

TEAM CODE: 92

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**29<sup>th</sup> STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT  
COMPETITION, 2024-2025**

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**BEFORE THE INTERNATIONAL COURT OF JUSTICE**

**LA COUR INTERNATIONALE DE JUSTICE**

**AT THE PEACE PALACE**

**THE HAGUE, THE NETHERLANDS**



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

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**ASTOR**

**(APPLICANT)**

**VS**

**RISHMAK**

**(RESPONDANT)**

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**MEMORIAL FOR THE RESPONDANT**

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## TABLE OF ABBREVIATIONS

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<b>1</b>	CMS: Convention on Migratory Species
<b>2</b>	CITES: Convention on International Trade in Endangered Species of Wild Fauna and Flora
<b>3</b>	CBD: Convention on Biological Diversity
<b>4</b>	ILO 169: Indigenous and Tribal Peoples Convention, 1989
<b>5</b>	ICESCR: International Covenant on Economic, Social and Cultural Rights
<b>6</b>	GATT: The General Agreement on Tariffs and Trade
<b>7</b>	WTO: World Trade Organization

## **QUESTIONS PRESENTED**

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### **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 AND

### **II.**

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

## STATEMENT OF JURISDICTION

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Consistently with *Article 40 of the Statute of the ICJ*, Astor and Rishmak have submitted to the ICJ by Special Agreement, Questions relating to subsistence use and trophy hunting as contained in Annex A – Agreed Statement of Facts -, including the Clarifications. The Parties transmitted a copy of the Special Agreement to the Registrar of the ICJ on 1 July 2024. The Registrar of the Court, as instructed by *Article 26 of the Rules of Court*, addressed a notification of receipt of the Special Agreement to the minister of foreign affairs from both parties on 31 July 2024.

The Parties have accepted the jurisdiction of the ICJ. Consequently, they request the Court to decide this matter based on the rules and principles of general international law, as well as any applicable treaties. The Parties also request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A. The Parties further request the Court to determine the legal consequences, including the rights and obligations of the Parties, arising from any judgment on the questions presented in this matter.

The Parties have agreed to respect the decision of this Court.

## STATEMENT OF FACTS

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Rishmak and Astor are neighboring sovereign States located in Central Asia (R¶1). While Rishmak is a low-income country with a small population, Astor is a high-income economy with a considerably larger population (R¶2,3). The Dion Ginsu, an indigenous community with high poverty rates, resides in Rishmak (R¶3).

Within the territories of both states, inhabits the Royal Markhor, a wild goat whose population and geographic distribution has decreased due to habitat loss, disease and hunting (R¶1). The Royal Markhor is currently listed in Appendix I of the CMS as an endangered migratory species, and in Appendix I of the CITES, as a species threatened with extinction which is or may be affected by trade (R¶7,8). However, due to the Dion Ginsu Community's traditional, historical and cultural bond to the Royal Markhor, Rishmak grants them permission to take ten specimens per year (R¶14,15).

In 2003, the ARTA was signed and ratified by each State. In such Agreement, parties committed themselves to avoid any prohibition or restrictive measure to limit the importation of any good, only allowing for minimal and limited exceptions (R¶11,12).

Since 2016, the Dion Ginsu community auctioned off their right to take the Royal Markhor, respecting the legal maximum. Through these auctions, the Dion Ginsu have been raising resources primarily to cover their basic human rights and needs. Nevertheless, they still respect the numerical cap imposed by Rishmak and allocate 15% of the earnings towards the conservation of the endangered species (R¶16).

Most of the auction winners have been Astori nationals. Therefore, from 2016 to 2022, Royal Markhor trophies were imported to Astor with the permits required by the CITES. (R¶17)

Despite the open commitment of the Dion Ginsu with the survival of the Royal Markhor and their economic dependence on the resources provided by the auction process, on December 11, 2022, Astor banned the importation of hunting trophies. (R¶16, 29) After a diplomatic exchange, Astor refused to lift the restrictive trade measure, contrary to ARTA, alleging unverified claims and misinterpretations of international law (R¶19, 21, 23, 33).

After the failed negotiation attempts, Rishmak and Astor submitted their dispute to the ICJ. (R¶35)

## SUMMARY OF ARGUMENTS

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By allowing the Dion Ginsu to auction their Royal Markhor hunting permits, Rishmak has not violated international law and is not internationally responsible. Article III(5)(c) of the CMS allows the auctions to meet the needs of traditional subsistence users like the Dion Ginsu, without imposing additional requirements on the hunter's identity. This practice allows Rishmak to meet its obligations under the ILO Convention 169 and the ICESCR, ensuring the protection of the community's rights. The auction process strikes a balance between meeting the Dion Ginsu's economic needs and promoting environmental conservation, aligning with Sustainable Development goals.

Properly managed trophy hunting, with a limit of ten Royal Markhors hunted annually, supports conservation and generates funds for further initiatives. Trade of the Royal Markhor trophies under the auction process complies with the standards set by CITES, which ensure that the level of trade does not threaten the species' survival.

On the other hand, Astor has violated conventional international law and shall be held responsible. The ban on the importation of Royal Markhor hunting trophies constitutes an illegal quantitative restriction, which violates Article 11 of ARTA. Although Article 20 of ARTA presents limited exceptions to this prohibition, Astor fails to justify the measure under any of the numerals of the article, specifically the exceptions in paragraphs (a) and (g).

