
29TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT
COMPETITION, 2025

BEFORE
THE INTERNATIONAL COURT OF JUSTICE
LA COUR INTERNATIONALE DE JUSTICE



AT THE PEACE PALACE,
THE HAGUE, NETHERLANDS

GENERAL LIST NO. 175

YEAR 2025

QUESTIONS RELATING TO SUBSISTENCE USE AND TROPHY HUNTING

ASTOR.....APPLICANT

RISHMAK.....RESPONDENT

- WRITTEN SUBMISSION ON BEHALF OF THE APPLICANT-

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QUESTIONS PRESENTED

1. WHETHER THE TROPHY HUNTING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS, BY HUNTERS WHO ARE NOT DIONE GINSU, VIOLATES OR COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW, AND
2. WHETHER THE BAN ON THE IMPORTATION OF ROYAL MARKHOR HUNTING TROPHIES VIOLATES OR COMPLIES WITH CONVENTIONAL INTERNATIONAL LAW.

STATEMENT OF JURISDICTION

Pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice, the States of Astor and Rishmak have submitted to the International Court of Justice (“ICJ”) their Special Agreement pertaining to questions relating to subsistence use and trophy hunting. The Parties transmitted a copy of the Special Agreement to the Registrar of the ICJ on 24 May 2024, which the Registrar acknowledged receipt on 31 July 2024.

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

The Royal Markhor is a critically endangered species that has once extended over six countries. Primarily due to habitat loss, disease, and hunting, there are currently only 2200 Royal Markhors, 20% being adult males, found in Astor and Rishmak (R¶1).

Astor and Rishmak, Range States of the Royal Markhor, entered into a bilateral agreement entitled Astor-Rishmak Trade Agreement (ARTA) that aims to promote sustainable development and enhance environmental laws and regulations (R¶12).

The national laws of both Astor and Rishmak strictly prohibit the taking of the Royal Markhor, with the latter allowing an exception for its Dione Ginsu indigenous community. Because of the cultural significance of the species to the community, Dione Ginsu members have traditionally required a male member, upon reaching adulthood, to hunt and kill a male Royal Markhor, and the meat is then shared with the community. The horns acquired are displayed in the entrance of their homes and are used in important ceremonies such as when members marry and die (R¶14).

Rishmak instituted a lottery system for the Dione Ginsu males allowing 10 Royal Markhors to be hunted annually, following the inclusion of the Royal Markhor in 2009 to the CMS Appendix I, which lists the migratory species that have been assessed as being in danger of extinction (R¶15).

Rishmak abandoned this lottery system in 2016, when they started auctioning off the right to hunt the Royal Markhors to foreign hunters (R¶16). The winning bidders, who are almost exclusively Astori nationals, are then able to hunt the Royal Markhor with their rifles with hired Dione Ginsu members as mere guides for the hunt. The hides and the horns, which are of cultural and religious significance to the indigenous community, are now usually imported to Astor (R¶17).

Only 15% of the auction proceeds is allocated for the Royal Markhor is used for research on vaccine development and other responses to disease threats to the Royal Markhor (R¶16). Meanwhile, most of the proceeds, amounting to 75% is used by the community for basic necessities — such as housing, food, and medical expenses — the rest paid to the organizers (R¶16).

The Government of Astor expressed its concerns that the taking violates the Convention on the Conservation of Migratory Species (CMS) (R¶19). Following a series of protests regarding the harms of trophy hunting, the national legislature of Astor enacted a law prohibiting the importation of hunting trophies (R¶29).

With the negotiations failing to resolve the dispute, Astor and Rishmak agreed to submit the discussion to the International Court of Justice (R¶35).

SUMMARY OF ARGUMENTS

I

Rishmak violated its obligations under the CMS by auctioning off the Dione Ginsu community's right to hunt the Royal Markhor. The taking cannot be exempted under the CMS, as it is contrary to the purpose of enhancing the propagation or survival of the Royal Markhor nor is it done to accommodate the needs of traditional subsistence users of the Royal Markhor. Given that hunting is the immediate threat to the species, Rishmak failed in its obligation to provide immediate protection. Rishmak cannot justify its actions under the ILO and the ICESCR, as its obligations under these treaties does not excuse a violation of its obligations under the CMS.

II

Astor did not violate conventional international law with its measures prohibiting the importation of hunting trophies. The importation ban is an exempted quantitative measure under ARTA. The ban is a necessary trade restriction that is designed to prevent trophy hunting, which is a public moral concern in Astor. The importation ban relates to the conservation of the Royal Markhor, made in conjunction with Astor's restrictions on domestic consumption. Lastly, Astor has the right to adopt stricter domestic measures on the trade under the CITES.

ARGUMENTS ADVANCED

I. Rishmak violated conventional international law in allowing the trophy hunting of the Royal Markhor through the auction hunting process.

As a Range State of the Royal Markhor, Rishmak is mandated to (1) prohibit the taking of the species¹ and (2) provide immediate protection for the same.² Rishmak failed to comply with these in allowing the taking of the Royal Markhors by non-indigenous, non-traditional subsistence users through the auction process.³

A. Rishmak violated the prohibition on taking of migratory species listed in Appendix I of the CMS.

Article III, paragraph 5 of the CMS mandates Parties that are Range States of migratory species listed in Appendix I to prohibit the taking of such species.⁴ A limited set of exceptions is allowed,⁵ provided that these (1) are precise as to content and limited in space and time, and (2) do not operate to the disadvantage of the species.⁶ The exceptions must be interpreted narrowly, in order

¹ Convention on the Conservation of Migratory Species of Wild Animals art. 3 ¶5, June 23, 1979, 1651 U.N.T.S. 333. [Hereinafter CMS].

