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29TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION, 2025

BEFORE THE INTERNATIONAL COURT OF JUSTICE

AT THE PEACE PALACE

THE HAGUE, NETHERLANDS

GENERAL LIST NO. 175

THE CASE CONCERNING QUESTIONS RELATING TO SUBSISTENCE USE AND TROPHY HUNTING

ASTOR

(APPLICANT)

V.

RISHMAK

(RESPONDENT)

MEMORIAL FOR THE RESPONDENT

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LIST OF ABBREVIATIONS

¶	Paragraph
2022 Survey	The survey done in 2022 on Astori public attitudes towards trophy hunting found at paragraph 28 of the record
A	29th Annual Stetson International Environmental Moot Court Competition Clarifications to the Record
AEWA	Agreement on the Conservation of African-Eurasian Migratory Waterbirds
ARTA	Astor-Rishmak Trade Agreement
ASHTA	Astor Society for the Humane Treatment of Animals
Auction Policy	Rishmak's policy, since 2016, of allowing the Dione Ginsu to auction off their rights to hunt 10 male Royal Markhors
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CMS	Convention on the Conservation of Migratory Species of Wild Animals
CoP	Conference of Parties
DG	Dione Ginsu (Rishmak's indigenous community)
ESA	Endangered Species Act
EU	European Union
GATT	General Agreement on Trade and Tariffs
IAC	Inter-American Convention for the Protection and Conservation of Sea Turtles
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRW	International Convention for the Regulation of Whaling

ILA	International Law Association
ILC	International Law Commission
ILO 169	Indigenous and Tribal People's Convention
IUCN	International Union for Conservation of Nature
NGO	Non-governmental Organization
Polar Bear Agreement	1973 Agreement on the Conservation of Polar Bears
PP	Precautionary Principle
R	29th Annual Stetson International Environmental Moot Court Competition Record
RHINA	Responsible Hunters in Astor
RM	Royal Markhor (*Capra royali*)
TBT	Technical Barriers to Trade Agreement
UN	United Nations
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNGA	United Nations General Assembly
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organisation

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

In accordance with Article 40(1) of the Statute of the ICJ, Astor and Rishmak submitted to the ICJ by Special Agreement, questions concerning their differences relating to Subsistence Use and Trophy Hunting, as contained in Annex A, including the Clarifications. The Parties transmitted a copy of the Special Agreement on July 1, 2024.

Pursuant to Article 26 of the Rules of Court, the Registrar of the Court acknowledged the receipt of the Special Agreement to the Parties on July 31, 2024.

The Parties have accepted the jurisdiction of the ICJ. Accordingly, they request the Court to adjudge the merits of this case following the rules and principles of general international law, as well as any applicable treaties. The Parties further request the Court to determine the legal consequences, including the rights and obligations of the Parties arising from any judgement on the questions presented in this matter.

The Parties have agreed to accept the Court's decision as final and binding.

STATEMENT OF FACTS

Rishmak is a low-income country, home to the highly impoverished Indigenous DG community. Since time immemorial, the DG relied on the RM to sustain their lives and way of life. In 2009, after the CMS listed the RM as endangered, Rishmak restricted the DG to only 10 male RM annually. Since 2016, the DG auctions the rights to hunt these individuals and frequently receives (a) USD 1,125,000 for their housing, medicine, and food, and (b) USD 225,000 for RM conservation programs. These programs develop vaccines, treatments, and prevention measures for disease threats, such as *Mycoplasma capricolum* which kills an estimated 22 to 66 RM every year.

In 2022, Rishmak's neighbor, the high-income country of Astor objected to the auction of hunting rights, asserting a violation of the CMS. After Rishmak responded that the CMS permits the taking through the auction process, Astor imposed a ban on the import of RM hunting trophies. This import ban caused Astori trophy hunters to demand a refund, the DG to return the proceeds, and an inability to auction off the hunting rights.

Within Astor, ASHTA advocates for banning the import of trophy animals while RHINA advocates for sustainable trophy hunting. A 2022 Survey found that 91% opposed import of trophies while 80% opposed domestic trophy hunting. Parliament passed the import ban, while a ban on domestic trophy hunting was not. In 2023, Rishmak objected to the import ban, asserting a violation of the ARTA and the CITES. Astor responded that the ARTA justifies the ban and the CITES authorizes the ban.

In 2024, after further negotiations failed to resolve the dispute, Astor and Rishmak agreed to submit questions to the ICJ for resolution. Rishmak agreed that the auction process is attributable to it. Astor agreed that the import ban is a quantitative restriction under the ARTA.

SUMMARY OF ARGUMENT

First, Rishmak's Auction Policy complies with conventional international law. The Auction Policy is consistent with the CMS as the exceptions under Article III for enhancing propagation and survival, and to accommodate the needs of traditional subsistence users, apply.

Second, Astor's import ban on RM hunting trophies violates conventional international law. Astor violates Article 11 of the ARTA. Astor cannot rely on the general exceptions under Article 25 since the ban was not necessary to protect public morals, nor related to conserving exhaustible natural resources, is arbitrary, and a disguised restriction on international trade.

Astor violates Articles III and XIV of the CITES, by failing to accept Rishmak's non-detriment finding and by not notifying or consulting.

Astor cannot rely on the CITES to excuse violations of the ARTA.