This measure is not necessary to protect public morals. While its underlying intent appears to be the protection of endangered species like the Royal Markhor, it is overly restrictive and does not

have a meaningful impact on the species' conservation. Additionally, the said measure fails to meet the criteria for the exception related to conserving exhaustible natural resources, as there is no clear connection between the ban and the protection of the species. It also undermines the international cooperation needed to protect migratory species under the CMS and contradicts Sustainable Development Principles.

## **ARGUMENTS ADVANCED**

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

The auction process carried out by the Dion Ginsu complies with conventional international law. Applicable treaties allow the taking of the Royal Markhor under specific conditions and circumstances. Trade activities regarding the species are subject to control through grants and permits<sup>1</sup>. Rishmak has successfully abided by both.

The taking of the Royal Markhor within Rishmak's circumstances is allowed since: (A) it is for the purpose of fulfilling the Dion Ginsu's rights and needs, (B) it is harmonious with a holistic interpretation of the CMS, (C) it is compatible with enhancing the propagation and survival of the species and (D) it meets the standards set by CITES.

#### **A) THE USAGE OF THE AUCTION PROCESS BY THE DION GINSU IS CONSISTENT WITH A TEXTUAL INTERPRETATION OF ARTICLE III (5)(C) OF THE CMS AND ABIDES BY THE ICESCR AND THE ILO CONVENTION**

Despite Astor's claims, an accurate reading of *Article III (5)(c) of the CMS* harmonizes with the internationally recognized rights and needs of Dion Ginsu as indigenous people. The Article allows the taking of the Royal Markhor to “*accommodate the needs* of traditional subsistence

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<sup>1</sup> See Michael Bowman, Peter Davies & Catherine Redgwell, *Lyster's International Wildlife Law*, at 490, (2nd ed. 2010).



users” of the species (R¶6).<sup>2</sup> In that context the word “subsistence” is used merely as an additional description of the term “traditional users”, referring to the subjects of the exception. The interpretation provided by Astor, which understands the direct “subsistence” use of the Royal Markhor as the only authorized by the exception, is restrictive and fallacious.<sup>3</sup>

Rishmak is part of the ILO Convention and the ICESCR, both instruments widely recognize and protect the needs of traditional subsistence users of certain species.<sup>4</sup> The ILO Convention requires the states parties to acknowledge the importance of activities like hunting for the economic sovereignty and sustainable development of indigenous communities.<sup>5</sup> Additionally, the same

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<sup>2</sup> The VCLT sets that the interpretation of a Treaty must follow the common meaning of the words, considering the context and purpose of the instrument. See Vienna Convention on the Law of Treaties, art. 31 (1), May 23, 1969, 1155 U.N.T.S. 331 [hereinafter VCLT]; Convention on the Conservation of Migratory Species of Wild Animals, art. III (5) (c), Mar. 3, 1979, U.N.T.S. 1651 [hereinafter CMS].

<sup>3</sup> “The term traditional subsistence user is undefined in the Convention text and has not been defined elsewhere by the CMS Secretariat.” Peter Richardson, Anette C. Broderick, Lisa Campbell, Brendan Godley & Sue Ranger, Marine Turtle Fisheries in the UK Overseas Territories of the Caribbean: Domestic Legislation and the Requirements of Multilateral Agreements, 9 J. Int'l Wildlife L. & Pol'y, Jul.-Sept. 2006, at 229, 223.

<sup>4</sup> “The provisions of this Convention shall in no way affect the rights or obligations of any Party deriving from any existing treaty, convention or Agreement.” See CMS, *supra* note 2, art. XII (2).

<sup>5</sup> See Convention (No. 169) concerning indigenous and tribal people in independent countries, Art. 23(1), Jun. 27, 1989, 1650 U.N.T.S. 383 [hereinafter ILO 169]

Convention compels the States to guarantee the management, participation, and decision-making of the communities over the natural resources that they rely on.<sup>6</sup> Correspondingly, the ICESCR recognizes the rights to self-determination and an adequate standard of living of the people, prohibiting the deprivation of a community from “its own means of subsistence” (including their socio-economic needs).<sup>7</sup> Although the ILO Convention and the ICESCR are not binding to Astor, precepts like the right to self-determination and an adequate standard of living are universally recognized as general international law.<sup>8</sup>

The Dion Ginsu are traditional subsistence users of the Royal Markhor since they hold a historical, cultural, and economic relationship with the species (R¶14). Even though, through the auction process, they are not the direct hunters of the specimens, they allocate about 75% of the revenue to cover their basic needs and directly eat a part of the meat (R¶16,17).<sup>9</sup> Not allowing the auction process would be detrimental to the Dion Ginsu exercise of their self-determination rights,

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<sup>6</sup> ILO 169, *supra* note 5, Art. 31 (1)

<sup>7</sup> See International Covenant on Economic, Social and Cultural Rights, arts. 1, 11, Dec. 16, 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]

<sup>8</sup> See East Timor (Port. v. Austl.) Judgment, 1995 I. C.J. Rep. p. 90 7, ¶ 102 (June. 30); G.A. Res. 61/295. 2, United Nations Declaration on the Rights of Indigenous Peoples (Sep. 13, 2007)

<sup>9</sup> “Aware (...) that many human communities directly and indirectly rely on the availability of large mammal species and on intact ecosystems for their livelihoods”. *Central Asian Mammals Initiative*. Resolution of the Conference of Parties to the CMS, U.N. Doc. UNEP/CMS/Resolution 11.24 (Rev.COP13) ¶ 4 (Feb. 2020)

depriving the community from pursuing “[their] own means of subsistence”.<sup>10</sup> By allowing the auction to be conducted, Rishmak was observing its international obligations towards the Dion Ginsu community, aligning with the exception of *Article III (5) (C)*.

