L.M. 1382 [hereinafter ILO Convention No. 169].

⁴⁷ *Id.*

⁴⁸ United Nations Declaration on the Rights of Indigenous Peoples art. 20, Sept. 13, 2007, G.A. Res. 61/295, U.N. Doc. A/RES/61/295 [hereinafter UNDRIP].

⁴⁹ Dawood Ahmed & Elliot Bulmer, *Social and Economic Rights, Int’l IDEA Constitution-Building Primer 9*, Int’l IDEA & Int’l Inst. for Democracy & Electoral Assistance (2d ed. 2017).

⁵⁰ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gamb. v Myan.), Judgment, 2022, I.C.J. 477, ¶111 (July 22); Int’l Law Comm’n, Draft Articles on Responsibility of States for Internationally Wrongful Acts art. 42(2)(a), U.N. Doc. A/56/10, (2001).

community (R.14). Moreover, Rishmak may act as *parens patriae*⁵¹ for the Dione Ginsu to ensure the protection of their interests. Therefore, the Dione Ginsu community's decision to transfer these rights through an auction represents a legitimate exercise of their autonomy and must be safeguarded by Rishmak.⁵²

c. The trophy hunting through the auction process qualifies as subsistence hunting, not commercial hunting, despite involving Astori nationals.

Astor argues that the trophy hunting in Rishmak's case cannot be classified as "subsistence" hunting because it involves Astori nationals (R.19). However, "subsistence" is not strictly limited to activities directly conducted by Indigenous communities, but also includes those conducted "on behalf" of them,⁵³ provided that these activities meet Indigenous or "aboriginal" needs.⁵⁴

⁵¹ Katherine Mims Crocker, *Securing Sovereign State Standing*, 97 VA. L. REV. 2051, 2071-72 (2011).

⁵² UNDRIP, *supra* note 48, art. 4.

⁵³ International Whaling Commission [IWC], *Report of the 'Ad Hoc' Technical Committee Working Group on Development of Management Principles and Guidelines for Subsistence Catches of Whales by Indigenous (Aboriginal) Peoples*, Paper IWC/33/14, 30 (June 1981).

⁵⁴ International Whaling Commission [IWC], *Report of the IWC Expert Workshop on Aboriginal Subsistence Whaling (ASW)*, Paper IWC/66/ASW, 3 (Oct. 15, 2015).

Traditionally, subsistence use refers to the personal consumption of animal products to meet essential needs like food, fuel, shelter, clothing, tools, or transportation.⁵⁵ Additionally, CITES allows for trade that benefits local communities, as long as it is not “primarily commercial.”⁵⁶

Here, the Dione Ginsu community makes full use of the animal in a sustainable manner. They consume the meat locally and bequeath their hunting rights to Astori nationals, whose trade of animal parts complies with CITES permits (R.17). This approach aligns with traditional subsistence practices and ensures that no part of the animal is wasted.

3. The trophy hunting through the auction process is controlled, limited in scope and time, and does not endanger the species’ survival.

In accordance with good faith,⁵⁷ Rishmak complies with its treaty obligation under the CMS because the taking of Royal Markhors is carefully regulated. Rishmak has imposed an annual numerical cap, allowing only ten adult male Royal Markhors to be hunted each year (R.15). This controlled limit remains consistent, and the solitary nature of adult male Royal Markhors further reduces the risk of mistakenly targeting females or their young (R.18). The systems in place for trophy hunting contribute directly to habitat protection and foster the long-term conservation of the species (R.20).

⁵⁵ International Whaling Commission [IWC], *Aboriginal/Subsistence Whaling (with special reference to the Alaska and Greenland fisheries)*, Reports of the International Whaling Commission Special Issue 4, 49 (1982).

⁵⁶ *Id.*

⁵⁷ VCLT, *supra* note 41, art. 31(1).

4. In any event, Astor’s silence on the trophy hunting establishes a pattern of tacit recognition of Rishmak’s interpretation of the CMS.

Astor’s challenge against trophy hunting under CMS Article III(5)(b) and (c) is rendered moot by its silence when the auction system was introduced. Tacit recognition occurs when a party refrains from “reacting in any way on an occasion that called for a reaction.”⁵⁸ In 2016, when Rishmak permitted the Dione Ginsu to auction hunting rights, Astor raised no objections (R.16). This silence indicates Astor’s implicit acceptance to this method of taking as consistent with the CMS.

B. THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS COMPLIES WITH THE ILO CONVENTION NO. 169 AND THE ICESCR.

Astor lacks the legal standing to invoke ILO Convention No. 169 or the ICESCR because it is not a party to either convention (R.9). Regardless, Rishmak complies with Article 23 of ILO Convention No. 169 because it recognizes hunting as integral to indigenous cultures and subsistence. The auction process supports both the Dione Ginsu’s right to traditional practices and their economic welfare (R.16). Funds generated from the auction help provide essential services, which align with Rishmak’s international obligations.⁵⁹

⁵⁸ Case Concerning the Temple of Preah Vihear (Cam. v. Thai.), Judgment, 1962 I.C.J. 6, 31 (June 15); Appellate Body Report, *European Communities—Customs Classification of Frozen Boneless Chicken Cuts*, ¶ 272, WTO Doc. WT/DS286/AB/R (adopted Sept. 27, 2005).

⁵⁹ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3; ILO Convention No. 169, *supra* note 46, art. 23.

C. THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS COMPLIES WITH THE CITES.

The CITES allows the trade of animal parts provided that its conduct is not detrimental to the species itself.⁶⁰ Here, appropriate CITES permits for the trade of the Royal Markhor's hide and horns were duly issued (R.17). And in any case, the trophy hunting is limited by a numerical cap in order to conserve the Royal Markhor population.⁶¹ Thus, it is not detrimental to the species.

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

In its diplomatic note to Rishmak, Astor alleged that the ban on the importation of Royal Markhor hunting trophies is compliant with conventional international law (R.33). On the contrary, as a specially affected state,⁶² Rishmak has a legitimate basis for challenging the import ban because it is a violation of Astor's treaty obligation under CITES [A], and under the principle of systemic integration, the ban does not satisfy the requirements of the general exceptions under ARTA's Article 20(a) and (g) [B].

A. THE BAN IS A VIOLATION OF ASTOR'S TREATY OBLIGATIONS UNDER CITES.

⁶⁰ Convention on International Trade in Endangered Species of Wild Fauna and Flora art. III, Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].

⁶¹ Conference of the Parties to the Convention, *Conservation of and Trade in Great Apes*, Res. Conf. 13.4 (Rev. CoP18) (2019).

⁶² See ARGUMENT I.A.2.b

States must comply with its treaty obligations in good faith.⁶³ Since 1975, Astor and Rishmak have been parties to the CITES (R.7). Under a broad interpretation of CITES provisions, Astor violated its duty to cooperate under Article XIV when it imposed the ban [1], Article III when it refused to accept the scientific findings of Rishmak [2], and its general obligation to recognize the Dione Ginsu as protectors of their own wild fauna and flora as interpreted through the CITES Preamble and other pertinent resolutions [3].

- 1. Under a broad interpretation, Astor’s ban violated its duty to cooperate under Article XIV of CITES, as clarified through CITES Resolution 6.7, by failing to consider mutual interests and alternatives.**

Astor argued that the ban is justified because CITES Article XIV, Paragraph 1(a) allows States “to adopt stricter domestic measures regarding conditions for trade of species included in Appendix I or the complete prohibition thereof.”

However, this interpretation is lacking. CITES Resolution 6.7 clarifies that the parties to the convention are “aware that international cooperation is fundamental to achieving the objectives of the convention” and that “strict domestic measures... may have adverse impacts on the conservation status.”⁶⁴

- a. As a subsequent agreement, CITES Resolution 6.7 provides that the right to impose stricter domestic measures includes the duty to cooperate in regulating the trade of species.*

⁶³ VCLT, *supra* note 41, art. 26.

⁶⁴ Conference of the Parties to the Convention, Res. Conf. 6.7, *Interpretation of Article XIV, Paragraph 1, of the Convention* (1987).

CITES must be interpreted in light of its subsequent agreements,⁶⁵ which includes decisions or resolutions adopted by the Conference of State Parties.⁶⁶ Such resolutions adopted whether by consensus or unanimous vote are relevant in treaty interpretation.⁶⁷ Given that Astor and Rishmak were part of the consensus that adopted CITES Resolution 6.7 (C.Q8), they are both bound by this subsequent agreement in interpreting CITES Article XIV, Paragraph 1.

b. The imposition of the Astori ban violated the duty to cooperate by compromising the conservation of the Royal Markhor and the needs of the Dione Ginsu.