ARGUMENTS

I. Rishmak complies with the CMS

Astor alleges that Rishmak's Auction Policy violates Article III of the CMS by allowing the taking of the RM, an Appendix I species.[1] However, the Auction Policy falls under the exceptions found at Article III Paragraph 5(b) and (c).[2]

A. The Article III Paragraph 5(b) exception for enhancing propagation and survival applies

(1) The text's ordinary meaning permits the Auction Policy

"Propagation" is defined as "the action of causing…animal[s] to produce offspring or multiply by natural processes".[3] When read alongside the phrase "for the purpose of," Article III indicates that a State may conduct a taking with multiple purposes, as long as one of those purposes is to enhance the species' overall health and reproduction.[4]

Astor argues that the choice of the definite article "the" over the indefinite article "a" implies a primary purpose test for this exception.[5] Specific wordings are valid means of interpretation insofar as they reflect the drafter's intention.[6] However, it is unclear that a deliberate choice of "the" over "a" was made. Replacing "the" with "a" violates grammatical rules.

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[1] R¶19.
[2] R¶20.
[3] *Propagation*, Oxford English Dictionary (3rd ed. 2024).
[4] Vienna Convention on the Law of Treaties art. 31(1), *opened for signature* May. 23, 1969, 1155 U.N.T.S 331 [hereinafter VCLT].
[5] R¶21.
[6] Oliver Dörr & Kirsten Schmalenbach, *Vienna Convention on the Law of Treaties: A Commentary* 581 (2nd ed., 2018) [hereinafter Dörr, *VCLT Commentary*].

First, the article "a" is inappropriate because "purpose" is a countable noun that requires "the" when referring to a specific or general purpose.[7] The phrase "for the purpose of" is a fixed expression used to introduce the reason or goal of something. Second, the inclusion of "the" in such an expression is a matter of convention,[8] rather than a meaningful or intentional emphasis. Since the drafters were merely observing basic grammar, no primary purpose test can be inferred.

(2) The object and purpose and supplementary means confirm Rishmak's interpretation

The CMS' object and purpose is to conserve "wild animals … for the good of mankind".[9] This exception recognizes that in certain instances, taking individual members promotes the conservation and protection of that species as a whole. The IUCN's 2016 report recognized that "[w]ell managed trophy hunting … generate[s] critically needed incentives and revenue … *to maintain and restore wildlife*".[10]

Supplementary means may confirm the interpretation under Article 31.[11] Article 32 does not exhaustively define such means and permit their use so long they are shown to be relevant.[12]

First, the CMS's drafting history confirms that Article III permits trophy hunting. Initially, Article III's only exception for taking was "if extraordinary circumstances so require and

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[7] Purdue Online Writing Lab, *Using Articles*, https://owl.purdue.edu/owl/general_writing/grammar/using_articles.html (last visited Nov. 14, 2024).; Gallaudet University, *When to Use 'A', 'An', or 'The'*, https://gallaudet.edu/student-success/tutorial-center/english-center/grammar-and-vocabulary/definite-and-indefinite-articles/when-to-use-a-an-or-the/ (last visited Nov. 14, 2024).

[8] Rodney Huddleston & Geoffrey K. Pullum, *The Cambridge Grammar of the English Language* 408 (2nd ed. 2002).

[9] VCLT, art. 31(1). ;Dörr, *VCLT Commentary* 583; Convention on the Conservation of Migratory Species of Wild Animals preamble ¶1, *opened for signature* Jun. 23, 1979, 1651 U.N.T.S 333 [hereinafter CMS].

[10] International Union for Conservation of Nature (IUCN), *Informing Decisions on Trophy Hunting: A Briefing Paper for European Union Decision-makers regarding potential plans for restriction of imports of hunting trophies* (Apr. 2016).

[11] VCLT, art. 32.

[12] Dörr, *VCLT Commentary* 620.

provided that such exceptions are precise as to content and limited in space and time".[13] Article III's current exceptions were lifted from the US' 1973 Endangered Species Act pursuant to a proposed amendment by the US in 1979.[14] Therefore, the ESA's application can inform the exceptions' scope. Pertinently, ESA permits are granted for the import of hunting trophies where hunting funds support conservation programs of the hunted species.[15]

The ESA confirms that "primary purpose" is not the threshold.[16] The ESA allows a wide range of activities for enhancing propagation and survival, including healthcare and population management, accumulating and holding wildlife not immediately needed for propagative or *scientific* purposes, exhibitions of living wildlife *designed to educate* the public about conservation needs.[17] These activities serve multiple purposes (including education, research, and revenue-generation), yet indisputably enhance survival and propagation. Permitting such activities also comports with the CMS Secretariat's guidance.[18]

Second, the AEWA Action Plan, a CMS daughter instrument, confirms Rishmak's interpretation. AEWA's Paragraph 2.1.3(e) is in *pari materia* with Article III Paragraph 5(b) of the CMS.[19] Paragraph 2.1.3(e) accommodates a wide range of taking, so long they generate

[13] Second Revised Draft Convention on the Conservation of Migratory Species of Wild Animals (Version of: 24 July 1978), art. III.
[14] *Conference to Conclude a Convention on the Conservation of Migratory Species of Wild Animals*, United States Proposed Amendment of Article III, PL whe10, Jun. 13, 1979; Endangered Species Act of 1973, 16 U.S.C. § 1539(a)(1) (2021).
[15] Pervaze A. Sheikh & Erin H. Ward, Cong. Rsch. Serv. R46677, *The Endangered Species Act: Overview and Implementation* 39 (2021).
[16] R¶21.
[17] 50 C.F.R § 17.3 (2023).
[18] CMS Secretariat, *Review Mechanism and National Legislation programme*, UNEP/CMS/COP13/Doc.22 ¶56 (2020).
[19] Melissa Lewis, *Deciphering the Complex Relationship between AEWA's and the Bonn Convention's Respective Exemptions to the Prohibition of Taking*, 22 J. Int. Wildlife Law & Policy 173, 182 (2019); African-Eurasian Waterbird Agreement Action Plan, Aug.15, 1996, 2365 U.N.T.S 305,¶2.1.3(e).