**B) THE AUCTION PROCESS IS HARMONIOUS WITH A HOLISTIC INTERPRETATION OF  
THE CMS ARTICLE III (5)(C) IN CONFORMITY WITH THE CITES, THE CBD AND  
THE SUSTAINABLE DEVELOPMENT PRINCIPLES**

In view of the CITES, the CBD, and the Sustainable Development Principles, a restrictive reading of the word “subsistence” is inconsistent.<sup>11</sup> The CMS CoP recognized that there must be a cooperative, synergetic, and coordinated relationship between wildlife protection treaties, among them, the CITES and the CBD.<sup>12</sup> On that basis, the CMS and CITES CoPs have recognized that

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<sup>10</sup> ICESR, *Supra* note 7, art 1 (2).

<sup>11</sup> The ICJ has allowed a systematic interpretation of treaties. See “*The Court cannot accept that Article XX, paragraph 1 (d), of the 1955 Treaty was intended to operate wholly independently of the relevant rules of international law (...)*” See *Oil Platforms (Iran. v. U.S.)*, Judgment, 1996 I.C.J. Rep. 803, ¶ 41 (Dec.12).

<sup>12</sup> See *Synergies and partnerships*. Resolution of the Conference of Parties to the CMS, U.N. Doc. UNEP/CMS/Resolution 11.10 (Rev.COP14). ¶ 14, 18. (Feb. 2024); Regarding the CITES, the CMS considers it to be the principal international source to tackle the trade of endangered species. See *Illegal and Unsustainable Taking of Wildlife*. Resolution of the Conference of Parties to the CMS, U.N. Doc. UNEP/CMS/Resolution 11.31 (Rev.COP14) (Feb. 2024); About the CBD, the CMS formalized their partnership in the Memorandum of Cooperation in 1996. See CMS

the use of wildlife is permitted to secure the livelihoods of communities, particularly those that are economically vulnerable and depend on the taking of some protected species.<sup>13</sup>

Simultaneously, the CBD, which incorporates the Addis Ababa Principles, acknowledges in its original text that some indigenous communities rely on the use of biological resources.<sup>14</sup> The Addis Ababa practical Principle 2 establishes that local users' rights must be guaranteed sufficiently to hold them responsible for their use of certain resources.<sup>15</sup> Likewise, Principle 7 from the 1992 Rio

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Secretariat, CBD Secretariat. Memorandum of Co-operation between the Secretariat of the CBD and the Secretariat of the CMS, art. 1 (Jun. 13, 1996)

<sup>13</sup> *Illegal and Unsustainable Taking of Wildlife. Id.* ¶ 12; *CITES and livelihoods*. Resolution of the Conference of Parties to the CITES. Conf. 16.6. (Rev. CoP 18) (Mar. 2013)

<sup>14</sup> See Convention on Biological Diversity, preamble, Jun. 5, 1992, 1760 U.N.T.S. 79 [hereinafter CBD].

<sup>15</sup> The CMS, the CITES and the CBD acknowledge the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity. *Sustainable use of biodiversity: Addis Ababa Principles and Guidelines*. Resolution of the Conference of Parties to the CITES. Conf. 13.2 (Rev. CoP14) (Oct. 2004); *Application to the Convention on Migratory Species of the Addis Ababa Principles and Guidelines for the Sustainable Use of Biodiversity*. Resolution of the Conference of Parties to the CMS, U.N. Doc. UNEP/CMS/Conf. 8.8 (CoP 18) (Jul. 17, 2005)

Declaration indicates that developing countries have special needs that must be particularly addressed by the international community.<sup>16</sup>

Astor's interpretation of *Article III (5) (C)* of the CMS, overlooks the conclusions and advances of widely recognized international environmental instruments. Astor, as a wealthy country with a large population, has an advantaged position compared to Rishmak, a developing country (R¶2), 3). The Dion Ginsu has an economic dependence on the profits of the auction process to guarantee their basic needs. In line with the Sustainable Development Principles, the needs of Rishmak and the Dion Ginsu community should be considered when applying and interpreting *Article III (5) (C)* of the CMS.

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<sup>16</sup>The CMS, the CITES and the CBD CoPs have also supported the Sustainable Development instruments. See *Manila Declaration on Sustainable Development and Migratory Species*. Resolution of the Conference of Parties to the CMS, U.N. Doc. UNEP/CMS/Resolution 12.3 (Oct. 2017); *CITES Strategic Vision: 2021-2030*. Resolution of the Conference of the Parties to the CITES Conf. 18.3 (Rev. CoP19) (Oct. 14, 2022); *Annex to The Hague Ministerial Declaration of the Conference of the Parties to the Convention on Biological Diversity*. Decision of the Conference of the Parties to the CBD. Decision VI/21 (Rev. CoP 6) (Apr. 2002); See U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development*, U.N. Doc. A/CONF.151/26/Rev.1 (Vol. I), annex I (Aug. 12, 1992) [hereinafter *Rio Declaration*].

