

Questions Relating to Subsistence Use and Trophy Hunting (Astor v. Rishmak)



SURANA & SURANA SAARC REGIONAL ROUNDS

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RECORD

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NOTIFICATION, DATED 31 JULY 2024, ADDRESSED TO
THE MINISTER OF FOREIGN AFFAIRS OF ASTOR
AND
THE MINISTER OF FOREIGN AFFAIRS OF RISHMAK

The Hague, 31 July 2024.

On behalf of the International Court of Justice, and in accordance with Article 26 of the Rules of Court, I have the honor to acknowledge receipt of the joint notification dated 1 July 2024. I have the further honor to inform you that the case of Questions Relating to Subsistence Use and Trophy Hunting (Astor v. Rishmak) has been entered as 2024 General List No. 175. The written proceedings shall consist of memorials to be submitted to the Court by 15 November 2024. Oral proceedings are scheduled for 9–12 April 2025.

/s/ _____
Registrar
International Court of Justice

JOINT NOTIFICATION, DATED 1 JULY 2024, ADDRESSED TO
THE REGISTRAR OF THE COURT

The Hague, 1 July 2024.

On behalf of Astor and Rishmak, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, we have the honor to transmit to you an original copy of the English texts of the Special Agreement Between Astor and Rishmak for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Subsistence Use and Trophy Hunting, signed at Ashgabat, Turkmenistan, on 24 May 2024.

For Astor:

/s/ _____
Pria C. Sucron
Minister of Foreign Affairs

For Rishmak:

/s/ _____
Carl Pan Facerio
Minister of Foreign Affairs

SPECIAL AGREEMENT
BETWEEN
ASTOR
AND
RISHMAK
FOR SUBMISSION TO THE
INTERNATIONAL COURT OF JUSTICE
OF DIFFERENCES BETWEEN THEM CONCERNING
QUESTIONS RELATING TO SUBSISTENCE USE AND TROPHY HUNTING

Astor and Rishmak,

Recalling that Astor and Rishmak are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Emphasizing that Astor and Rishmak are range states of the Royal Markhor,

Noting that Astor and Rishmak are Parties to the Convention on the Conservation of Migratory Species of Wild Animals,

Considering that Astor and Rishmak are Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora,

Bearing in mind that Astor and Rishmak are Parties to the Astor-Rishmak Trade Agreement,

Recognizing that differences have arisen between Astor and Rishmak concerning trophy hunting in Rishmak and the export of Royal Markhor trophies to Astor,

Acknowledging that Astor and Rishmak have been unable to settle their differences through negotiation,

Desiring that the International Court of Justice, hereinafter referred to as “the Court,” consider these differences,

Desiring further to define the issues to be submitted to the Court,

Have agreed as follows:

Article I

Astor and Rishmak, hereinafter referred to as “the Parties,” shall submit the questions contained in Annex A of this Special Agreement to the Court pursuant to Article 40, paragraph 1 of the Statute of the International Court of Justice. The Parties agree that the Court has jurisdiction to decide this matter and that they will not dispute the Court’s jurisdiction in the written or oral proceedings.

Article II

1. The Parties shall request the Court to decide this matter on the basis of the rules and principles of general international law, as well as any applicable treaties.
2. The Parties also shall request the Court to decide this matter based on the Agreed Statement of Facts, attached as Annex A, which is an integral part of this Agreement.
3. The Parties also shall 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.

Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties. The arguments shall focus on the treaties referenced in the Annex.
3. The written pleadings shall be consistent with the Rules for the 2024–2025 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading after it has been submitted to a national or regional round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the national or regional round.

Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.

3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

Article V

This Special Agreement shall enter into force upon signature.

DONE at Ashgabat, Turkmenistan, this 24th day of May 2024, in two copies, each in the English language, and each being equally authentic.

For Astor:

/s/ _____
Pria C. Sucron
Minister of Foreign Affairs

For Rishmak:

/s/ _____
Carl Pan Facerio
Minister of Foreign Affairs

ANNEX A

1. The Royal Markhor (*Capra rojali*) is a critically endangered large, wild goat that is native to several countries in Central Asia.¹ The Royal Markhor is known for its distinctive iridescent spiral horns and splashes of reddish and pink fur. The range of the Royal Markhor once extended over six countries, but primarily due to habitat loss, disease, and hunting (both legal and illegal), the species now lives in only Astor and Rishmak. The most current census of the species (conducted in 2023) determined that the population consists of 2200 individuals. Adult females and their young live in herds of about ten individuals, while adult males (which make up approximately 20% of the population) are generally solitary.
2. Astor is a sovereign state with a population of 220 million people. Under the World Bank's classification system, Astor is a high-income country with a highly diversified economy.
3. Rishmak is a sovereign state with a population of 3.5 million people, including an Indigenous community, the Dione Ginsu, which consists of approximately 4,000 members. Under the World Bank's classification system, Rishmak has a low-income economy. Poverty rates within Rishmak are highest in the Dione Ginsu community.
4. Astor and Rishmak share a border, over which Royal Markhors migrate. In the fall and winter, most Royal Markhor individuals are in the territory of Rishmak. During the warmer spring and summer, they migrate to cooler, higher altitudes in the territory of Astor.
5. Astor and Rishmak are Members of the United Nations (UN) and are Parties to the Statute of the International Court of Justice.
6. Astor and Rishmak are Parties to the Vienna Convention on the Law of Treaties.
7. Astor and Rishmak are Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), each since 1975. The Royal Markhor was added to CITES Appendix I in 2007.
8. Astor and Rishmak are Parties to the Convention on the Conservation of Migratory Species of Wild Animals (CMS), each since 1983. The Royal Markhor was listed on CMS Appendix I in 2008.
9. Rishmak is a Party to the Indigenous and Tribal Peoples Convention, 1989 (ILO Convention 169) and the International Covenant on Economic, Social and Cultural Rights. Astor is not a Party to either agreement.
10. In 2007, Rishmak voted in the UN General Assembly in favor of adoption of the UN Declaration on the Rights of Indigenous Peoples. Astor abstained from voting.

¹ The Royal Markhor is considered a separate species and distinct from *Capra falconeri* or any other species or subspecies of markhor.

11. In 2003, Astor and Rishmak signed and ratified a bilateral trade agreement, entitled the Astor-Rishmak Trade Agreement (ARTA).

12. The relevant portions of the ARTA provide as follows:

Astor and Rishmak, hereinafter referred to as “the Parties,” resolve to:

Strengthen the special bonds of friendship and cooperation among their peoples;

Contribute to the harmonious development and expansion of regional trade and provide a catalyst to broader international cooperation;

Ensure a predictable commercial framework for business planning and investment;

Undertake each of the preceding in a manner that is consistent with environmental protection and conservation;

Enhance and enforce environmental laws and regulations, and strengthen cooperation on environmental matters;

Promote sustainable development;

Encourage enterprises operating within their territory or subject to their jurisdiction to respect internationally recognized corporate social responsibility standards and principles and to pursue best practices;

Promote broad-based economic development to reduce poverty; and

Preserve their flexibility to safeguard the public welfare.

The Parties have agreed as follows:

* * *

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 measures, shall be instituted or maintained by any Party regarding the importation of any product from the territory of any other Party.

* * *

Article 20: General Exceptions

Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures, so long as such measures are not arbitrary and do not constitute a disguised restriction on international trade, that are:

(a) necessary to protect public morals;

* * *

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

* * *

Article 25: Settlement of Disputes

1. Any differences between the Parties concerning the interpretation or application of this Agreement or any arrangements arising therefrom shall, as far as possible, be settled amicably between the Parties. Whenever necessary, an appropriate body shall be designated for the settlement of disputes.

2. Decisions by GATT and WTO panels or appellate bodies shall be considered subsidiary sources of law with respect to the interpretation of terms of this Agreement.

13. The ARTA has been registered in accordance with Article 102 of the Charter of the United Nations.
14. The national laws of Astor strictly prohibit the taking (defined consistently with CMS) of the Royal Markhor. Rishmak also has a statute that strictly prohibits the taking of the Royal Markhor but with an exception for the Dione Ginsu community living in Rishmak, which has had a relationship with the Royal Markhor since time immemorial. Traditionally, when a male member of the Dione Ginsu reaches adulthood, he is required to hunt and kill a male Royal Markhor. The meat is shared with the community, and the horns have cultural and religious significance. The Dione Ginsu consider the horns to symbolize strength and prosperity. Members of the Dione Ginsu who acquire horns display them in the entrance of their homes. The horns also are used in ceremonies, such as when members of the Dione Ginsu marry and when they die. Although originally the Dione Ginsu hunted the Royal Markhor with handmade bows and arrows, in more recent times they have used manufactured crossbows.
15. In 2009, after the Royal Markhor was added to CMS Appendix I, Rishmak instituted a lottery system for Dione Ginsu males reaching adulthood in which only ten (10) Royal Markhors were permitted to be hunted annually.