conservation benefits to enhance survival of the species and such benefits cannot be satisfactorily achieved through other means.[20]

(3) The Auction Policy enhances the propagation and survival of the RMs

Every year, an estimated 22 to 66 RMs die of *Mycoplasma capricolum* infections.[21] By taking 10 RMs, the Auction Policy minimally generates USD 150,000 every year for conservation programs that combat *Mycoplasma capricolum* and other disease threats the RM faces.[22] The funds are also used to educate the DG on methods to reduce the likelihood of RMs contracting such fatal diseases.[23] Further, no alternatives generate comparable levels of conservation benefits: funding provided under biodiversity treaties is dismal – for example, the CMS Small Grants provide up to €15,000 over two years,[24] while the IUCN's Conservation Action Grant provides up to €50,000 per year.[25]

B. The Article III Paragraph 5(c) exception for traditional subsistence users applies

(1) The text's ordinary meaning and object permits the Auction Policy

"[S]ubsistence" refers to the essentials needed for use or consumption.[26] This necessarily includes basic requirements to sustain life, such as housing, medicine, and food.[27] "[S]ubsistence" is read with "accommodate" which means "fit in the wishes of, or to adapt

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[20] Melissa Lewis, *Sustainable Use and Share Species: Navigating AEWA's Constraints on the Harvest of African-Eurasian Migratory Waterbirds*, 32 Geo. Envtl. L. Review 299, 342 (2020).
[21] R¶19.
[22] R¶16,19.
[23] R¶18.
[24] CMS, *CMS Small Grants Programme: Guide for Applicants* § I.2, at 4 (2013).
[25] IUCN SOS Foundation, *Fondation Segré Conservation Action Fund* https://iucnsos.org/initiative/fondation-segre/ (last visited Nov. 12, 2024).
[26] *Subsistence*, Oxford English Dictionary (3rd ed.2024).
[27] International Covenant on Economic, Social and Cultural Rights, arts. 2(1), 11, 12, Dec. 16, 1966, 993 U.N.T.S 3 [hereinafter ICESCR].

to".[28] The word "traditional" qualifies "subsistence users", not *uses*. The emphasis is on serving the needs of such users, not the method of use. Seen together, the text permits flexibility of use to meet subsistence needs, not a narrow notion of cultural need, nor an insistence on traditional users conducting the taking.

This interpretation comports with the CMS which is "conscious of the ever-growing value of wild animals from … cultural … economic and social points of view",[29] and recognises that wild animals can be utilized, if done "wisely".[30] This reflects a foundational assumption that humankind's relationship with wild animals can, must, and will change. Indeed, the DG's economic relationship with the RM outgrew its cultural, religious, and social roots. Where previously more RMs were available, now the DG may only use 10 to accommodate the needs of 4,000 DG members.[31] This sharpens the DG's reliance on the 10 RMs, which is acutely heightened by living in a low-economy country and being plagued by the highest poverty rates.[32] Rishmak's policy, therefore, reflects the CMS' purpose by allowing the DG to adapt their use of the RM, meeting their pressing subsistence needs while protecting the RM.

(2) Reading the exception harmoniously with the customary rights of Indigenous people confirms Rishmak's interpretation

Treaties "shall be interpreted" in light of "relevant rules of international law",[33] such as customary international law.[34] Indigenous peoples enjoy a customary right of self-

[28] *Accommodate,* Oxford English Dictionary (3rd ed. 2024).
[29] CMS, preamble ¶3.
[30] CMS, preamble ¶2.
[31] R¶15-16.
[32] R¶3.
[33] VCLT, art. 31(3)(c).
[34] Oil Platforms (Islamic Republic of Iran v. United States of America), [2003] ICJ Rep 161,¶40-41 (Nov. 6).

determination,[35] which encompasses the freedom to pursue "economic development",[36] and control the "means for financing their autonomous functions".[37] State practice and *opinio juris* are evinced by the widespread and consistent endorsement and enforcement of this right pursuant to multilateral instruments such as the UNDRIP, the ILO 169, and the ICESCR.[38]

These instruments also clarify that this right to economic self-determination is closely tied to subsistence rights. The ICESCR affirms the "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing",[39] and has been applied specifically to Indigenous peoples.[40] The UNDRIP declares that Indigenous peoples "have the right to the improvement of their economic and social conditions, including … housing, sanitation, health and social security",[41] and further affirms that all rights it recognised "constitute the *minimum standards for the survival, dignity* and well-being of [I]ndigenous peoples".[42]

Reading exception (c) harmoniously with this customary right confirms that significant latitude is afforded to accommodate the subsistence and economic developmental needs of Indigenous peoples. Indeed, Indigenous peoples are allowed to transmit and lease their hunting rights

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[35] Int'l L Association, *2010 Hague Conference Report on the Rights of Indigenous People*, 51-52.
[36] United Nations Declaration on the Rights of Indigenous Peoples, art. 3, Sep. 13, 2007, U.N. Doc. A/RES/61/295 [hereinafter UNDRIP].
[37] UNDRIP, art. 4.
[38] United Nations Department of Economic and Social Affairs, *UNDRIP*, https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples (143 states voted in favour) (last visited Nov. 12, 2024); Indigenous and Tribal Peoples Convention, 1989 (No. 169), opened for signature Jun. 27, 1989 [hereinafter ILO] (24 ratifications), https://normlex.ilo.org/dyn/normlex/en/f?p=1000%3A11300%3A0%3A%3ANO%3A11300%3AP11300_INSTRUMENT_ID%3A312314 (last visited Nov. 12, 2024); ICESCR, https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&clang=_en (71 signatories) (last visited Nov. 12, 2024); International law Association, *Committee on Indigenous Rights*: Final Report (2010), Second Report (2012), Third Report (2020).
[39] ICESCR, art. 11.
[40] International Law Association, *Conference Report: The Hague 2010*, at 45 (2010). https://www.ila-hq.org/en_GB/documents/conference-report-the-hague-2010-13 (last visited Nov. 12, 2024).
[41] UNDRIP, art. 21.
[42] UNDRIP, art. 43.

outside their community.[43] In 2020, the Swedish Supreme Court ruled that the Sami People, an Indigenous group, has the exclusive right to lease hunting rights to non-members of the community. Similarly, the DG may use the RM for economic subsistence and development, including by outsourcing the taking.