A correct application of the Article's exception needs to incorporate the abovementioned instruments. The denial of a comprehensive reading of the exception would seriously jeopardize the livelihoods of the Dion Ginsu community, implying a flagrant violation of their rights.

**C) THE AUCTION PROCESS IS A PROPERLY MANAGED FORM OF TROPHY HUNTING AND  
THUS, IT IS COMPATIBLE WITH ENHANCING THE PROPAGATION OR SURVIVAL OF  
THE ROYAL MARKHOR**

The taking of the Royal Markhor through the auction process falls within the exception of *Article III (5) (B)* of the CMS. The text does not explicitly regulate how the benefits obtained from the taking of the species must be allocated, nor do other associated instruments or resolutions from the secretariat. However, the main purpose of the CMS, the conservation of the migratory species, clarifies the authentic meaning of the rule.<sup>17</sup>

Astor proposes a false dichotomy, suggesting that the investment of revenue from the auction process to multiple purposes is incompatible with the conservation aim, and does not meet the exception. As per the *onus probandi incumbit actori* Principle, it is for Astor to prove such an assumption, but it fails to do so.<sup>18</sup>

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<sup>17</sup> VCLT, *supra* note 2, Art. 31 (1)

<sup>18</sup> See *Pulp Mills on the River Uruguay (Arg. v. Uru.) Judgment*, 2010 I.C.J. Rep. 14, ¶ 71 (Apr. 20).

Yet, the CITES CoP 17.9 recognizes that “*well-managed and sustainable trophy hunting*”, like the one carried out by the Dion Ginsu, is compatible with conservation aims.<sup>19</sup> The CITES recognition is based on multiple cases, one of those being the Torghar Conservation Project in Pakistan, which was implemented by Pathan tribesmen in the 1980’s. Within the frame of the project, the community sells its rights to hunt Markhor or Urial specimens. Foreigners purchase the permits, and the tribesmen are employed as game guards. The resources are invested, among other things, in education and health programs. It has worked effectively towards the conservation of the species by increasing “the value of wildlife” and discouraging poaching.<sup>20</sup> The aforementioned project was approved by CITES under a quota restriction.<sup>21</sup> Many similar projects are waiting to for approval by the CITES CoP.<sup>22</sup>

The Rishmak scenario, like the one described above, controls carefully the hunting process of the Royal Markhor by respecting the ten Royal Markhor quota. (R¶15, 16) Besides, 15% of the profits are invested directly in the conservation aim. (R¶16)

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<sup>19</sup>*Trade in hunting trophies of species listed in Appendix I or II*. Decision of the Conference of the Parties to the CITES. Conf. 17.9 (Rev. CoP 18) (Oct, 2016).

<sup>20</sup> Dilys Roe & Patricia Cremona, IUCN Briefing Paper - Informing Decisions on Trophy Hunting 1 (Apr. 2016), [www.iucn.org/downloads/iucn\\_informingdecisionsontrophyhuntingv1.pdf](http://www.iucn.org/downloads/iucn_informingdecisionsontrophyhuntingv1.pdf)

<sup>21</sup> *Establishment of export quotas for markhor hunting trophies*. Resolution to the Conference of the Parties to the CITES. Conf. 10.15. (Rev. CoP14) (June 2007)

<sup>22</sup> See Eg. *Establishment of export quotas for black rhinoceros hunting trophies*. Resolution to the Conference of the Parties to the CITES Conf. 13.5 (Rev. CoP18) (Aug. 25, 2019)

Overall, the main goal of the CMS is to enhance the conservation of the migratory species listed in its Appendices. The CITES CoP has found that there are sustainable trophy hunting contexts that work efficiently towards conservation aims. The auction process carried out in Rishmak is an example of sustainable trophy hunting. Therefore, there is no reason for Astor to assert that allocating the profits for different purposes is contrary to the CMS *Article III (5) (B)* exception.

**D) THE TAKING OF THE ROYAL MARKHOR THROUGH THE AUCTION PROCESS MEETS  
THE STANDARDS SET BY CITES**

Rishmak has always complied with the rules and requirements established by international environmental law instruments to legally trade with the Royal Markhor products. The Royal Markhor is considered a “species threatened with extinction that is or may be affected by trade” under Appendix I of the CITES.<sup>23</sup> Article III of the same convention sets that any act of trade regarding an Appendix I species requires a prior grant and the presentation of a permit.<sup>24</sup> The authorization of the grants and permits is conditioned to the satisfaction of the competent management authorities of each country and the favorable concept of a scientific authority.<sup>25</sup>

Just before this dispute, between 2016 and 2022, the hide and horns of the Markhor were imported to Astor, given the appropriate CITES permits (R¶17). By then, the auctions carried out by the Dion Ginsu were already taking place respecting the ten Royal Markhor numerical cap (R¶15, 16). If those permits were issued by the time, it necessarily means that the conditions for their allowance

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<sup>23</sup> See Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].