16. Beginning in 2016, rather than allowing male members who win the lottery to conduct a hunt, the Dione Ginsu community annually auctioned off the right to hunt the Royal Markhors to foreign hunters, subject to the numerical cap imposed by Rishmak. The auction took place at a trophy hunting safari convention held at a casino in Astor. Minimum bids were USD \$100,000 per Royal Markhor, and frequently the winning bid was approximately USD \$150,000 per Royal Markhor. The Dione Ginsu community used 30% of the money for community housing expenses, 30% for community medical expenses, and 15% for community food expenses. Fifteen percent was allocated for Royal Markhor conservation programs, and 10% was paid to the casino and the convention organizer.
17. The winning bidders at the auctions have been almost exclusively Astori nationals, who use rifles when hunting Royal Markhor. The trophy hunters are required to hire Dione Ginsu guides, who use the scent of female Royal Markhors as bait to lure male Royal Markhors to ensure a successful hunt. After each successful trophy hunt, the meat is always shared with the Dione Ginsu community. The hide and horns were usually imported to Astor with the appropriate CITES permits, until this dispute occurred.
18. The Royal Markhor is particularly susceptible to *Mycoplasma capricolum* infections, which cause respiratory distress and a high mortality rate (estimated between 10-30%). The most likely source of such infections occurs when Royal Markhors come into contact with domestic goats with *Mycoplasma capricolum*. The funds from the auctions allocated to conservation programs are principally used for research to develop vaccines and other treatments to respond to *Mycoplasma capricolum* and other disease threats to the Royal Markhor. Portions of the funds are also used for workshops to educate the Dione Ginsu community about the importance of ensuring that domestic goats are not permitted to roam free (or escape) so as to reduce the risk of cross-species transmission of *Mycoplasma capricolum*.
19. On 22 May 2022, the following diplomatic note was forwarded to the Government of Rishmak:

The Embassy of Astor presents its compliments to the Government of Rishmak and wishes to convey its concerns about the taking of the Royal Markhor in violation of the Convention on the Conservation of Migratory Species of Wild Animals (CMS).

Because the Royal Markhor is listed on CMS Appendix I, Royal Markhors are entitled to receive the highest levels of protection. CMS Article III provides that “Parties that are Range States of a migratory species listed in Appendix I shall prohibit the taking of animals belonging to such species.” Only limited exceptions are contemplated, such as members of an Indigenous community harvesting a species for subsistence use (i.e., food). In our view, the hunting of Royal Markhors by non-Indigenous, non-traditional subsistence users (including Astori nationals) is contrary to the text and purpose of the CMS.

We wish to open a dialogue on this matter.

Please accept the assurance of my highest consideration.

/s/ _____
Wren Rosch
Ambassador

20. On 16 June 2022, the following diplomatic note was forwarded to the Government of Astor:

The Embassy of Rishmak presents its compliments to the Government of Astor and has the honor to acknowledge receipt of the diplomatic note dated 22 May 2022.

As an initial matter, Rishmak notes that the Dione Ginsu community has the right to hunt the Royal Markhor under international law. See, e.g., ILO 169 Article 23 and UN Declaration on the Rights of Indigenous Peoples Article 26. If the Dione Ginsu community wishes to transfer this right, that is within the community's purview, and Rishmak wholly supports and endorses this action.

With respect to CMS Article III, paragraph 5, we point out that the taking of an Appendix I species is permitted when:

- (b) the taking is for the purpose of enhancing the propagation or survival of the affected species; [or]
- (c) the taking is to accommodate the needs of traditional subsistence users of such species.

Both provisions are applicable here. The funds from the auction are used to respond to a grave threat to the continued existence of the Royal Markhor. Furthermore, the taking of a limited number of individual Royal Markhors accommodates the needs of the Dione Ginsu community, the traditional subsistence users of the Royal Markhor, by providing money for critically necessary housing, medicine, and food, all of which constitute "subsistence," as that term is used in international law. Under the International Covenant on Economic, Social and Cultural Rights (ICESCR), "[i]n no case may a people be deprived of its own means of subsistence." In this context, Articles 11 and 12 of the ICESCR recognize the right to food, housing, and physical health.

Please accept the assurance of my highest consideration.

/s/ _____
N.T. Serpe
Ambassador

21. On 13 September 2022, the Government of Astor sent a diplomatic note to the Government of Rishmak that stated in part:

Setting aside 15% for conservation purposes does not satisfy the requirements of CMS Article III, paragraph 5(b). For paragraph 5(b) to apply, the *primary* purpose of the taking must be for enhancing the survival of the species. Note that paragraph 5(b) uses the definite article—“the”—rather than an indefinite article. Accordingly, the taking must be for *the* purpose of enhancing the species’ survival; it must be the primary motivation. Simply asserting that enhancing the species’ survival is *a* purpose is insufficient. In this case, the purpose of the taking by non-traditional subsistence users is primarily to raise money for housing and medical expenses. Paragraph 5(b) therefore does not apply.