(3) Supplementary means confirm Rishmak's interpretation

First, Rishmak's interpretation comports with wildlife treaties that contain exceptions for taking by traditional communities. Under the Polar Bear Agreement, Canada allows its indigenous Inuits to allocate part of their subsistence hunting quotas under the Agreement for trophy hunters, so long as they are guided by Inuits.[44] Under the IAC, Costa Rica is allowed to let locals collect and sell eggs for their subsistence needs.[45]

Second, Rishmak's interpretation comports with the EU's interpretation of Indigenous subsistence. This is relevant as EU States are party to the CMS.[46] The EU's *Trade in Seal Products Regulation* prohibits sale of seal products, save when it is a product of Indigenous "subsistence" hunts.[47] Subsistence hunting under this law encompasses both cultural and commercial components: Indigenous communities hunt seals for their cultural significance while selling seal by-products to "adjust to modern society".[48] This law recognises that these hunts contribute "to [Indigenous peoples'] subsistence and development, providing food and

[43] Indigenous and Tribal Peoples Convention, 1989 (No, 169), art. 17(2), Jun. 27, 1989; *Girjas Sameby v. Sweden*, Swedish Supreme Court, Feb. 24, 2020.
[44] Agreement on Conservation of Polar Bears, art. III, ¶(d), adopted Oct. 18, 1973, 27 U.S.T 3919, 993 U.N.T.S 69.
[45] Inter-American Convention for the Protection and Conservation of Sea Turtles, art. IV,¶3(a), adopted Dec. 4, 1996, O.A.S.T.S No. 2. [hereinafter IAC]; IAC, Resol. CIT-COP10-2022-R5 (2022); R¶22.
[46] CMS, European Union, https://www.cms.int/en/country/european-union (last visited Nov. 12, 2024).
[47] Regulation (EU) 2015/1775 of the European Parliament and of the Council of 6 October 2015 amending Regulation (EC) No 1007/2009 on trade in seal products and repealing Commission Regulation (EU) No 737/2010, 2015 O.J. (L262) 1. [hereinafter EU Seal Product Regulation].
[48] Panel Report, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, WTO doc. WT/DS400/R,WT/DS401/R, ¶7.287 (Adopted Jun. 18, 2014). [hereinafter Seal Products Panel Report].

income to support the life and sustainable livelihood of the community, preserving and continuing [their] traditional existence".[49] Similarly, Rishmak's Auction Policy gives expression to both cultural and commercial aspects of subsistence. Funds from hunting are directed to the DG's needs and development.[50] Additionally, the cultural link between the DG and the RM is preserved: after each hunt, the community eats the RM, and DG guides are actively involved in the hunting process, using traditional methods like scent baiting.[51]

(4) Astor's reliance on the ICRW is misplaced

Astor's reliance on the ICRW to argue that the exception does not permit commercial hunting, is misplaced. Less weight is accorded to the ICRW as material that the court *may* consider,[52] unlike materials that the court *shall* consider.[53] The ICRW is so far removed from Article III Paragraph 5(c) of the CMS that it provides little guidance on interpreting the exception.

First, the ICRW has only one exception for "purposes of scientific research",[54] significantly differs from the CMS' four exceptions,[55] and is irrelevant to the interpretation of the CMS exception for traditional subsistence users under VCLT Article 31.[56] In fact, the ICRW's only mention of aboriginal subsistence whaling appears in a separate subsidiary regulation adopted in Schedule form,[57] and only distinguished itself from commercial whaling in terms of time,

[49] EU Seal Products Regulation, Preamble ¶2.
[50] R¶16.
[51] R¶17.
[52] VCLT, art. 32.
[53] VCLT, art. 31.
[54] International Convention for the Regulation of Whaling, art. VIII(1), Dec. 2, 1946, 161 U.N.T.S. 72 [hereinafter ICRW].
[55] CMS, art. III.
[56] VCLT, art. 31.
[57] ICRW, art. V(1).

method, and intensity of whaling for Baleen whales.[58] This was a mere regulatory measure that the Commission "may amend from time to time".[59]

Second, the ICRW's "catch limits for aboriginal subsistence whaling *to satisfy* aboriginal subsistence need",[60] is distinguishable from the CMS' text which emphasises the need "*to accommodate…*traditional subsistence users".[61] The CMS contemplates a degree of flexibility not found in the ICRW.

C. Concerns that Rishmak's interpretation is overly expansive are unfounded

All exceptions for taking must be "precise as to content and limited in space and time" and "[such] taking should not operate to the disadvantage of the species".[62] This addresses concerns that overly-expansive interpretations of exceptions (b) and (c) undermine the protection of migratory species. Rishmak has been entirely compliant: the Auction Policy operates precisely, only taking 10 RMs, and channels significant funds to conservation to ensure that the RMs are not disadvantaged.