<sup>24</sup> *Id.*, art. IV

<sup>25</sup> *Id.*, art. III



were verified by the competent management authorities.<sup>26</sup> The latter is confirmed by the Scientific Authority of Rishmak, which advised that the limited trade acts regarding the Royal Markhor will not be harmful to the endurance of the species (R¶32).

Rishmak allowed the exportation of Royal Markhor trophies to Astor solely because Astori citizens were permitted to import them to their own State. That was done given the adjustment of the commercial activity to the wildlife protection laws of both States.

No condition has changed since 2022, except the modification of internal laws of Astor. However, Rishmak keeps fulfilling its obligations under the CITES, limiting the hunting and controlling it through conditions that are faithful to the conventional requirements.

## **II. ASTOR'S BAN ON THE IMPORTATION OF ROYAL MARKHOR HUNTING TROPHIES VIOLATES CONVENTIONAL INTERNATIONAL LAW**

Astor's law banning the importation of Royal Markhor hunting trophies violates free trade agreements, namely the ARTA and GATT.<sup>27</sup> Both States are signatories of the GATT, which, as part of the WTO system, promotes the reduction of trade barriers.<sup>28</sup> Therefore it is surprising that, after allowing the importation of the Royal Markhor's hides and horns for six years with the

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<sup>26</sup> See Michael Bowman, et al., *Supra* note 1, 499-502

<sup>27</sup> To understand the provisions under the ARTA, decisions by GATT and WTO Panels or Appellate Bodies shall be considered relevant since article 25 (2) mandates that they constitute subsidiary sources of law with respect to the interpretation of terms of the agreement (R¶12).

<sup>28</sup> Damiola S. Olawuyi, Environment, in 25 The Oxford Handbook of International Trade Law 674-693, at 674, (Daniel Bethlehem, et al., ed., 2nd ed. 2022).

required CITES permits (R¶17), Astor has now recklessly and unilaterally enacted a law banning the importation of hunting trophies.<sup>29</sup>

The following sections will demonstrate under the methodology set by WTO panels and appellate bodies that Astor's ban on the importation of Royal Markhor trophies goes against international law, since: (A) it constitutes a quantitative restriction that violates the ARTA agreement, (B) it is not necessary to protect public morals, and (C) it does not relate to the conservation of exhaustible natural resources, undermining the principles of international cooperation and sustainable development.

**A) THE BAN ON THE IMPORTATION OF ROYAL MARKHOR TROPHIES CONSTITUTES A  
QUANTITATIVE RESTRICTION THAT VIOLATES THE ARTA**

Astor's law banning the importation of Royal Markhor hunting trophies explicitly violates the ARTA. It imposes a quantitative restriction, prohibited under both GATT and ARTA in their common *Article 11*. This article states that “no prohibitions or restrictions” other than duties, taxes, or similar charges — whether made effective through quotas, import or export licenses, or other measures — shall be instituted or maintained by any party regarding the importation of any product from the territory of another Party (R¶12).<sup>30</sup>

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<sup>29</sup> As an expression of an organ of the state, this law is therefore attributable to Astor. See International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, art 4, U.N. Doc. A/56/49(Vol. I)/Corr.4. (2001).

<sup>30</sup>Article 11: Quantitative Restrictions “No prohibitions or restrictions (other than duties, taxes, or similar charges), whether made effective through quotas, import or export licenses, or other

As recognized by Astor, the trophy banning represents a prohibited quantitative restriction (R¶33,36). Quantitative measures refer to any restriction or limitation, excluding duties, taxes, or similar charges, which applies to the import or export of goods between parties.<sup>31</sup> Prohibited measures include restrictions that limit or completely ban the amount of a specific good that can be imported into a State.<sup>32</sup>

Although *Article 20* of ARTA and the GATT similarly allow for the exceptional adoption of quantitative measures, as will be explained below, these provisions do not apply to the Astor Trophy Ban.<sup>33</sup> According to the *US – Gasoline Case*, a “two-tiered test” must be done to

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measures, shall be instituted or maintained by any Party regarding the importation of any product from the territory of any other Party” See Astor Rishmak Trade Agreement, Astor-Rishmak., 2003 [hereinafter ARTA] (R 12); Also see General Agreement on Tariffs and Trade, art. XI, Oct. 30, 1947, 55 U.N.T.S. 194 [hereinafter GATT]

<sup>31</sup> Michael Trebilcock, Robert Howse & Antonia Eliason, *The Regulation of International Trade*, at 280, (4th ed. 2013).

<sup>32</sup> “[The] wording [of Article XI] [is] comprehensive: it applie[s] to all measures instituted or maintained by a contracting party prohibiting or restricting the importation, exportation or sale for export of products other than measures that take the form of duties, taxes or other charges.” Panel Report, *Japan – Trade in Semi-Conductors*, ¶ 104, WTO Doc. BISD 35S/116 (adopted May. 4, 1988)

<sup>33</sup> See ARTA, *supra* note 30, art 11 (R¶12); Also see GATT, *supra* note 30, Art. XX

understand whether a measure falls under the exceptions of these articles.<sup>34</sup> The measure at issue “(...)must not only come under one or another of the particular exceptions – paragraphs (a) to (j)” but it must also satisfy the “chapeau”<sup>35</sup>. The chapeau requires that such measures must not be arbitrary and must not constitute a disguised restriction on international trade.