² CMS art. 2 ¶3(b)

³ R¶16; R¶17.

⁴ CMS.

⁵ CMS art. 3 ¶5.

⁶ CMS art. 3 ¶5.

to serve the object and purpose of the CMS.⁷ In this case, the trophy hunting through auction fails to meet any of the exceptions enumerated.

1. The taking was not done for the purpose of enhancing the propagation or survival of the Royal Markhor.

Article III, paragraph 5(b) of the CMS provides that the taking may be allowed if done for the purpose of enhancing the propagation or survival of the affected species.⁸ Rishmak cannot justify the prohibited taking of Royal Markhors under the reason of enhancing propagation or survival, as this is not the primary purpose of the taking and it is done contrary to the propagation of the Royal Markhor.

a. The propagation or survival of the affected species is not the primary motivation of the taking.

A plain reading of the word “purpose” means that the exception must be confined comprehensively and particularly to the enhancement of the propagation or survival of the species. The definite article “the” confines the word it qualifies,⁹ references a particular and identifiable object,¹⁰ and is

⁷ CMS, 13th Meeting of the Conference of the Parties (COP 13), *Application of Article III of the Convention*, Agenda Item 21, February 17-22, 2020 (prepared by the Secretariat); Arie Trouwborst, *Aussie Jaws and International Laws: The Australian Shark Cull and the Convention on Migratory Species*, 1 *Transnat'l Envtl. L.* 17 (2014).

⁸ CMS art. 3 ¶5(b).

⁹ *Appeal Relating to the Jurisdiction of the ICAO Council (India v. Pakistan)*, 1972 I.C.J. 46 (Aug. 18, 1972).

¹⁰ Daniel Costelloe, *General Principles and the Coherence of International Law* (2019).

indicative of comprehensiveness.¹¹ The Court has held that a cumulative reading of the phrase “purposes of” is necessary in determining the relation between the purpose and objective.¹² The degree of the relation between the taking and the propagation or survival of the species must be assessed, rather than merely ascertaining whether or not the taking involves conservation efforts.¹³ Rishmak argues that funds from the auction are used to respond to a threat to propagation,¹⁴ but has only allocated 15% of the proceeds of the hunting proceeds to the conservation program, with the majority of the funding for other needs of the community.¹⁵ It is not enough that the proceeds of the auction involve a conservation program, when the taking is not “for the purposes” of the propagation of the Royal Markhor.

b. The scale of the taking is not reasonable in relation to the purpose of the taking.

The objective test in determining the purpose is whether the design and implementation of a programme are reasonable in relation to achieving the stated objectives.¹⁶ The motivations alone cannot justify¹⁷ a programme that uses lethal sampling on a larger scale than is reasonable in

¹¹ *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*, I.C.J. Rep. 455 (Dec. 18, 2020).

¹² *Whaling in the Antarctic (Australia v. Japan)*, I.C.J. 226, ¶71 (Mar. 31, 2014). [Hereinafter *Whaling in the Antarctic*].

¹³ *Id.*

¹⁴ R¶18.

¹⁵ R¶16.

¹⁶ *Whaling in the Antarctic*, I.C.J. 226 at ¶97.

¹⁷ *Id.*

relation to achieving the programme's stated research objectives.¹⁸ The funding of the vaccine research only required the proceeds from the taking of 1.5 Royal Markhors based on the current pricing structure of the auction, but Rishmak allowed the taking and killing of ten (10) Royal Markhors.¹⁹ Given that Rishmak's objective is to preserve the species of Royal Markhors through vaccine research, the auction process that allows for the taking of excessive numbers of Markhor is not reasonable and disproportionate for the purpose of the taking.

c. The taking is done contrary to the purpose of propagation and survival.

Propagation is the process of reproduction and creation of offsprings,²⁰ which refers to the natural expansion of a species' population within ecosystems.²¹ The taking violates the CMS because of its negative impacts to the propagation and survival of the Royal Markhors.

i. The hunting of the Royal Markhor during winter disrupts the species' breeding pattern and cycle.

Migratory species rely on specific habitats at different times for their breeding and survival.²² The hunting, when done too close to the rut, interferes with the reproductive cycle of the species²³

¹⁸ *Id* at ¶94.

¹⁹ R¶15.

²⁰ Derek A. Roff, *Life History Evolution* (2002).

²¹ Michael Begon & Colin R. Townsend, *Ecology: From Individuals to Ecosystems* (2021).

²² UNEP World Conservation Monitoring Centre, *State of the World's Migratory Species* (2024).

²³ CMS, 4th Meeting of the Signatories (MOS4) to the Memorandum of Understanding Concerning Conservation, Restoration, and Sustainable Use of the Saiga Antelope (Sept. 28-29, 2021).

leading to reduced reproductive success,²⁴ altered offspring ratio,²⁵ and decreased genetic diversity.²⁶ The mating season of Markhors is from late October until December,²⁷ only during which solitary males temporarily join female herds.²⁸ Rishmak conducts the hunting program during such time,²⁹ disrupting the natural mating patterns of the species.

²⁴ Jos M. Milner et al., *Demographic Side Effects of Selective Hunting in Ungulates and Carnivores*, 21 *Conserv. Biol.* 36 (2007).