II. Astor violates the ARTA

Astor concedes that the import ban is a quantitative restriction which violates Article 11 of the ARTA.[63] However Astor seeks to rely on exceptions (a) and (g) under Article 20 of the ARTA to justify the ban.[64] Under Article 20 of the ARTA, which is in *pari materia* to Article XX of the GATT,[65] Astor must first provisionally justify the challenged measure, then satisfy the

[58] ICRW, Schedule ¶13.
[59] ICRW, art. V(1).
[60] ICRW, Schedule para. 13(a)(1).
[61] CMS, art. III para. 5(c).
[62] CMS, art. III.
[63] R¶33.
[64] R¶33.
[65] General Agreement on Tariffs and Trade, art. XX, Oct. 30, 1947, 55 U.N.T.S 194.

chapeau.[66] Based on WTO/GATT jurisprudence, a subsidiary means of interpreting the ARTA,[67] Article 20(a) and (g) have a very high threshold that few have crossed.[68] Astor's import ban is neither provisionally justified nor satisfies the chapeau requirements.

A. The import ban is not necessary to protect public morals

(1) The ban does not protect public morals in the form of animal welfare concerns

Public morals refer to standards of right and wrong conduct maintained by a community or State which differs in time and space,[69] subject to the State's discretion.[70] In *EC-Seal Products*, concerns about the killing and skinning methods that cause excessive pain and suffering to seals were found to constitute animal welfare concerns falling within "public morals."[71] The Panel found these concerns for seal welfare to be "anchored in the morality of European Societies" because clear references were made "ethical considerations" in the legislative history of the Seal Products ban.[72] This was reinforced by the EU's adoption of and participation in various animal welfare instruments.[73]

Conversely, it is unclear that animal welfare concerns are anchored in Astori morality. Nothing suggests that ethical considerations were raised in legislative debates, nor is it clear that Astor

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[66] Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp Products*, WTO doc. WT/DS58/AB/R (Adopted Nov. 6, 1998), ¶118.[hereinafter US-Shrimp Appellate Report].
[67] R¶12, ARTA art. 25(2).
[68] Eva Johan & Francesco Cazzini, *Lessons from the Case Law on the Public Moral Exception: Halal and the Debate for Policy Space* 51(2) Legal Issues Econ. Integration 147, 158. ; Umair Ghori, *An Epic Mess: Exhaustible Natural Resources and the future of export restraints after the China-Rare Earths Decision* 16 Melbourne J. Int'l L 1, 29-34.
[69] Panel Report, *United States — Measures Affecting the Cross-Border Supply of Gambling and Betting Services*, WTO Doc. WT/DS285/R (adopted Apr. 20, 2005),¶6.465. [hereinafter US-Gambling Panel Report].
[70] US-Gambling Panel Report, ¶6.461.
[71] Seal Products Panel Report, ¶7.409.
[72] Seal Products Panel Report ¶7.396,7.404.
[73] Seal Products Panel Report, ¶7.405-7.407.

has adopted comprehensive animal welfare legislation. Instead, there was active support for trophy hunting, evident from RHINA's campaign.[74]

Further, the Astori public has never been concerned about the pain and suffering experienced by the RM. The DG has hunted the RM for centuries.[75] Astor never raised or indicated any concerns about the pain and suffering experienced by the RMs during such hunts.[76] Instead, the Astori public's concerns have always been about trophy hunting, not Indigenous hunting nor the pain and suffering experienced by the RM. The DG's hunting and the subsequent hunting under the Auction Policy do not significantly differ in relation to animal welfare; since the Astori hunters' rifle-shots are indistinguishable from the DG's crossbow-shots, the pain and suffering of the RM under both hunts were similar.[77]

(2) The ban's objective is not to protect public morals

To determine the objective of the ban, this court considers the State's "articulation of the objective … it pursues through its measure [and] the texts of statutes, legislative history, and other evidence regarding the structure and operation".[78] In *EC-Seal Products*, public survey results were held as "informative … *to a limited extent* … in demonstrating the public's concerns".[79] This recognizes that survey results are less direct than the text or legislative history for discerning legislative intent behind a measure. To infer that the objective is public morals from the evidence, Astor must show that there is "no room for reasonable doubt".[80]

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[74] R¶26.
[75] R¶14.
[76] R¶14-17, 24.
[77] R¶34.
[78] Appellate Body Report, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products* ,WTO Doc. WT/DS401/AB/R (adopted Jun. 18, 2014), ¶5.144. [hereinafter Seal Products Appellate Report].
[79] Seal Products Appellate Report, ¶5.135.
[80] Corfu Channel (United Kingdom of Great Britain and Northern Ireland v. Albania), Judgement, [1949] ICJ Rep 4, 18 (9 April). [hereinafter Corfu Channel].

The facts are insufficient for Astor to discharge this burden. First, Astor did not pass a ban on domestic trophy hunting despite widespread public opposition to the practice.[81] Since Astor passed an import ban with similarly high levels of public opposition, this casts serious doubt on the inference that the Astori legislature was concerned with public morals.

Second, the temporal and causal proximity between the 2022 Survey and the import ban is unclear; at best, the survey shows Astori dissatisfaction with trophy hunting, not that the legislature was motivated by the same concerns.

Third, Astor's import ban is likely a response to Rishmak's perceived intransigence on the issue of trophy hunting. In May 2022, Astor conveyed its concerns with Rishmak's policy of allowing Astori nationals to hunt and export RM hunting trophies.[82] Shortly after Rishmak explained that this policy comports with international law,[83] Astor imposed the import ban on all hunting trophies.[84] This would better explain the passing of the import ban and the failure of the domestic hunting ban; the object was to restrict Rishmak's exports rather than to protect public morals.

(3) The ban is not necessary

The necessity analysis is a weighing and balancing of factors including the importance of the objective, the contribution of the measure to that objective, and the trade-restrictiveness of the measure.[85] Should less trade-restrictive and equally efficacious measures be "reasonably available", the measure will be unnecessary.