Astor's actions violate common *Article 11*, as the quantitative restriction it imposed fails to comply with the requirements set forth in common *Article 20*. Specifically, the ban does not meet the conditions in paragraphs (a) nor (g). Instead, Astor is misusing these exceptions to avoid its obligation under *Article 11* to not impose quantitative restrictions.

**B) THE QUANTITATIVE RESTRICTION IMPOSED BY ASTOR IS NOT NECESSARY TO PROTECT PUBLIC MORALS**

Astor's ban on the importation of Royal Markhor hunting trophies is not justified under the exception of *Article XX (a)* of the GATT as it is not a necessary measure to protect public morals.

To understand the moral interests underlying the ban on Royal Markhor trophies, Astor's 2022 polling data must be analyzed. 80% of Astori citizens opposed domestic trophy hunting, 79% opposed international trophy hunting, and 90% specifically opposed the hunting of internationally protected species, like the Royal Markhor (R¶28). Despite this, trophy hunting remains legal in Astor and generates significant revenue from hunting non-endangered species such as bears and bobcats. (R ¶30,25, Clarifications to the Record Q7). Therefore, the underlying moral interest to

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<sup>34</sup>Appellate Body Report, United States - Standards for Reformulated and Conventional Gasoline, at 22, ¶ 3, WTO Doc. WT/DS2/AB/R (adopted Apr. 12, 1996)

<sup>35</sup> *Id.*

ban Royal Markhor trophies does not seem to be based on a general opposition to trophy hunting. Additionally, there is no substantial evidence to suggest that Astor's trophy hunting practices differ from those in Rishmak in a way that would justify stronger moral opposition to the activity abroad. Instead, polling data indicates that Astori nationals are primarily concerned about trophy hunting of vulnerable species, like the Royal Markhor (R¶28). Since non-endangered species can still be legally hunted in Astor, the trophy ban appears focused on protecting specific vulnerable species, rather than opposing trophy hunting as a whole.

The ban on the importation of Royal Markhor trophies incorrectly attempts to address this concern by unjustly searching to reduce trophy hunting of the species in Rishmak. This is based on the mistaken belief that banning the import of its hide and horns will align with public views that aim to conserve the endangered species. To justify the trophy ban under *Article 20 (a)*, Astor must therefore demonstrate that this ban is necessary to protect the Royal Markhor as an endangered species by reducing its trophy hunting<sup>36</sup>.

In *EC – Seal Products*, the Appellate Body holds that the burden of proving that a measure qualifies for the previously mentioned exception lies with the party asserting it. However, the complaining party must identify any “alternative measures” that the asserting party should have applied.<sup>37</sup> Therefore, Astor must prove that the trophy ban is necessary to protect public morals but fails to

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<sup>36</sup> See ARTA, *supra* note 30, art 20 (a) (R¶12); Also see GATT, *supra* note 30, Art. XX (a).

<sup>37</sup> Appellate Body Report, *European Communities – Measures Prohibiting the Importation And Marketing Of Seal Products*, ¶ 5.169, WTO Doc. WT/DS400/AB/R & WT/DS401/AB/R (adopted May. 19, 2014)

do so. Nevertheless, Rishamak will conclude this section by detailing alternative measures Astor could have implemented to achieve the same moral objectives.

In the *Colombia – Textiles Case*, the Appellate Body established a two-step analysis for assessing measures under *Article XX(a)*. First, the measure must be specifically "designed" to protect public morals, meaning it must be capable of achieving this objective.<sup>38</sup> The Appellate Body emphasizes that the initial step requires examining whether there is a clear link between the measure and the protection of public morals by analyzing its content, structure, and expected operation.<sup>39</sup>

Astor's ban on importing trophy hunting products is not designed to conserve the Royal Markhor. Instead, it is designed to discourage Astori nationals from participating in auctioned hunts by preventing trophy imports. The design of the measure fails to impact the actual conservation of the species, as the trophy hunting of the Royal Markhor is already limited to ten cases annually. The import prohibition on Markhor trophies has no impact on the number of animals hunted, rendering it ineffective for conservation purposes. Consequently, there is no clear link between the import ban and the conservation goal of the Royal Markhor.

Even if it were determined that the ban met the first requirement, it would still fail to meet the second, which requires a more comprehensive analysis of the "necessity" of the measure. This involves weighing various factors, including the relative importance of the societal interest at

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<sup>38</sup> Appellate Body Report, *Colombia – Measures Relating to The Importation Of Textiles, Apparel And Footwear*, ¶ 5.49., WTO Doc. WT/DS461/AB/R (adopted Jun. 07, 2016)

<sup>39</sup> *Id.*, ¶ 5.69

stake, the measure's contribution to its intended objective, and the trade restrictiveness of the measure<sup>40</sup>. A critical comparison with other possible alternatives must also be undertaken.<sup>41</sup>

The Appellate Body in *Colombia – Textiles* emphasizes that a panel must evaluate how effectively a measure contributes to its intended objectives, assessing this contribution “qualitatively and quantitatively”.<sup>42</sup> A thorough review also indicates, as stated before, that the trophy import ban will not reduce the fixed number of animals hunted annually. Additionally, as outlined in Question I of this memorial, properly managed trophy hunting aligns with conservation efforts<sup>43</sup>. Therefore, the ban not only fails to support the moral objective of conserving the Royal Markhor but actively undermines it. By reducing incentives for Astori nationals to purchase hunting rights at auctions, the ban decreases auction revenue, weakening critical resources generated from these funds that are earmarked for the Royal Markhor’s conservation.