²⁵ CMS & CITES, 2nd Meeting of Range States of the Joint CITES-CMS African Carnivore Initiative (ACI2), *Conservation of the Leopard (Panthera pardus) under the Joint CITES-CMS African Carnivores Initiative (ACI)*, (May 1-4, 2023).

²⁶ Human-induced evolution caused by unnatural selection through harvest of wild animals, *Proc. Nat'l Acad. Sci. U.S. (PNAS)*, <https://www.pnas.org/doi/abs/10.1073/pnas.0901069106>

²⁷ ADW: Capra falconeri: INFORMATION, https://animaldiversity.org/accounts/Capra_falconeri/; T.J. Roberts, *The Mammals of Pakistan* (Ernest Benn Ltd. 1977).

²⁸ *Id.*; Riyaz Ahmad et al., *Security, size, or sociality: what makes markhor (Capra falconeri) sexually segregate?*, 99 *Journal of Mammalogy* 55 (2017).

²⁹ R¶31.

ii. *Trophy hunting leads to a female-biased adult sex ratio of the species.*

The trophy hunting of the Royal Markhors, targeted towards the male individuals,³⁰ skews the population dynamics of the species, leading to female-biased adult sex ratios.³¹ The imbalance results in reproductive collapse,³² delays in birth rates and body mass development, and reduction in birth synchrony.³³ An imbalance of sex ratio of the Royal Markhors is already in place, with only 20% of its population made up of males,³⁴ warranting the implementation of a strict prohibition of trophy hunting.

iii. *The hunting aggravates the recovery cycle of the Royal Markhors as low-fecundity species.*

Species with low fecundity produce fewer offspring and are slower to recover from population losses.³⁵ To be classified as low-fecundity, the breeding cycle range,³⁶ gestation period, and reproductive maturity must be considered.³⁷ The Markhors are considered to be low-fecundity

³⁰ R¶14; IEMCC Clarifications A3.

³¹ Milner et al., *supra* note 26.

³² CMS (MOS4), *supra* note 23.

³³ Milner et al., *supra* note 26.

³⁴ R¶1.

³⁵ Jean-Michel Gaillard et al., “Temporal variation in fitness components and population dynamics of large herbivores, *Annual Review of ecology and Systematics* (2000).

³⁶ F. H. Bronson, *Mammalian Reproductive Biology* (1989).

³⁷ Ronald M. Nowak, *Walker’s Mammals of the World* (1999).

species since they breed in annual intervals,³⁸ their gestation period ranges from 5 to 6 months,³⁹ and their reproductive maturity occurs in 2 to 3 years.⁴⁰ The taking should only be done when a species' sex ratio is at a high level of fecundity, otherwise, it will cause population decline⁴¹ and damage the recovery cycle.⁴²

2. The taking is not done to accommodate the needs of traditional subsistence users of such species.

Article III, paragraph 5(c) provides an exception when the taking is done “to accommodate the needs of traditional subsistence users of such species.”⁴³ The trophy hunting through the auction⁴⁴ is not made in relation to the needs of the Dione Ginsu community and is not done to accommodate subsistence needs by the traditional subsistence users.

a. The taking is not related to the traditional subsistence use of the species.

A treaty shall be interpreted in good faith in accordance with its ordinary meaning.⁴⁵ Viewed in this light, the ordinary meaning of “traditional subsistence users of the species” when used in

³⁸ Animal Diversity Web, *supra* note 27.

³⁹ Bronson, *supra* note 38.

⁴⁰ Allan Larson et al., *Integrated Principles of Zoology* (2013).

⁴¹ CMS, 3rd Meeting of the Signatories (MOS3) of the Memorandum of Understanding Concerning Conservation and Restoration of the Bukhara Deer (September 10-11, 2024).

⁴² CMS (MOS4), *supra* note 23.

⁴³ CMS art. 3 ¶5(c).

⁴⁴ R¶16.

⁴⁵ VCLT, art. 31 ¶1.

conjunction with a “need” qualifies the term. Taken together, the provision refers to needs of a traditional subsistence user in relation to its necessary use of such species. Recourse to the preparatory work may also be resorted to as a supplementary means of interpretation,⁴⁶ since the term “needs” under the exception is not defined.⁴⁷ The *travaux préparatoires* of the CMS and its deliberations show that proposed exceptions can be allowed for indigenous persons in pursuit of traditional purposes.⁴⁸

The accommodation made for the Dione Ginsu community was because of its relationship with the Royal Markhor since time immemorial, wherein the horns are displayed in homes and used in significant ceremonies.⁴⁹ However, beginning the auction of hunting rights,⁵⁰ the hides and horns are usually imported to Astor by the foreign hunters.⁵¹ Through the auction of the right of taking, the hunting has ceased to be done to accommodate traditional subsistence needs of the users. Rishmak allowed the taking of the Royal Markhor primarily to raise money for housing, medicine,

⁴⁶ VCLT art. 32

⁴⁷ CMS, 14th Meeting of the CMS Scientific Council (ScC14), *Sustainable Use*, Agenda Item 5.3(a), ¶23 (March 14-17, 2007).

⁴⁸ CMS, Travaux Préparatoires, *PL30 Proposed Amendments to the Draft Convention Submitted by Australia*, June 14-19, 1979

⁴⁹ R¶14.

⁵⁰ R¶16.

⁵¹ R¶17.

and food.⁵² Hence, the auction is not related to the needs of the Dione Ginse community, as traditional users of the Royal Markhor.

b. The taking is not done by indigenous, traditional subsistence users.