[81] R¶30.
[82] R¶19.
[83] R¶22.
[84] R¶29.
[85] Seal Products Appellate Report, ¶5.214.

First, the test for importance of an objective is comparable to the test for "risks of non-fulfilment under Article 2.2 of the TBT Agreement"[86]; it inquires into "the nature of the risks and the gravity of the consequences of non-fulfilment of the objective of the challenged measures".[87] Presently, the consequences of non-fulfilment are of little gravity as animal welfare is not anchored in Astori morality. Even if the Astoris are concerned with animal welfare and the objective is important, this is not dispositive of the necessity inquiry.

Second, the import ban's contribution towards protecting public concerns about trophy hunting is drastically reduced. The import ban only obliquely addresses trophy hunting abroad; trophy hunting abroad persists and domestic trophy hunting remains unabated.

Third, instead of adopting reasonably available less-trade restrictive alternatives, Astor imposed a blanket ban – the most trade-restrictive of measures. In *EC – Seal Products,* the EU's seal-products import ban with exceptions for certain Indigenous communities passed the necessity analysis.[88] The EU's ban was not total but this did not stop the Appellate Body from finding that it sufficed to address public morals. Similarly, Astor could have employed a less trade-restrictive alternative by adding an Indigenous exception to the import ban to accommodate the DG's interests. This alternative's effectiveness in addressing Astori public moral concerns is not reduced as all non-RM hunting trophies are still caught. Alternatively, fines and tariffs on hunting trophies reflect such public concerns by inflicting financial penalties on trophy hunters.

[86] Seal Products Panel Report, ¶7.632.
[87] Panel Reports, *Australia — Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* , WTO doc. WT/WT/DS435/R ; WT/DS441/R ; WT/DS458/R ; WT/DS467/R,¶7.1321.(Adopted Aug. 27, 2018).
[88] Seal Products Appellate Report, ¶ 5.200.

B. Astor cannot prove the import ban relates to conservation of exhaustible natural resources

(1) The ban does not relate to conservation of "exhaustible natural resources"

In *US-Shrimp*, the sea turtles that the US sought to conserve were found to be "exhaustible" because they were listed on Appendix 1 of the CITES.[89] While the RM could be considered an exhaustible natural resource, Astor's import ban is overinclusive, covering all species irrespective of their need for protection against exploitation.[90]

(2) The ban does not "relat[e] to" conservation

There must be "a close and genuine relationship of ends and means" between that measure and the measure-imposing State's objective.[91] The measure must also be "primarily aimed" at conservation.[92] Relevant factors include legislative intent and predictable effects of the imposed measure. Presently, the import ban has predictable adverse outcomes for RM conservation: it severs substantial funds that currently go towards conservation.

Further, Astor cannot prove beyond reasonable doubt that the ban's primary purpose is conservation.[93] At best, the 2022 survey proves that many Astoris are concerned with trophy hunting,[94] not that such concerns were motivated by conservation.[95] In fact, the evidence suggests otherwise: ASHTA's campaign was mounted against using trophy animals "for the

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[89] US-Shrimp Appellate Report,¶132.
[90] R¶28-29; Convention on International Trade in Endangered Species of Wild Fauna and Flora, art. 2, ¶1, Mar. 3, 1973, 993 U.N.T.S. 243 [hereinafter CITES].
[91] Appellate Body Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum* ,WTO Doc.WT/DS431/AB/R,WT/DS432/AB/R ,WT/DS433/AB/R (Adopted Aug. 29, 2014), ¶5.90. [hereinafter China-Rare Earth Appellate Report].
[92] Report of the Panel, *Canada—Measures Affecting Exports of Unprocessed Herring and Salmon* , ¶ 4.70 , L/6268 (Mar. 22, 1988), GATT B.I.S.D (35th Supp.).
[93] Corfu Channel, 18.
[94] R¶28.
[95] R¶33-34.

bragging rights of humans".[96] Even if the Astori nationals were motivated by conservation concerns,[97] this cannot prove that the Astori legislature shared the same primary purpose.[98]

(3) The ban is not made effective in conjunction with restrictions on domestic production or consumption

When international trade is restricted, effective restrictions must be imposed on domestic production or consumption, especially where domestic consumption substantially accounts for the exhaustible natural resource to be conserved.[99] While evenhandedness is not required,[100] there is a need to "ensure authenticity of concern for conservation by ensuring that the major burden of the conservation is not imposed on foreign interests".[101] Since Astor banned all hunting trophies imports, the "exhaustible natural resources" Astor wishes to conserve are likely game animals in general.[102] However, even assuming all game animals are exhaustible natural resources, Astor has not enacted any domestic measures to protect them. Astor neither restricted domestic hunting of Astori wildlife,[103] nor restrained its nationals from hunting abroad.[104] Conversely, every year, thousands of game animals are hunted in Astor and beyond.[105]

[96] R¶25.
[97] R¶28.
[98] R¶29.
[99] China-Rare Earth Appellate Report, ¶5.132.
[100] China-Rare Earth Appellate Report, ¶5.127.
[101] Joel P Trachtman, *The WTO Jurisprudence of Article XX(g) and the Conservation of Natural Resources* in ECONOMIC INTERNATIONAL LAW AND GOVERNANCE 58, 65 (Julien Chaisse & Tsai-Yu Lin eds., 2016).
[102] R¶29.
[103] R¶34.
[104] R¶17.
[105] R¶25.