The ban on the importation of Royal Markhor trophies is also unnecessarily restrictive, as bans represent the highest level of trade restrictiveness. However, when weighing and balancing the measure’s elements, it becomes evident that Astor’s law is excessively harsh, when it does not significantly advance in the conservation of the Royal Markhor.

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<sup>40</sup> EC – Seal Products, *supra* note 37, ¶ 5.169.

<sup>41</sup> *Id.*, ¶ 5.169.

<sup>42</sup> A panel must also examine the contribution of the measure its objective. "a panel's duty is to assess, in a qualitative or quantitative manner, the extent of the measure's contribution to the end pursued, (...) t]he greater the contribution, the more easily a measure might be considered to be 'necessary'" See *Colombia Textiles*, *supra* note 38, ¶ 5.72

<sup>43</sup> See I (C) of this Memorial

Instead, less restrictive alternatives could achieve the same moral conservation objectives without the negative consequences of a complete ban. For instance, Astor could establish a limited quota for importing Royal Markhor trophies. It could also continue with the previous allowance of ten trophies, which has been proven not to harm the species, or even impose a lower quota. This approach would incentivize Astori nationals to purchase hunting rights, while Rishmak could utilize part of the revenue generated to support conservation initiatives directly.

Allowing even a small number of trophy exports annually could contribute more effectively to the moral objective of species protection than the existing ban. These factors demonstrate that the ban is unnecessary and fails to meet the standards set by *Article 20 (a)*.

**C) THE QUANTITATIVE RESTRICTION IMPOSED BY ASTOR DOES NOT RELATE TO THE  
CONSERVATION OF EXHAUSTIBLE NATURAL RESOURCES AND UNDERMINES THE  
PRINCIPLES OF INTERNATIONAL COOPERATION AND SUSTAINABLE DEVELOPMENT**

Astor's imposition of the import ban represents a quantitative restriction that is unrelated to the conservation of exhaustible natural resources and, therefore, does not qualify under *Article 20 (g)* of ARTA<sup>44</sup>. The quantitative restriction on the importation of Royal Markhor hunting trophies does not reduce the number of animals hunted annually, and prior export levels were shown to have no negative impact on the species.

In the *US – Shrimp Case*, the panel found that the measures implemented by the United States were provisionally consistent with *Article XX (g)* because they were reasonably related to the

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<sup>44</sup> It does not meet article 11 under ARTA (R¶12) nor article XX (g) of GATT. See GATT, *supra* note 30, art XX (g).



objective of protecting and conserving sea turtles.<sup>45</sup> The Appellate Body emphasizes the necessity of a "means and ends relationship" between the measure and the goal of natural resource conservation<sup>46</sup>. It concluded that the measure was not "disproportionately wide in its scope and reach in relation to the policy objective of protection and conservation (...)"<sup>47</sup>.

In contrast, the Astor ban on the importation of hunting trophies has no effect on the number of Royal Markhor specimens hunted in Rishmak, which remains fixed at ten annually. As a result, the ban is excessively broad and fails to directly contribute to the species' conservation. Its lack of impact on actual hunting practices demonstrates that the measure is too broad to its intended objective. Therefore, the ban does not meet the necessary criteria to qualify for the exception under *Article XX (g)* of the GATT, as it does not establish a clear, and effective relationship between the measure and the conservation of the Royal Markhor.

Additionally, the quantitative restriction imposed by Astor directly contradicts the Principle of International Cooperation.<sup>48</sup> An essential Principle for conserving the Royal Markhor as a

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<sup>45</sup> Appellate Body Report, United States - Import Prohibition of Certain Shrimp And Shrimp Products, ¶ 141, WTO Doc. WT/DS58/AB/R (adopted Oct. 12, 1998)

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

<sup>47</sup> *Id.*

<sup>48</sup> The GATT and the WTO agreement both advocate in their preambles for "reciprocal and mutually advantageous arrangements" aimed at significantly reducing trade barriers and eliminating discriminatory treatment". See Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter WTO agreement]; See GATT, *supra*

migratory species, specifically emphasized in the ARTA agreement and the preambles of both the WTO Agreement and the GATT Agreement.<sup>49</sup> The CMS recognizes the Royal Markhor as an "Endangered Migratory Species" and highlights the necessity of concerted action by all States within its range of migration.<sup>50</sup> The *Appellate Body in the US – Shrimp Case* similarly notes that protecting highly migratory species, demands cooperative efforts among countries where the species traverse in the course of migration.<sup>51</sup> Astor's unilateral action failed to acknowledge the need for such international collaboration in the protection of the Royal Markhor.