The CMS included in its Model Law a recommendation to prohibit the transfer of any license to take an Appendix I species that has been granted.⁵³ The members of the Dione Ginsu community may not transfer to foreigners their right to hunt as this does not fulfill the purpose of the allowable exception availed of which is to afford them their belief-based traditional subsistence.⁵⁴

Rishmak argues that the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) offers an analogous interpretation of the harvesting of eggs,⁵⁵ which makes an exception for “economic subsistence needs” of traditional communities.⁵⁶ However, such exception will only be considered if it does not undermine efforts to achieve the objective of the Convention,⁵⁷ and that critically endangered species must be protected from any negative impacts

⁵² R¶20.

⁵³ CMS, 13th Meeting of the Conference of the Parties (COP13), Review Mechanism and National Legislation Programme, Annex 3 (February 17-22, 2020).

⁵⁴ R¶14.

⁵⁵ R¶22.

⁵⁶ Inter-American Convention for the Protection and Conservation of Sea Turtles art. IV, ¶ 3(a). [Hereinafter IAC].

⁵⁷ IAC, 10th Conference of the Parties (COP10) Exceptions Under Article IV(3)(a) and (b) for Subsistence Harvesting of *Lepidochelys olivacea* Eggs in Costa Rica (June 15–17, 2022).

resulting from the exception.⁵⁸ In this case, the exception should not be considered, because it fails to achieve the objective of the CMS. Moreover, the IAC explicitly categorizes that the taking should be for “economic” subsistence needs.⁵⁹ Given that no such qualification exists in the CMS,⁶⁰ the same cannot be applied in this case.

3. The taking fails to meet the requirements under Art. III, paragraph 5.

Article III, paragraph 5 of the CMS requires that the exceptions (1) must be precise as to content and limited in space and time, and (2) should not operate to the disadvantage of the species.⁶¹

a. The taking is not precise as to content and limited in space and time.

Restrictions must be imposed on the location and duration of the hunting,⁶² and the hunting must have determinate limitations.⁶³ For the taking to be precise as to content, the restrictions must be clearly drafted,⁶⁴ and hunting quotas must be allocated based on site-specific data⁶⁵ calculated on

⁵⁸ IAC, 5th Conference of the Parties (COP5), Procedures for Cases Where Exceptions Exist (June 1-3, 2011).

⁵⁹ IAC art. IV, ¶ 3(a).

⁶⁰ CMS art. 3 ¶5.

⁶¹ CMS art. 3 ¶5.

⁶² *Limitation*, Black's Law Dictionary (11th ed. 2019)

⁶³ *Precise*, Black's Law Dictionary (11th ed. 2019)

⁶⁴ CMS (COP13), *supra* note 53 at ¶10.

⁶⁵ CMS, 1st Range State Meeting (RS1) on the Implementation and Revision of the International Single Species Action Plan for the Conservation of the Argali (*Ovis ammon*), September 12-13, 2024.

a year-to-year basis.⁶⁶ In 2009, Rishmak imposed a limit of ten (10) Royal Markhors permitted to be hunted annually⁶⁷ and has not changed since then,⁶⁸ showing that Rishmak has failed to precisely delimit the hunting quota. The range of “persons” to whom the prohibition applies must also be defined.⁶⁹ Rishmak does not specify this criteria and instead allows hunting rights to be auctioned off to any individual.⁷⁰

Likewise, the taking is not limited in space and time. The geographical scope of the hunting must be clearly defined,⁷¹ such as the species’ terrestrial habitats,⁷² area of the state’s jurisdiction including vessels flagged or registered by it,⁷³ and whether the animal is taken on public or private land.⁷⁴ The transfer of the right to hunt violates this requirement.

⁶⁶ CMS, 4th Meeting of the Signatories (MOS4) to the Memorandum of Understanding Concerning Conservation, Restoration, and Sustainable Use of the Saiga Antelope, September 28-29, 2021

⁶⁷ R¶15.

⁶⁸ R¶16; IEMCC Clarifications A6.

⁶⁹ CMS (COP13), *supra* note 53 at ¶32.

⁷⁰ R¶16.

⁷¹ CMS (COP13), *supra* note 53 at ¶25.

⁷² *Id.* at ¶28.

⁷³ *Id.* at ¶29.

⁷⁴ *Id.* at ¶31.

b. The trophy hunting operates to the disadvantage of the Royal Markhors.

Art. III paragraph 5 of the CMS provides that the taking done should not operate to the disadvantage of the species.⁷⁵ Range States are required to ensure that any taking of the subject species does not undermine its conservation status and is not detrimental to its survival.⁷⁶ The trophy hunting operates to the disadvantage of the Royal Markhors, as (1) the taking exceeds the recommended hunting cap by the CMS, and (2) the area is below carrying capacity.

i. *The imposed hunting cap of ten (10) Royal Markhors exceeds the recommended hunting cap by the CMS.*

The CMS recommended a hunting cap of not exceeding 1% of the recorded population of the species subject to hunting.⁷⁷ The Royal Markhor is composed of only 2200 individuals, 20% of which or 440 comprising the male population subject to the hunt.⁷⁸ Imposing the recommended hunting cap, the taking should not exceed 4.4 male Royal Markhors annually. Rishmak allowed the taking of 10 Royal Markhors,⁷⁹ exceeding the cap by more than twice.

⁷⁵ CMS art. 3 ¶ 5.

⁷⁶ CMS (COP13), *supra* 53 at ¶67.