Astor failed to observe “international cooperation” because it lacked any reasonable effort to cooperate with either the Government of Rishmak or the Dione Ginsu community. As a result, its ban dismissed mutual interest and alternatives and compromised the conservation status of the Royal Markhor and the needs of the Dione Ginsu community (R.19, 21, 23). Since Dione Ginsu’s existing programs were designed to address the *Mycoplasma capricolum* infections that pose a risk to the survival of the Royal Markhors (R.18), the consequent deprivation in funding due to the Astori ban made the species’ extinction more likely (R.32).

Furthermore, the duty to cooperate in relation to environmental matters is stated in Principle 24 of the Stockholm Declaration.⁶⁸ The duty to cooperate in ensuring that trade measures

⁶⁵ VCLT, *supra* note 41, art. 31(3)(a).

⁶⁶ Int’l Law Comm’n, Rep. on the Work of the Seventieth Session, U.N. Doc. A/73/10, 69 (2018).

⁶⁷ Whaling in the Antarctic (Aust. v. Jap.), Judgment, 2014 I.C.J. 226, ¶ 46 (Mar. 31).

⁶⁸ U.N. Conference on the Human Environment, *Stockholm Declaration on the Human Environment*, U.N. Doc. A/CONF.44/14/Rev.1, 4 (June 16, 1972).

are not arbitrary is also provided in Principle 12 of the Rio Declaration.⁶⁹ Finally, recalling that Astor and Rishmak are members of the United Nations (R.5), the UN Charter calls for international co-operation in solving international problems.⁷⁰

2. Under a broad interpretation, Astor's refusal to accept the scientific findings of Rishmak violated Article III of CITES as clarified through CITES Resolution 2.11.

CITES Article III must be interpreted according to CITES Resolution 2.11 as a subsequent agreement by the parties to the CITES.⁷¹ Similar to CITES Resolution 6.7, Astor and Rishmak were part of the consensus that adopted Resolution 2.11 (C.Q8).

CITES Article III provides that trade in hunting trophies of animals of the species listed in Appendix 1 must be accompanied by import and export permits. On the other hand, CITES Resolution 2.11 states that an importing country must accept the finding of the exporting country's Scientific Authority that such hunting trophy export is not detrimental to a species' survival, unless there is data that indicate otherwise.⁷²

Here, Astor's refusal to issue import permits for Royal Markhor hunting trophies (R.33) is a violation of CITES Article III in relation to CITES Resolution 2.11. Rishmak's Scientific

⁶⁹ Rio Declaration on Environment and Development, Aug. 12, 1992, U.N. Doc. A/CONF.157/26/Rev.1, 3 [hereinafter Rio Declaration].

⁷⁰ U.N. Charter art. 1, ¶3.

⁷¹ VCLT, *supra* note at 41, art. 31(3)(a).

⁷² Conference of the Parties to the Convention, Conference Res. 2.11 (Rev.), *Trade in Hunting Trophies of Species Listed in Appendix I*, 1(b) (1979).

Authority has already advised that such limited export will not be detrimental to the survival of the Royal Markhor (R.32), and Astor was not able to furnish data to the contrary.

3. Astor violated its general obligation to recognize the Dione Ginsu as protectors of their own wild fauna and flora as interpreted through the CITES Preamble and other pertinent resolutions.

In enacting the ban, Astor rejected Rishmak’s well-balanced conservation policy of sustainability and community involvement.⁷³ Recalling that the preamble establishes the context of the treaty,⁷⁴ the *CITES Preamble* provides that “peoples and states are and should be the best protectors of their own wild fauna and flora.”⁷⁵ Moreover, CITES Resolution 10.15 expresses in its preamble that “conservation of the species will depend on the capacity of the state and on local people having sufficient incentives to maintain the species in preference to their domestic livestock.”⁷⁶

Here, Astor’s failure to consider and evaluate the capacity of the Dione Ginsu community in maintaining and conserving the Royal Markhor is inconsistent with CITES’ policies. The Dione Ginsu is among Rishmak’s poorest communities (R.3), and a complete import ban would deprive them of resources and incentives to protect the Royal Markhors.