This Principle of Cooperation is further reinforced by Principle 12 of the Rio Declaration, which advises against unilateral actions for addressing environmental challenges outside a country's jurisdiction, advocating instead for measures based on international consensus.<sup>52</sup> Moreover, Agenda 21 encourages governments to engage international bodies like GATT and UNCTAD to

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note 30, preamble; Article 31(1) of VCLT mandates that treaties be interpreted in good faith, within the context and considering their object and purpose. This suggests that a reading of Article 20 of GATT should consider the GATT and WTO Agreements as a whole. See VCLT, *supra* note 2, Art. 31 (1)

<sup>49</sup> In the *US – Shrimp Case*, the AP body discussed the significance of the Preamble of the WTO Agreement for its interpretative approach needs to “add colour, texture and shading to our interpretation of the agreements annexed to the WTO Agreement, in this case, the GATT 1994.”. See *US- Shrimp*, *supra* note 45, ¶ 2.21. 153.

<sup>50</sup> CMS, *supra* note 2, preamble

<sup>51</sup> See *US- Shrimp*, *supra* note 45, ¶ 168.

<sup>52</sup> Rio Declaration, *supra* note 16, Principle 12

avoid unilateral actions and to base environmental measures addressing transboundary issues on global agreement.<sup>53</sup> By imposing this unilateral ban, Astor shows total absence of interest to cooperate, disregards these principles and undermines the spirit of international negotiation and cooperation.

Astor's misapplication of international law also contradicts the principles of Sustainable Development outlined in instruments like the Rio Declaration, the Johannesburg Plan of Implementation, and Agenda 21.<sup>54</sup> Principle 3 of the Rio Declaration highlights that development must equitably meet the needs of present and future generations, reconciling social, economic, and environmental goals.<sup>55</sup> Principle 4 further emphasizes that environmental protection must be integral to development, balancing sustainability with economic and social progress.<sup>56</sup> Additionally, equity and poverty eradication are central to sustainable development.<sup>57</sup>

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<sup>53</sup> Report of the UNCED, Agenda 21, (1992) UN Doc. A/CONF. 151/26 Rev. 1, ¶ 2.22 (i), (1992).

<sup>54</sup> Sustainable development is internationally binding: “This need to reconcile economic development with protection of the environment is aptly expressed in the concept of sustainable development”. See *Gabčíkovo-Nagymaros Project* (Hung./Slovk.), Judgment, I.C.J. 1997 Rep. 7, ¶ 140 (Sept. 25).

<sup>55</sup> Rio Declaration, *supra* note 16, Principle 3.

<sup>56</sup> *Id.*, Principle 4.

<sup>57</sup> The World Commission on Environment and Development emphasized that priority should be given to addressing the essential needs of the world's poor, reinforcing this in the Johannesburg Plan of Implementation and Chapter 2 of the World Summit on Sustainable Development.

Conventional rules such as the preambles of both the WTO Agreement and the ARTA reflect key principles of Sustainable Development that should permeate the interpretation of Article XX (g)<sup>58</sup>. The WTO Agreement emphasizes that trade and economic relations should aim to improve living standards, foster the production and trade of goods and services, and promote the responsible use of global resources. These frameworks recognize that true sustainable development requires a careful balance between economic growth and environmental protection, ensuring that both economic progress and the preservation of natural resources are pursued for the benefit of future generations.

Rishmak, as a developing State, is fully entitled to shape its environmental policies in accordance with its unique developmental and environmental priorities, as outlined in Principle 2 of the Rio Declaration. This Principle affirms the sovereign right of states to manage their natural resources in a manner that supports national objectives, provided their actions do not harm the environment of other countries. One of those policies is the auctioning of hunting rights for the Royal Markhor, which not only meets the economic needs of the Dion Ginsu community but also encourages active participation in environmental management.

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Principle 5 of the Rio Declaration further stresses the importance of equity in Sustainable Development, advocating for fairness in the distribution of resources and opportunities, particularly for those most in need. See Marie-Claire Cordonier & Ashfaq Khalfan, Sustainable Development Law 122-132 (2016).

<sup>58</sup> See ARTA *supra* note 30 (R¶12); See WTO Agreement, *supra* note 48.

The annual taking of ten Royal Markhor specimens has been conclusively proven to be non-detrimental to the species, making Astor's import ban an unjustified quantitative restriction<sup>59</sup>. This ban fails to establish any meaningful connection to the conservation of natural resources and thus does not meet the criteria set forth in *Article 20 (g)* of ARTA, which permits measures directly related to resource conservation. Furthermore, interpreting this article must take into account the principles of multilateral cooperation for migratory species and the broader framework of Sustainable Development. These principles emphasize the need for cooperative management and the balance between environmental protection and socio-economic needs. By imposing this import ban, Astor undermines both the Principles of International Cooperation and Sustainable Development, harming sustainable practices that benefit both the Dion Ginsu and the conservation of the Royal Markhor.

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<sup>59</sup> A Scientific Authority of Rishmak has advised that such limited export will not be detrimental to the survival of the Royal Markhor (R¶32); Under CITES Article III, the export and import of specimens from Appendix I species, like the Royal Markhor, require permits only granted if authorities from the exporting and importing parties confirm that these actions will not harm the species' survival. See CITES, *supra* note 23, art III.

## **CONCLUSION**

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Rishmak respectfully requests the Court to declare that: (I) Rishmak has not violated international law with respect to the trophy hunting of the Royal Markhor through the auction process; and (II) Astor has violated conventional law by imposing a ban on the importation of Royal Markhor Hunting Trophies.

**Respectfully submitted,**

Agents of the Respondent