⁷⁷ Convention on International Trade in Endangered Species of Wild Fauna and Flora, 18th Meeting of the Conference of the Parties (COP18), May 23-June 3, 2019 [Hereinafter CITES]; CMS (MOS3), *supra* note 42 (citing S. Michel et al., Population Status of Heptner's Markhor (*Capra falconeri heptneri*) in Tajikistan: Challenges for Conservation, 49 *Oryx* 506 (2015)).

⁷⁸ R¶1.

⁷⁹ R¶5.

ii. Trophy hunting is only allowed in areas where population size exceeds or is at carrying capacity.

Hunting should be made possible only in areas where population size is at carrying capacity, applying a very conservative approach.⁸⁰ It must be identified whether the activity surpasses the greatest size that a species' population could theoretically reach within a given area of its habitat.⁸¹ To ensure that the population would still sustain itself despite the taking, the Maximum Sustainable Yield (MSY)⁸² must be achieved. The Royal Markhors having been classified under Appendix I⁸³ are below carrying capacity and, corollarily, below where the level of MSY could apply.

B. Rishmak failed to comply with its obligation under the CMS to provide immediate protection to the Royal Markhors.

Article II of the CMS obliges parties to provide immediate protection for migratory species included in Appendix I.⁸⁴ A plain reading⁸⁵ of the word “immediate” implies a prompt, vigorous action, without any delay.⁸⁶ Hunting has a detrimental impact on the conservation status of

⁸⁰ CMS (MOS3), *supra* note 41 at p.135.

⁸¹ *Id.* at p.13.

⁸² CMS (MOS4), *supra* note 23.

⁸³ R¶8.

⁸⁴ CMS art. 2 ¶3(b).

⁸⁵ VCLT art. 31 ¶1.

⁸⁶ *Immediately*, Black's Law Dictionary (11th ed. 2019)

migratory mammals⁸⁷ and is the immediate threat to the Royal Markhors.⁸⁸ The minor percentage of funds used for conservation are used for research on *Mycoplasma capricolum* infections.⁸⁹ However, the disease is not the immediate threat as it only scopes the minority of the species.⁹⁰ Hunting, on the other hand, scopes from 50% to 90% with a severity causing rapid decline.⁹¹ The large impact of hunting is evidence to the immediacy of the threat.⁹² Hence, continuous conduct of trophy hunting is disproportionate to the immediate protection of the species.

C. Rishmak cannot rely on the ILO and ICESCR to justify auctioning hunting rights to non-indigenous people, thereby avoiding its obligations under the CMS.

As a general rule, a treaty does not create either obligations or rights for a third State without its consent.⁹³ An exception to this occurs when parties to the treaty intend the same to be the means of establishing the obligation and the third State expressly accepts that obligation in writing.⁹⁴

⁸⁷ CMS 13th Conference of the Parties (COP 13), Central Asian Mammals Initiative (Feb. 2020).

⁸⁸ *IUCN Red List of Threatened Species: Capra falconeri*, IUCN Red List of Threatened Species (2014). [Hereinafter IUCN Red List]

⁸⁹ R¶20.

⁹⁰ IUCN Red List *supra* note 88.

⁹¹ *Id.*

⁹² A. Ghoddousi et al., The Decline of Ungulate Populations in Iranian Protected Areas Calls for Urgent Action Against Poaching, 53 *Oryx* 151, 151–58 (2017).

⁹³ VCLT art. 34.

⁹⁴ VCLT art. 35.

Astor is not a Party to the ILO and ICESCR⁹⁵ nor did Astor expressly stated in writing its acceptance to any such obligation. Hence, Rishmak cannot impose its rights and obligations under the ILO and ICESCR on Astor.

II. The ban on the importation of Royal Markhor hunting trophies complies with conventional international law.

In imposing a ban on the importation of hunting trophies,⁹⁶ Astor complied with its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)⁹⁷ and the Astor-Rishmak Trade Agreement (ARTA).⁹⁸

A. The importation ban complies with the ARTA.

Article 20 of the ARTA provides for general exceptions for a quantitative restriction if: (a) the trade measure falls within the scope of at least one of the listed exceptions,⁹⁹ and (b) the measure satisfies the requirements of the chapeau.¹⁰⁰ In this case, the importation ban is exempted under Article 20 since it (a) is necessary to protect public morals and (g) relates to the conservation of exhaustible natural resources, made in conjunction with restrictions on domestic production or consumption. Likewise, the ban is not arbitrary and does not constitute a disguised restriction on international trade.

⁹⁵ R¶9.

⁹⁶ R¶29.

⁹⁷ R¶7.

⁹⁸ R¶11.

⁹⁹ Astor-Rishmak Trade Agreement art. 20(a); art. 20(g). [Hereinafter ARTA].

¹⁰⁰ ARTA art. 20.

1. The ban on importation is necessary to protect public morals.

Article 20(a) of the ARTA exempts the measure if it is necessary for the protection of public morals.¹⁰¹ The analysis proceeds in two steps: first, the measure must be "designed" to protect public morals, and second, the measure must be "necessary" to protect such public morals.¹⁰²

a. Trophy hunting is a public moral concern.

Public morals denote standards of right and wrong conduct maintained by or on behalf of a community or nation.¹⁰³ Members must be given some scope to define for themselves the concept of public morals in their respective territories and according to their own social, cultural, ethical, and religious values.¹⁰⁴ In determining a public moral concern, the WTO Appellate Body has held that public outcry is a factor to be considered,¹⁰⁵ and that the protection of wildlife is a public

¹⁰¹ ARTA art. 20(a).