B. UNDER THE PRINCIPLE OF SYSTEMIC INTEGRATION, THE BAN DOES NOT SATISFY THE REQUIREMENTS OF THE GENERAL EXCEPTIONS UNDER ARTA’S ARTICLE 20(A) AND (G).

⁷³ See ARGUMENT I.A.1

⁷⁴ GARDINER, *supra* note 5, at 205.

⁷⁵ CITES, *supra* note 60, preamble ¶ 3.

⁷⁶ Conference of the Parties to the Convention, *Establishment of Quotas for Markhor Hunting Trophies*, Res. 10.15 (Rev. CoP14), 1 (2007).

ARTA Article 25(2) prescribes that decisions from the General Agreement on Tariffs and Trade (“GATT”) and the World Trade Organization (“WTO”) panels or appellate bodies are subsidiary sources for interpreting its terms (R.12). This clause is similar to dispute settlement mechanisms in trade agreements like the Comprehensive and Progressive Agreement for Trans-Pacific Partnership.⁷⁷

This interpretation adheres to the principle of systemic integration. Article 31(3)(c) of the VCLT mandates that “any relevant rules of international law applicable in the relations between the parties” must be considered in treaty interpretation.⁷⁸ This approach ensures coherence within the broader context of the international legal system.⁷⁹ It also shows that ARTA’s parties sought to ensure consistency with WTO decisions to prevent trade barriers and disguised trade restrictions when invoking the general exceptions (R.12).

Under WTO jurisprudence, to determine whether a measure or import ban is valid under the exceptions, it must pass a two-tiered analysis. **First**, the measure must fall within the scope of at least one of the listed exceptions. **Second**, it must surpass the chapeau that prohibits

⁷⁷ Comprehensive and Progressive Agreement for Trans-Pacific Partnership, 2018 ¶ 28.12(3).

⁷⁸ VCLT, *supra* note 41 art. 31(3)(c).

⁷⁹ Campbell McLachlan, *The Principle of Systemic Integration*, 54 INT’L & COMP. L.Q. 279, 279-320 (Apr. 2005).

discriminatory or arbitrary measures.⁸⁰ The party invoking the exception has the burden of justifying its applicability.⁸¹

Astor's reliance on the general exceptions under ARTA Article 20(a) and (g) is unfounded because the ban is not necessary to protect public morals [1], is unrelated to the conservation of exhaustible natural resources [2], and is arbitrary under the chapeau [3].

1. The ban is not necessary to protect public morals under the WTO framework.

Measures invoking ARTA Article 20(a) must be necessary to protect public morals. Public morals are defined as “the standards of right and wrong conduct maintained on behalf of a community or nation.”⁸²

⁸⁰ Appellate Body Report, *United States – Standards for Reformulated and Conventional Gasoline*, 22, WTO Doc. WT/DS2/AB/R (adopted May 20, 1996) [hereinafter US Gasoline]; Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, ¶¶ 119-120, WTO Doc. WT/DS58/AB/R (adopted Nov. 6, 1998) [hereinafter US Shrimp].

⁸¹ Panel Report, *Canada – Administration of the Foreign Investment Review Act*, ¶ 5.20, L/5504 – 30S/140,164 (adopted Feb. 7, 1984); Panel Report, *United States – Section 337 of the Tariff Act of 1930*, ¶ 5.27, L/6439 – 36S/345 (adopted Nov. 7, 1989) [hereinafter US–Section 337].

⁸² Appellate Body Report, *United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, ¶ 296, WTO Doc. WT/DS285/AB/R (adopted Apr. 7, 2005).

Preliminarily, Rishmak submits that no moral concern exists in this case [i]. However, assuming that there is, a State cannot justify a measure as necessary “if an alternative measure which it could reasonably be expected to employ, and which is not inconsistent with other GATT provisions, is available to it.”⁸³ Two factors ought to be considered under this prong. **First**, the ban is not necessary because it is not the least restrictive measure [ii]. **Second**, the ban is not necessary because the alternative measure can achieve the goal just as effectively as Rishmak’s controlled hunting [iii].

a. Preliminarily, no moral concern exists in Royal Markhor hunting.