Additionally, Paragraph 5(c) of Article III offers no justification for the taking of the Royal Markhor by non-traditional subsistence users. This provision is most reasonably read to require the subsistence users to conduct the taking. Moreover, “accommodate the needs of traditional subsistence users” implies that the need must be related to how the traditional subsistence users traditionally used the Royal Markhor—for food, religious, and cultural reasons.

22. On 1 November 2022, the Government of Rishmak sent a diplomatic note to the Government of Astor that stated in part:

Rishmak rejects such arguments and such a restrictive reading of Article III exceptions. With respect to subsistence use, we observe that the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC) offers an analogous example. The IAC prohibits the intentional killing of sea turtles, including the harvesting of sea turtle eggs, but makes an exception “to satisfy economic subsistence needs of traditional communities . . . provided that such exceptions do not undermine efforts to achieve the objective of this Convention.” The IAC Parties have interpreted this provision to allow for the collection and sale of turtle eggs. The exception applies not only to those who collect and eat the eggs, but also to those who collect and sell the eggs and use that money for subsistence needs. See, e.g., Resolution CIT-COP10-2022-R5, Exceptions under Article IV (3a and 3b) for Subsistence Harvesting of *Lepidochelys olivacea* Eggs in Costa Rica.

23. On 6 November 2022, the Government of Astor sent a diplomatic note to the Government of Rishmak that stated in part:

We note that in the IAC example, the egg extraction is conducted by members of the local communities—not foreign nationals. A better analogy may be found under the International Convention for the Regulation of Whaling, which makes a distinction between aboriginal subsistence whaling and commercial whaling. In the instant case, the sale of hunting rights through an auction falls on the commercial side of the line.

24. After Cecil the Lion was shot and killed in Zimbabwe by a United States national in 2015, non-governmental organizations in Astor opposed to trophy hunting used the incident to raise awareness about the activity. The Astor Society for the Humane Treatment of Animals (ASHTA), which has 12 million members, is the largest such organization in Astor.
25. In 2016, ASHTA launched a campaign called “Ban Trophy Hunting Now!” The campaign called on the Astor legislature to ban the importation of trophy animals. A typical ASHTA posting stated:

We must halt the killing of wildlife for the bragging rights of humans.

Trophy hunters murder thousands of wild animals in Astor and around the world every year. Why? Not for food, but to obtain body parts (heads, horns, claws) to display. These “sportsmen” (and women) cruelly bait and hound their targets. They often engage in canned hunts, in which the animals have no chance of escape.

Trophy hunting is an Astori problem.

Astori trophy hunters pay big money to kill animals in other countries. They also kill domestically, with bears, bobcats, panthers, and other Astori wildlife as victims, disrupting the delicate balance of our natural ecosystems.

26. Responsible Hunters in Astor (RHINA), a non-governmental organization with 50,000 members that promotes sustainable hunting and fishing, responded with its own campaign to defend trophy hunting. RHINA emphasized a 2016 IUCN briefing paper titled [*Informing decisions on trophy hunting*](#) to support its position, emphasizing that properly managed trophy hunting can provide demonstrable conservation benefits.
27. ASHTA enlisted actors and other celebrities to rally public support for a ban on domestic trophy hunting and a ban on the importation of hunting trophies. For example, one famous comedian, Gary Vickeris (known for his dyspeptic view of humanity), stated:
- One of the most immoral acts in the world is shooting an animal just for fun and then bragging about it. It’s just sickening, cowardly, and downright deranged. Royal Markhors are amazing creatures that are very special to me. I hope people support the campaign to ban trophy hunting and end this sick so-called sport for good.
28. Polling about public attitudes in Astor about trophy hunting found consistent opposition to the practice. In 2022, a survey, which was properly weighted to be nationally representative of key demographics, such as age, gender, and region, asked the following questions:

Do you support or oppose trophy hunting of wild animals in Astor?
(80% opposed, 12% supported, and 8% had no opinion)

Do you support or oppose trophy hunting of wild animals abroad?
(79% opposed, 12% supported, and 9% had no opinion)

Do you support or oppose trophy hunting of internationally protected animals
(such as rhinos, elephants, Royal Markhors)?
(90% opposed, 5% supported, and 5% had no opinion)

Do you support or oppose the importation of trophies of dead animals from other
countries?
(91% opposed, 5% supported, and 4% had no opinion)