¹⁰² *Appellate Body Report, Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/AB/R (May 15, 2017).

¹⁰³ *Appellate Body Report, China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/AB/R, ¶5.11 (Jan. 19, 2010). [Hereinafter *China - Trading Rights and Distribution Services*]

¹⁰⁴ *Id* at ¶7.759.

¹⁰⁵ *Appellate Body Report, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/AB/R;WT/DS401/AB/R (June 16, 2014). [Hereinafter *EC - Seal Products*].

moral concern.¹⁰⁶ Astor has imposed the ban¹⁰⁷ in order to protect the hunting of the Royal Markhor because of the public outrage regarding the dangerous hunting of critically vulnerable species for sport,¹⁰⁸ with polls showing a negative attitude toward trophy hunting.¹⁰⁹ This sufficiently demonstrates that the regulation addresses the protection of wildlife as a moral concern.¹¹⁰

b. The importation ban is a measure necessary to prevent trophy hunting.

To determine the necessity for the protection, the analysis involves a process of 'weighing and balancing' a series of factors, which are: (1) the importance of the interest or values protected, (2) the contribution of the measure to the objective, and (3) the trade restrictiveness of the measure.¹¹¹ The protection of endangered species being an important value, the importation ban's level of restriction is necessary.

¹⁰⁶ *Id.* at ¶5.203.

¹⁰⁷ R¶29.

¹⁰⁸ R¶25.

¹⁰⁹ R¶28.

¹¹⁰ *EC - Seal Products*, *supra* note 105.

¹¹¹ *Appellate Body Report, Brazil – Measures Affecting Imports of Retreaded Tyres*, WT/DS332/AB/R, ¶ 175 (Dec. 3, 2007). [Hereinafter *Brazil - Tyres*]

i. The importation ban contributes to the objective of preventing trophy hunting.

A measure's contribution exists when there is a genuine relationship of ends and means between the objective pursued and the measure.¹¹² The greater the contribution a measure makes to the objective pursued, the more likely it is to be characterized as 'necessary.'¹¹³ Astor should seek to establish such necessity through "evidence or data, pertaining to the past or the present," establishing that the measures at issue contribute to the achievement of the objectives pursued.¹¹⁴

Astor hunters have already been refunded their auction purchase during the same year that the law was enacted.¹¹⁵ Moreover, the Dione Ginsu have been unable to auction off the right to hunt the Royal Markhor as a result of the ban.¹¹⁶ Hence, Astor's importation ban has sufficiently demonstrated that the importation ban will lead and has led to a decrease in trophy hunting.

ii. The importation ban is not trade-restrictive.

In assessing a measure's trade-restrictiveness, the degree of a measure's trade-restrictiveness must be assessed, rather than merely ascertaining whether the measure involves some restriction on

¹¹² *Brazil - Tyres*, *supra* note 111 at ¶145.

¹¹³ *Appellate Body Report, Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef*, WT/DS161/12 WT/DS169/12 (Dec. 11, 2000).

¹¹⁴ *Brazil - Tyres*, *supra* note 111 at 592.

¹¹⁵ R¶31.

¹¹⁶ R¶31.

trade.¹¹⁷ An actual and potential overall trade restrictiveness of the measure is material, rather than a precise quantitative determination of the trade-restrictiveness of a particular measure.¹¹⁸ The moral concern with regard to the protection of animals' is regarded as a value of high importance,¹¹⁹ necessitates a stricter restriction in trade.

Lastly, a comparison between the challenged measure and possible alternatives should be undertaken to determine the necessity of the importation ban.¹²⁰ In order to establish that an alternative measure is not 'reasonably available', Rishmak must establish that the alternative measure would impose an undue burden on it, and it must support such an assertion with sufficient evidence.¹²¹

c. Astor has the right to determine the level of protection it considers appropriate.

In protecting public morals, States are not required to regulate similar public moral concerns in similar ways.¹²² Rishmak argues that domestic trophy hunting in Astor continues to be permitted,

¹¹⁷ *Appellate Body Report, Colombia - Measures Relating to the Importation of Textiles, Apparel and Footwear*, WT/DS461/AB/R (May 15, 2017).

¹¹⁸ *Panel Report, Brazil – Certain Measures Concerning Taxation and Charges*, WT/DS472/R, ¶7.607 (Sept. 14, 2018).

¹¹⁹ *Panel Report, European Communities – Measures Prohibiting the Importation and Marketing of Seal Products*, WT/DS400/R, ¶7.632 (Nov. 25, 2013).

¹²⁰ *China - Trading Rights and Distribution Services*, *supra* note 103 at ¶¶239,242.

¹²¹ *China - Trading Rights and Distribution Services*, *supra* note 103 at ¶327.

¹²² *EC - Seal Products*, *supra* note 105 at ¶¶ 5.197-5.198.

despite the importation ban.¹²³ However, States have the right to determine the level of protection that they consider appropriate, which suggests that different levels of protection can be enacted when responding to a similar moral concern.¹²⁴ Thus, Astor can impose a different level of protection for importation of hunting trophies, regardless of similar domestic measures in addressing trophy hunting.

2. The ban on importation relates to the conservation of exhaustible natural resources, made in conjunction with restrictions on domestic production or consumption.