Astor’s invocation of *EC – Seals* holds no water as there is no moral concern in Royal Markhor trophy hunting. The trophy hunting is ultimately for the purpose of accommodating the needs of the Dione Ginsu, the traditional subsistence users of the Royal Markhor (R.20).

b. The ban is not necessary because it is not the least restrictive measure.

Unilateral actions such as import bans should be resorted to only when all other remedies have been exhausted.⁸⁴ Here, Astor has failed to consider other less restrictive options. For instance, in lieu of an outright ban, New Zealand⁸⁵ and South Africa⁸⁶ require certification, coupled with strong enforcement mechanisms, to ensure the protection of endangered species.

c. The ban is not necessary because Rishmak’s alternative of controlled hunting already achieves the goal of regulating the taking of the Royal Markhor.

⁸³ US– Section 337, *supra* note at 81, ¶ 5.26.

⁸⁴ Rio Declaration, *supra* note 69, 3.

⁸⁵ Trade in Endangered Species Act 1989, No. 18 (N.Z.).

⁸⁶ Nature and Environmental Conservation Ordinance No. 19 of 1974 (S. Afr.).

The extent to which the measure contributes “to the realization of the end pursued” is weighed in measuring necessity.⁸⁷

Here, Astor’s ban is no longer necessary because Rishmak already has an existing system that sets the taking of Royal Markhors to only ten individuals annually (R.15). Contrarily, the ban is more inconsistent with ARTA’s objective to “[c]ontribute to the harmonious development and expansion of regional trade” (R.12). It even imposes undue limitations to the Dione Ginsu’s practices.

2. The ban is not related to the conservation of exhaustible natural resources under the WTO framework.

On the alternative, although a measure may not always be “necessary,” it must at least be primarily aimed at the conservation of an exhaustible natural resource to be considered as “relating to” conservation within the meaning of Article XX(g) of the GATT.⁸⁸

Here, Rishmak concedes that living species like the Royal Markhors are within the ambit of “exhaustible natural resources” under ARTA Article 20(g).⁸⁹ However, the Astori ban was only adopted after an unsubstantiated public outcry (R.24, 25), without proof that such measure relates to the goal of conserving the Royal Markhor species.

3. In any case, the ban is arbitrary under the chapeau in ARTA’s Article 20.

⁸⁷ Appellate Body Report, *Korea – Measures Affecting Imports of Fresh, Chilled, and Frozen Beef*, ¶ 163, WT/DS161/AB/R (adopted Dec. 11, 2000).

⁸⁸ Panel Report, *Canada – Measures Affecting Exports of Unprocessed Herring and Salmon*, ¶ 4(7), L/6268 - 35S/98 (adopted March 22, 1988).

⁸⁹ *Id.*, at ¶ 4(4).

The introductory text or chapeau in ARTA Article 20 requires that measures must be neither “arbitrary” nor “disguised restrictions” (R.12). The chapeau’s function is to prevent abuse of the exceptions under Article XX of the GATT.⁹⁰ In *US-Shrimp*, which involves a measure aimed at protecting sea turtles, the Appellate Body modified its initial report and declared that a measure is justified under Article XX of the GATT if “serious good faith efforts is made to negotiate and reach an agreement.”⁹¹

Here, Astor lacked serious good faith efforts to negotiate and reach an agreement with either the Government of Rishmak or the Dione Ginsu community before imposing the import ban. As a result, the latter were deprived of reasonable opportunity to prevent such arbitrary or discriminatory measure.

⁹⁰ US Gasoline, *supra* note 80, 22; US Shrimp, *supra* note 80, ¶¶ 119-120.

⁹¹ Appellate Body Report, *United States – Import Prohibition of Certain Shrimp and Shrimp Products – Recourse to Article 21.5 of the DSU by Malaysia*, ¶ 153, WT/DS58/AB/RW (adopted Oct. 22, 2001).

CONCLUSION

Respondent respectfully prays that this Honorable Court adjudge and declare that:

- a. The trophy hunting of the Royal Markhor through the auction process complies with conventional international law; and,
- b. The ban on the importation of Royal Markhor hunting trophies violates conventional international law.

Respectfully submitted,

AGENTS FOR THE RESPONDENT