(4) Reading the exception harmoniously with the precautionary principle confirms that the exception does not apply

The precautionary principle is a customary norm that States should avoid environmentally sensitive activities and take precautionary measures where there is potential hazard but scientific uncertainty as to its impact.[106] States must demonstrate that the activity is not harmful before proceeding.[107] This customary norm is relevant as the ARTA's object and purpose is the expansion of regional trade in a manner consistent with environmental protection and conservation.[108] Presently, Astor's import ban will sever funds for RM conservation, thereby adversely affecting the species' survival, and obliges Astor to demonstrate the lack of harm.

(5) Reading the exception harmoniously with the customary norm of sustainable development confirms that the exception does not apply

Sustainable development is a customary norm that requires integrating environmental considerations into economic development.[109] States must ensure activities under their jurisdiction "do not cause damage to the environment of other States" and are required to cooperate in the "spirit of global partnership to conserve [and] protect . . . the health and integrity of the Earth's ecosystem".[110] This rule is relevant as the ARTA's object and purpose is to promote sustainable development.[111] Presently, the import ban is inconsistent with sustainable development. The import ban adversely affects Rishmak's economic development,

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[106] Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area, Case No. 17, Advisory Opinion, Feb. 1, 2011, ITLOS Rep.10, ¶126..
[107] Philippe Sands & Jacqueline Peel, *Principles of International Environmental Law* 234 (4th ed. Cambridge University Press 2018).
[108] R¶12.
[109] Gabcikovo-Nagymaros Project (Hungary v Slovakia), 1997 I.C.J. 162.
[110] U.N., Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992), Principles 2, 7.
[111] R ¶12.

exacerbated by the fact that Rishmak is a low-income economy. The import ban also stultifies conservation efforts of the RM, exacerbated by the species' dangerously low numbers.

C. Astor's import ban does not comply with the chapeau

(1) The import ban is arbitrary

Discrimination that is not rationally related to that measure's policy objective, or a measure that goes against its stated objective, is arbitrary.[112] By imposing the import ban, Astor supports domestic trophy hunting but discriminates against trophy hunting abroad. Such discrimination neither relates to conserving the RM nor public concerns about the welfare of the RM.[113] Further, banning imports severs funds for *mycoplasma capricolum* prevention, treatment, and vaccines,[114] stultifying RM conservation.

Arbitrariness also encompasses procedural fairness such as a duty to have regard to other States' interests,[115] to be flexible in applying the measure so as to "allow for [an] inquiry into the appropriateness of the regulatory program for the conditions prevailing in ... exporting countries" [116] as well as a duty to give reasons.[117] This comports with ARTA's inclusion of "sustainable development" [118] which includes a duty to cooperate when addressing transboundary environmental issues.[119] In *US – Shrimp*, the US' "rigidity and inflexibility" in implementing their measures, and their refusal to give reasons for rejecting applications, were

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[112] Appellate Body Report, *Brazil — Measures Affecting Imports of Retreaded Tyres*, WTO Doc. WT/DS332/AB/R (Adopted Dec. 17, 2007), ¶227-228.
[113] See Part II (A) and (B).
[114] R ¶16,31.
[115] Christian Riffel, *The Chapeau: Stringent Threshold or Good Faith Requirement*, 45(2) Legal Issues Econ. Integration 141, 152 (2018).
[116] US-Shrimp Appellate Report, ¶165.
[117] Christian Riffel, *The Chapeau: Stringent Threshold or Good Faith Requirement*, 45(2) Legal Issues Econ. Integration 141, 166 (2018).
[118] R¶12.
[119] Robyn Briese, *Precaution and Cooperation in the World Trade Organization: An Environmental Perspective* , 22 Austl.Y.B. Int'l. L. at 11-12 and 39.

found to be arbitrary.[120] Astor did not notify or consult Rishmak about their import ban,[121] and dismissed concerns Rishmak raised on the ban's adverse effects on the DG who are highly dependent on trophy hunting.[122] Further, Astor gave no reasons when refusing to accept Rishmak's non-detriment finding.[123]

Specifically for Art XX(g), the existence of less-trade restrictive alternatives that also achieve conservation outcomes would support a finding of arbitrariness.[124] Possible alternatives include introducing an exception for the DG or imposing tariffs and fines on hunting trophies.

(2) The import ban is a disguised restriction on international trade

A restriction on trade is disguised if the measure purports to have legitimate purposes, but actually disguises a true purpose of protecting domestic production.[125] Astor's assertions that the ban achieves legitimate objectives of public morals and conservation are unfounded.[126] In fact, the import ban prevents hunting trophies from entering Astor while allowing domestic trophy hunting.[127] Since trophies are trophy hunting's raison d'etre, the ban boosts Astor's domestic trophy hunting industry by eliminating foreign competition.

III. Astor violates the CITES

The CITES aims to protect wild fauna and flora against over-exploitation through international trade, recognizes that international cooperation is essential for such protection, and introduces

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[120] US-Shrimp Appellate Report, ¶165,177.
[121] R¶29.
[122] R¶21-23.
[123] R¶33.
[124] Panel Report, *China — Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum*,WTO doc, WT/DS431/R, WT/DS432/R, WT/DS433/R (Adopted Aug. 19, 2014),¶7.354.
[125] Chang Fa Lo, *The Proper Interpretation of 'Disguised Restriction on International Trade' under the WTO: The Need to Look at the Protective Effect*, 4(1) J. Int'l Disp. Settlement. 111, 129-131 (2013).
[126] See Part II(A) and (B).
[127] R¶34; A¶7.

a regulatory framework where import States and export States work together in the control of trade.[128] Astor's actions which culminated in the import ban ran counter to international cooperation, violating Article III and XIV.