Article 20(g) of the ARTA provides that the measure must be concerned with the protection of an “exhaustible natural resource,” related to the conservation thereof, and be made effective in conjunction with restrictions on domestic production.¹²⁵ This provision has recognised that living species constitute exhaustible natural resources as they are susceptible to depletion and extinction.¹²⁶ The Royal Markhor, being recognized in Appendix I of the CITES,¹²⁷ is an exhaustible natural resource.

¹²³ R¶33.

¹²⁴ *Panel Report, United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO Doc. WT/DS285/R (Apr. 20, 2005).

¹²⁵ ARTA art. 20.

¹²⁶ *Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R, ¶ 128 (Oct. 12, 1998). [Hereinafter *US - Shrimp*].

¹²⁷ R¶7.

a. The ban relates to the conservation of endangered species.

The test for whether measures “relate to” conservation is based on a “close and genuine relationship of ends and means.”¹²⁸ Regarding migratory species, a “sufficient nexus” with the territory of the state concerned will suffice to invoke the exception.¹²⁹

The measure introduced by Astor is closely related to the conservation of the Royal Markhor and other endangered species. Trophy hunts conducted using permits for hunting for scientific purposes can be illegal, despite being done through the use of ostensibly legally-procured permits.¹³⁰ Restrictions on the importation of hunting trophies decreases the demand for its conduct.¹³¹ Moreover, importation bans of hunting trophies creates a shift in attention towards more sustainable population recovery efforts.¹³² Instead of allocating funds for the payment of convention organizers,¹³³ resources can be redirected towards habitat restoration and anti-poaching measures.

¹²⁸ *Appellate Body Report, China – Measures Related to the Exportation of Various Raw Materials*, WT/DS394/AB/R, ¶ 355 (Jan. 30, 2012). [Hereinafter *China - Raw Materials*]

¹²⁹ *US - Shrimp*, *supra* note 126.

¹³⁰ Daniel W. S. Challender & Douglas C. MacMillan, Poaching Is More Than an Enforcement Problem, 7 *Conservation Letters* 484 (2014).

¹³¹ C. Packer et al., Conserving Large Carnivores: Dollars and Fence, 16 *Ecology Letters* 635 (2013).

¹³² P.A. Lindsey et al., Economic and Conservation Significance of the Trophy Hunting Industry in Sub-Saharan Africa, 134 *Biological Conservation* 455 (2007).

¹³³ R¶16.

b. The importation ban was made in conjunction with Astor's restrictions on domestic consumption.

The term "measures made effective in conjunction with" is the requirement of "even-handedness" in the imposition of restrictions.¹³⁴ This requirement does not amount to a requirement of identity of treatment.¹³⁵ The exception does not require that the conservation measure be primarily aimed at the domestic restriction; such measures are permitted if they "work together" with restrictions on domestic production or consumption.¹³⁶ It is sufficient for 'real' restrictions on domestic production or consumption to reinforce and complement the restriction on international trade.¹³⁷ With respect to domestic restrictions, the Astori hunters are prohibited from consuming or importing their trophies under the law.¹³⁸ Moreover, Astor already strictly prohibits the taking of the Royal Markhor.¹³⁹ Given that the Royal Markhor lives in only Rishmak and Astor,¹⁴⁰ the domestic consumption of Royal Markhor hunting trophies in Astor is prohibited in any manner.

¹³⁴ *Appellate Body Report, United States - Standards for Reformulated and Conventional Gasoline*, WT/DS2/AB/R, ¶20 (Apr. 29, 1996). [Hereinafter *US - Gasoline*].

¹³⁵ *US Gasoline*, *supra* note 134 at ¶21.

¹³⁶ *China - Raw Materials*, *supra* note 128 at ¶360..

¹³⁷ Appellate Body Report, China – Measures Related to the Exportation of Rare Earths, WT/DS432/AB/R, ¶¶5.93-5.94 (Aug. 30, 2014).

¹³⁸ R¶29.

¹³⁹ R¶14.

¹⁴⁰ R¶1.

3. The importation ban is justified under the chapeau.

The chapeau of Article 20 requires that a trade measure invoking justification as an exception must (a) not be arbitrary and (b) not constitute a disguised restriction on international trade.¹⁴¹

a. The importation ban is not arbitrary.

The analysis of whether there is arbitrariness can be gleaned from a similar chapeau under GATT, which provides that arbitrary discrimination exists when the measure results without taking into consideration different conditions which may occur in the territories of those other Members.¹⁴² Moreover, arbitrariness results when the measure does not allow for any inquiry into the appropriateness of the regulatory program.¹⁴³ To constitute arbitrariness, the WTO Appellate Body has emphasized that it is important to engage in bilateral or multilateral negotiations before enacting measures.¹⁴⁴ Astor has persistently made efforts to engage with Rishmak regarding the trophy hunting,¹⁴⁵ to which Rishmak has failed to act upon.

¹⁴¹ ARTA art. 20

¹⁴² General Agreement on Tariffs and Trade, art. XX. [Hereinafter GATT].

¹⁴³ *US - Shrimp*, *supra* note 126 at ¶164.

¹⁴⁴ *US Gasoline*, *supra* note 134 at ¶166.

¹⁴⁵ R¶¶33-34.

b. The importation ban does not constitute a disguised restriction on international trade.

