

**INTERNATIONAL COURT OF JUSTICE**

## **SPECIAL AGREEMENT**

**BETWEEN THE STATE OF AUROK (APPLICANT)  
AND THE REPUBLIC OF RAKKAB (RESPONDENT)  
TO SUBMIT TO THE INTERNATIONAL COURT OF JUSTICE  
THE DIFFERENCES BETWEEN THE PARTIES  
CONCERNING THE KAYLEFF YAK**

**jointly notified to the Court on 14 September 2018**

**COUR INTERNATIONALE DE JUSTICE**

## **COMPROMIS**

**ENTRE L'ÉTAT D'AUROK (DEMANDEUR)  
ET LA RÉPUBLIQUE DE RAKKAB (DÉFENDERESSE)  
VISANT À SOUMETTRE À LA COUR INTERNATIONALE DE JUSTICE  
LES DIVERGENCES QUI OPPOSENT LES DEUX PARTIES  
CONCERNANT LE YAK KAËLEFF**

**notifié conjointement à la Cour le 14 septembre 2018**

**JOINT NOTIFICATION  
ADDRESSED TO THE REGISTRAR OF THE COURT:**

The Hague, 14 September 2018

On behalf of Applicant, the State of Aurok, and Respondent, the Republic of Rakkab, and in accordance with Article 40(1) of the Statute of the International Court of Justice, we have the honor to transmit to you an original of the Special Agreement for submission to the International Court of Justice of the Differences between the Applicant and the Respondent concerning the Kayleff Yak, signed in The Hague, The Netherlands, on the fourteenth day of September in the year two thousand eighteen.

*(Signed)* Her Excellency Handog  
Ambassador of the State of Aurok  
to the Kingdom of the Netherlands

*(Signed)* His Excellency Jelles Kelf  
Ambassador of the Republic of Rakkab  
to the Kingdom of the Netherlands

## **SPECIAL AGREEMENT**

### **SUBMITTED TO THE INTERNATIONAL COURT OF JUSTICE BY THE STATE OF AUROK AND THE REPUBLIC OF RAKKAB ON THE DIFFERENCES BETWEEN THEM CONCERNING THE KAYLEFF YAK**

*The State of Aurok (“Applicant”) and the Republic of Rakkab (“Respondent”) (hereinafter “the Parties”);*

*Considering* that differences have arisen between them concerning the Kayleff Yak and other matters;

*Recognizing* that the Parties have been unable to settle these differences by direct negotiations;

*Desiring* further to define the issues to be submitted to the International Court of Justice (“the Court”) for resolution;

*In furtherance thereof* the Parties have concluded this Special Agreement:

#### *Article 1*

The Parties submit the questions contained in the Special Agreement (together with Corrections and Clarifications to follow) (“the Case”) to the Court pursuant to Article 40(1) of the Court’s Statute.

#### *Article 2*

It is agreed by the Parties that the State of Aurok shall appear as Applicant and the Republic of Rakkab as Respondent, but such agreement is without prejudice to any question of the burden of proof.

#### *Article 3*

The Court is requested to adjudicate the claims of the State of Aurok specified in paragraph 49 below, applying the rules and principles of international law, including any applicable treaties, in accordance with Article 38, paragraph 1, of the Statute of the Court.

#### *Article 4*

- (a) Procedures shall be regulated in accordance with the applicable provisions of the Official Rules of the 2019 Philip C. Jessup International Law Moot Court Competition.
- (b) The Parties request the Court to order that the written proceedings should consist of one round of written Memorials presented by each of the Parties not later than the date set forth in the Official Schedule of the 2019 Philip C. Jessup International Law Moot Court Competition.

*Article 5*

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

In witness whereof, the undersigned, being duly authorized, have signed the present Special Agreement and have affixed thereto their respective seals of office.

Done in New York, the United States of America, this twenty-third day of August in the year two thousand eighteen, in triplicate in the English language.

*(Signed)* MR. REDTAILI  
Minister of Foreign Affairs  
State of Aurok

*(Signed)* DR. DVORAH ZHIVAGO  
Minister of Foreign Affairs  
Republic of Rakkab

# **SPECIAL AGREEMENT**

## **CASE CONCERNING THE KAYLEFF YAK**

*(State of Aurok*  
*v.*  
*Republic of Rakkab)*

1. Fossil records indicate that the Gaur Highlands have been the exclusive habitat of the majestic Kayleff Yak (*Bos mumuensis*, or “the Yak”) for more than 250,000 years. An average adult male Yak weighs between 800 and 900 kilograms and stands 160 centimeters tall at the withers; adult females weigh between 400 and 500 kilograms and stand 150 centimeters. A motivated Yak can reach speeds of up to 45 kilometers per hour, and a migrating herd of Yak can sustain speeds of 25 kilometers per hour for hours at a time. Individual herds of Yak once numbered in the hundreds of thousands and have for millennia migrated thousands of kilometers seasonally. In the (northern hemisphere) spring and summer, young Yak are born and the herd stays in their northern grazing lands (in present-day Aurok). Mating season begins after the Yak migrate south to their autumn and winter range (in present-day Rakkab). Throughout the 1990s and early 2000s, scientists consistently estimated the Yak population to be roughly 750,000 individuals. Humans have never been able to domesticate the Yak, and the Yak have never successfully been bred in captivity.