29. On 11 December 2022, the national legislature of Astor enacted a law that prohibited the importation of hunting trophies. It passed the lower chamber of the legislature by a vote of 387-13. It passed the upper chamber of the legislature by a vote of 98-2. The law was effective immediately.
30. Proposed legislation to ban domestic trophy hunting in Astor was not enacted, with the bill failing to receive majority votes in committees in both chambers of the Astori legislature.
31. Astori hunters who had purchased the right to take a Royal Markhor in winter 2022-2023 demanded and received refunds as they were no longer permitted to import hunting trophies into Astor. As a result of the ban on the importation of hunting trophies, the Dione Ginsu have been unable to auction off the right to hunt the Royal Markhor.
32. On 3 March 2023, the Government of Rishmak sent a diplomatic note to the Government of Astor that stated in part:

The ban on the importation of Royal Markhor hunting trophies is an infringement on the subsistence rights of the Dione Ginsu. . . .

We also wish to remind you that the Scientific Authority of Rishmak has advised that such limited export will not be detrimental to the survival of the Royal Markhor and that CITES Resolution 2.11 obliges the Scientific Authority of Astor to accept this non-detriment finding. The ban is counterproductive—by depriving funding for the conservation of the Royal Markhor, the ban makes it more likely that this iconic species will go extinct.

Furthermore, the ban is an impermissible quantitative restriction in violation of ARTA Article 11.

33. On 22 April 2023, the Government of Astor sent a diplomatic note to the Government of Rishmak that stated in part:

Although we concede that the ban on the importation of Royal Markhor hunting trophies is a quantitative restriction, such an action is justified under ARTA

Article 20(a) as necessary to protect public morals. The ban is consistent with the WTO Appellate Body's decision in *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, in which public morals concerns were recognized to include animal welfare concerns and that it is permissible to distinguish between Indigenous hunting and commercial hunting. It is also permitted by ARTA Article 20(g), as the ban relates to conserving a natural resource. Allowing commercial hunting can lead to increased poaching.

Furthermore, such a ban is authorized by CITES. See, e.g., Resolution 17.9, Trade in hunting trophies of species listed in Appendix I or II, and Resolution 13.7, Control of trade in personal and household effects. With the passage of the legislation, the Astori Management Authority may not issue an import permit for Royal Markhor hunting trophies. Such an action is entirely consistent with CITES Article XIV, paragraph 1(a), which provides that CITES “shall in no way affect the right of Parties to adopt . . . stricter domestic measures regarding the conditions for trade . . . of specimens of species included in Appendi[x] I, . . . or the complete prohibition thereof.”

34. On 5 June 2023, the Government of Rishmak sent a diplomatic note to the Government of Astor that stated in part:

WTO/GATT case law does not support such a ban for several reasons. First, the moral concern in *Seal Products* about seal hunting primarily related to the method of killing seal pups. Here, however, there is no significant distinction between crossbows and rifles. Thus, ARTA's public morals exception does not apply. Moreover, the ban on the importation of Royal Markhor hunting trophies is an arbitrary measure that makes no sense in terms of conservation and deprives the Dione Ginsu of funding for housing, medical, and food expenses.

The invocation of ARTA Article 20(g) is similarly misplaced. The ban works crosswise with conserving the Royal Markhor, and we note that domestic trophy hunting in Astor continues to be permitted.

We reject the argument that CITES excuses a breach of the ARTA. Most fundamentally, we note that CITES Article XIV, paragraph 3, expressly states that CITES “shall in no way affect the provisions of, or the obligations deriving from, any treaty, convention or international agreement concluded or which may be concluded between States creating a union or regional trade agreement . . . insofar as they relate to trade among the States members of that union or agreement.”

35. Further negotiations did not resolve the dispute, and Astor and Rishmak agreed to submit the following questions to the ICJ: (1) whether the trophy hunting of the Royal Markhor through the auction process, by hunters who are not Dione Ginsu, violates or complies with conventional international law and (2) whether the ban on the importation of Royal Markhor hunting trophies violates or complies with conventional international law.

36. Rishmak agrees that the auction process, by which hunters who are not Dione Ginsu take Royal Markhors, is attributable to it under international law. Astor agrees that the import ban on hunting trophies of the Royal Markhor constitutes a quantitative restriction under the ARTA.
37. Astor seeks an order from the ICJ declaring that (1) the trophy hunting of the Royal Markhor through the auction process violates conventional international law and (2) the ban on the importation of Royal Markhor hunting trophies complies with conventional international law.
38. Rishmak seeks an order from the ICJ declaring 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.