A measure is a disguised restriction on international trade if it amounts to arbitrary or unjustifiable discrimination “taken under the guise of being formally within the terms of the exceptions.”¹⁴⁶ The absence of arbitrariness against Rishmak suggests that there is no disguised restriction on international trade. There is a relation between the importation ban and the purpose of protecting animal welfare and public morals. The measures are not disguised restrictions on trade as they do not pursue trade-restrictive objectives.¹⁴⁷

B. The importation ban complies with Astor’s obligations under the CITES.

Astor, as State Party to the CITES,¹⁴⁸ is mandated to take appropriate measures to prohibit trades on specimens in violation thereof,¹⁴⁹ and allowed to adopt stricter domestic measures on trade of Appendix I species,¹⁵⁰ and provide an independent finding in relation to granting of import permits.¹⁵¹

¹⁴⁶ *US - Gasoline*, *supra* note 134 at ¶25.

¹⁴⁷ Appellate Body Report, *European Communities—Measures Affecting Asbestos and Asbestos-Containing Products*, WT/DS135/AB/R, ¶26 (Mar. 12, 2001).

¹⁴⁸ R¶7.

¹⁴⁹ CITES art. VIII ¶1.

¹⁵⁰ CITES art. XIV ¶1.

¹⁵¹ CITES art. III ¶3; CITES Conf. 2.11 (Rev.), Trade in Hunting Trophies of Species Listed in Appendix I.

1. Astor has the right to adopt stricter domestic measures.

The CITES mandates Astor to take appropriate measures to enforce its obligations in the protection of certain species and to prohibit trade in specimens in violation thereof.¹⁵² The importation ban is a trade regulation in accordance with Article III of the CITES, which provides for the regulation of specimens included in Appendix I.¹⁵³ The trade of the Royal Markhor, as a species included in Appendix I,¹⁵⁴ must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances.¹⁵⁵ Moreover, the provisions of the CITES shall not affect the right for the parties to adopt stricter domestic measures regarding the conditions for trade of Appendix I specimens.¹⁵⁶

2. The importation ban does not satisfy the requirements of the general exceptions on prohibition.

a. The hunting trophies were not acquired before the present Convention applied to the Royal Markhor.

Article VII, paragraph 2 of the CITES provides that the provisions thereof may not apply where an exporting state certifies that a specimen was acquired before the provisions of the Conventions

¹⁵² CITES art. VIII ¶1.

¹⁵³ CITES art. III.

¹⁵⁴ R¶7.

¹⁵⁵ CITES art. II ¶1.

¹⁵⁶ CITES art. XIV ¶1(a).

applied to a specimen.¹⁵⁷ The date on which a specimen is acquired is considered as the date on which the animal or parts thereof were taken or removed from the wild.¹⁵⁸ Hence, the acquisition pertains to the taking of each specimen. The Royal Markhor was added to the CITES Appendix I in 2007, before the annual auction of the right to hunt.¹⁵⁹ Thus, any importation of Royal Markhor hunting trophies is still governed by the CITES.

b. The hunting trophies are not personal or household effects.

Article VII, paragraph 3 of the CITES provides that provisions on the regulation of trade in specimens shall not apply to specimens that are personal or household effects.¹⁶⁰ However, an exemption to this exemption is when specimens of Appendix I species are acquired by the owner outside his State of usual residence, and are being imported into that State.¹⁶¹ In this case, Astori nationals are almost exclusively the winning bidders of the auction. Astori hunters are importing the Royal Markhor hunting trophy, acquired in Rishmak, which is outside of their usual residence.¹⁶²

¹⁵⁷ CITES art. II.

¹⁵⁸ CITES Conf. 13.6 (Rev. CoP18) Implementation of Article VII, par. 2, concerning ‘pre-Convention specimens’ (2019).

¹⁵⁹ R¶16.

¹⁶⁰ CITES art. VII ¶3.

¹⁶¹ CITES art. VII ¶3(a).

¹⁶² R¶17.

3. Astor's Scientific Authority is allowed to provide its own independent finding.

Astor is not compelled to accept the non-detrimental finding of Rishmak's Scientific Authority. The CITES mandates Astor to grant an import permit only when its Scientific Authority has advised that the import will be for purposes which are not detrimental to the survival of the species involved.¹⁶³ Astor may provide its own scientific or management data that indicates a different finding than that of Rishmak's,¹⁶⁴ and such scientific examination is carried out independently of the result of the scientific assessment by the exporting country.¹⁶⁵

C. The provisions under ARTA do not affect Astor's obligations under the CITES.

Article XIV para. 2 of the CITES, which provides that the Convention shall not affect the provisions of obligations of Parties deriving from any treaty, or convention, is qualified by the phrase "relating to other aspects of trade, taking, possession or transport of specimens."¹⁶⁶ According to the provision, only international agreements specifically relating to trade of specimens are exempted from the CITES provisions.¹⁶⁷ Since the ARTA is a general bilateral trade agreement, without any specific provision pertaining to specimens, the provision cannot apply.¹⁶⁸ Hence, Rishmak's contention that the CITES does not excuse a breach in ARTA must fail.

¹⁶³ CITES art. III ¶3(a).

¹⁶⁴ CITES Resolution 2.11, *supra* note 151 at ¶1(b).

¹⁶⁵ CITES Resolution 2.11, *supra* note 151 at ¶1(c).

¹⁶⁶ CITES art. XIV ¶2.

¹⁶⁷ CITES art. XIV ¶2.

¹⁶⁸ R¶12.

CONCLUSION AND PRAYER FOR RELIEF

The Applicant, the Sovereign State of Astor, respectfully requests the Court to adjudge and declare that:

- (1) The trophy hunting of the Royal Markhor through the auction process violates conventional international law, and
- (2) The ban on the importation of Royal Markhor hunting trophies complies with conventional international law.

Respectfully submitted,
Agents for the Applicant