A. Astor violates the obligation to accept Rishmak's non-detriment finding

The CITES' Article III imposes conditions on granting permits for export and import, including (a) that the Scientific Authority of the exporting State has advised that such export will not be detrimental to survival,[129] and (b) the Scientific Authority of the importing State has advised that the import will be for purposes not detrimental to survival.[130] To achieve complementary control of trade in the most effective and comprehensive manner, the COP in Resolution 2.11 recommended that unless there is contradicting data, the importing State's Scientific Authority accept the non-detriment finding of the exporting State's Scientific Authority.[131] Despite agreeing to adopt this recommendation,[132] Astor did not accept Rishmak's non-detriment finding and imposed an import ban.[133]

While not binding on its own, Resolution 2.11 interprets the CITES' Article III which is binding on Astor as a "subsequent agreement between the parties regarding the interpretation of the treaty".[134] In *Whaling in the Antarctic*, this court held that resolutions of treaty bodies passed by consensus are relevant for treaty interpretation.[135] There, the court did not use certain resolutions to interpret the ICRW only because Japan, one of the disputing parties, did not vote

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[128] CITES, Preamble, ¶4.
[129] CITES, art. 3,¶2(a).
[130] CITES, art. 3,¶3(a).
[131] CITES Conf. of Parties, Res Conf.2.11(rev.),¶ 1(b) (1994).
[132] A¶8.
[133] R¶17.
[134] VCLT art 31(3)(a).
[135] Whaling in the Antarctic (Australia v. Japan: New Zealand intervening), Judgement, [2014] ICJ Rep 226, ¶46, [Hereinafter Whaling in the Antarctic].

for them.[136] Conversely, both Astor and Rishmak formed part of the consensus that adopted Resolution 2.11.[137]

In any event, Resolution 2.11 binds Astor by virtue of estoppel. Estoppel requires (a) a State to make clear representations; (b) an authorized agent made such representations; (c) the invoking State was induced to act to its detriment; and (d) such reliance was legitimate.[138]

Presently, all elements are met. Astor clearly represented that it would adhere to the recommendations under Resolution 2.11. First, Astor voted for the resolution.[139] Second, before this dispute, Astor imported RM trophies with all appropriate CITES permits,[140] including import permits issued by Astor upon satisfaction that there was no detriment to the species. Since Astor has yet to furnish any contrary scientific finding on the Auction Policy's effects on RMs, Astor consistently relied on Rishmak's non-detriment finding. Rishmak relied on this representation, assumed that Astor would continue to act in accordance with Resolution 2.11, and continued pursuing the Auction Policy. Rishmak suffered detriment from Astor's sudden reversal and imposition of the import ban: Rishmak had to refund Astori hunters who purchased RM hunting rights in winter 2022-2023 and has been unable to auction off such rights,[141] depriving the DG of critically necessary funds for survival.

[136] Whaling in the Antarctic, ¶83.
[137] A¶8.
[138] Chagos Marine Protected Area Arbitration (Mauritius v. UK), PCA Repository 2015,¶438 (Perm. Ct. Arb).
[139] A¶8.
[140] R¶17.
[141] R¶31.

B. Astor violates its obligation to notify and consult Rishmak before imposing the import ban

Under Article XIV of the CITES, parties may adopt stricter conditions for trade.[142] Recognizing that range States invest significant resources in — and aware that some parties face challenges when — making scientifically based non-detriment findings, the COP in Resolution 17.9 recommended that exporting and importing States "maintain a close dialogue"[143] and "make every reasonable effort to notify range States of the species concerned at as early a stage as possible prior to the adoption".[144] Similar to Resolution 2.11, Resolution 17.9 constitutes a binding subsequent agreement on the interpretation of the CITES. Therefore, before adopting stricter conditions, there is an obligation to notify and consult, which Astor failed to do before imposing the import ban on Rishmak.

C. Reading these obligations harmoniously with the customary rule of good neighborliness confirms Astor's violations

Good neighborliness encompasses respect for independence, economic, and social system of one's neighbor, includes a duty not to bar them from the fullest possible participation in economic cooperation,[145] and finds expression in mutual aid.[146] This customary rule is relevant given that international co-operation forms the foundation of the CITES' regulatory framework.[147] Therefore, the CITES' obligations — for parties to cooperate by accepting the non-detriment findings and to notify and consult before imposing stricter conditions —

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[142] CITES art 14, ¶1(a).
[143] CITES Conf. of Parties, Res Conf.17.9 ,¶6, (2016) [Hereinafter CITES Res 17.9].
[144] CITES Res 17.9, ¶8.
[145] Clarence Wilfred Jenks, *Tolerance and Good Neighborliness As Concepts of International Law*, 9 Malaya L. Rev. 1, 7 (1967) [hereinafter Jenks, *Good Neighbourliness*].
[146] Jenks, *Good Neighbourliness* 8.
[147] VCLT art 31(3)(c); CITES Preamble, ¶4.

comports with this custom. Astor failed to respect Rishmak's efforts to work together in the control of trade, barred Rishmak from participating in a mutually profitable economic intercourse, and refused aid.

IV. Astor cannot rely on the CITES to excuse its violation of the ARTA

By choosing to be a party to the CITES and the ARTA,[148] Astor commits to performing its obligations under both treaties.[149] The CITES expressly states that it will not affect obligations deriving from trade agreements.[150] As both treaties cover the same subject matter of trade regulation, the CITES (being the earlier treaty) applies only to the extent that its provisions are compatible with the ARTA.[151] Since the ARTA's Article 20 circumscribes the permitted trade regulations, the CITES will not apply to authorize any trade regulation falling outside these limits.

[148] VCLT art 2(1)(g).
[149] VCLT art 26.
[150] CITES, art. XIV, ¶3.
[151] VCLT art 30(3).

CONCLUSION AND PRAYER FOR RELIEF

The Respondent, Rishmak, respectfully requests the Court to adjudge and declare that:

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

Respectfully submitted,

AGENTS FOR THE RESPONDENT