2. The Pivzao civilization that arose in the Gaur Highlands in 1000 BCE relied upon subsistence hunting of the Yak for virtually every aspect of their lives, including food, medicine, construction materials, and clothing. Accordingly, the Yak formed a central part of Pivzao culture and religion. The people believed that thousands of years ago, the Great God Kayleff came from the heavens and witnessed a great famine. Harsh weather the prior year had killed most of the root vegetables near the ground’s surface, the main source of sustenance on which the people had relied. In his benevolence, Kayleff sent massive herds of a beast formed in his image to the people and taught the Pivzao people to hunt the Yak. In accordance with these beliefs, the Pivzao calendar was based upon the animals’ regular migration, and the central festivals of the year were coordinated with the Yak’s movements. The first sighting of a Yak during each seasonal migration was considered an auspicious day and called for ceremonies to

thank Kayleff for his continued blessing. A sighting later than usual was taken as a sign of Kayleff's displeasure.

3. Traditional Yak hunting was a complex community event. According to Professor Wim Kurriz, a noted expert on the prehistory of the Gaur highlands:

Weeks ahead of the arrival of the Yak herds, villages would prepare elaborate traps, including spear-lined pits, along the anticipated migration routes. When the Yak arrived, the entire village would employ noisemakers and fires to separate individuals from the main herd, driving them into the pits and then worrying them with spears, arrows, and large rocks until the Yak's throat could be slit by a villager chosen for that special honor. A town of 100 people might, in this way, kill as many as 15 or 16 Yak during the Spring and Autumn migrations. Even with this much planning the Yak cull was a dangerous affair, with grave injuries and fatalities to the hunters occurring on a regular basis.

Prof. Kurriz noted that with the arrival of motor vehicles and firearms in the 1950s, the pursuit of the Yak became less dangerous:

In observance of tradition, the old ways are still practiced, with existing traps maintained and new ones dug from year to year. However, the pits – and the rituals, from the noisemaking to the killing by hand – are no longer strictly necessary, as a skilled hunter is able to fell an adult Yak with one or two well-placed shots from a hunting rifle.

Prof. Kurriz also reported that at the conclusion of the hunt, those who participated in the kill were rewarded with a traditional dish called *Tirhinga Nos Lustuk* ("soup of the nasty bits of the Yak").

4. According to the tradition, consumption of *Tirhinga Nos Lustuk* not only symbolized gratitude to Kayleff for nature's bounty, but also conferred health benefits and longevity on all who partook in it. A monthly communal meal including the soup was a solemn, ritualized event that also included a liturgical component of prayers and hymns.

5. The first outside account of the Yak was reported by the Chinese explorer Zheng He in the 15<sup>th</sup> century. During a trading expedition into the interior of the continent, Zheng's scribe

depicted “unimaginable herds of immense hairy nightmares, moving faster than the fastest ship, stretching from horizon to horizon, crushing everything underfoot and churning the very earth into porridge to a depth of [30 centimeters].” The scribe also noted that “the local tribesmen venerate the Yak, putting every part of it to some useful purpose, eating virtually every morsel that can be rendered edible, and using the large bones to build their homes, the smaller bones to make weapons, and assorted bits in their fearsome religious rites.” Expedition records indicate that the unnamed scribe was trampled to death by Yak shortly before Zheng’s mission departed from the Highlands.

6. In 1730, the Kingdom of Jeramia, a colonial power located on another continent, claimed the region, including the Gaur Highlands, as its colony. Jerami explorers reported that the Highlands, while hospitable to “millions of pounds of hirsute stampeding death,” offered no natural resources that were considered commercially exploitable. Thus, during the entirety of Jeramia’s colonization, there was minimal interference with the indigenous population.

7. The State of Aurok is a small, landlocked, least-developed country with a population of around 1.2 million, composed almost entirely of descendants of the Pivzao civilization. It was established in 1961, when Jeramia granted independence to all of its colonies worldwide. Aurok’s territory comprises the northern 70 percent of the Gaur Highlands. A 2015 United Nations Development Programme report indicated that the majority of the population is rural, living in villages and settlements of fewer than 200 people. To the present day, many Aurokans continue to observe the Pivzao traditions, and the Yak remains of prime religious and cultural significance. Even among the emerging urban population in the Aurokan capital, Transcentral, the culture still draws heavily on ancient tribal practices and beliefs. In particular, participation in a successful Yak hunt is considered a rite of passage into adulthood for young Aurokans. As of the date of this Special Agreement, the website for the Tourism Board of Aurok includes videos of various traditional ceremonies and practices, including many involving the Yak.

8. The Republic of Rakkab borders Aurok to the south and, along with its neighbor, gained independence from Jeramia in 1961. It encompasses 30 percent of the Gaur Highlands, along with the fertile plains to the south and east. Its territory includes several deep-water oceanic trading ports. As a consequence of its geographical advantages and decades of careful

stewardship, Rakkab emerged as a regional power in the 1970s, and today has a diversified economy including international banking and technology, as well as light manufacturing, agriculture, and the production of raw and finished textiles. As of 2015, the multi-ethnic population of Rakkab was 4.5 million. Census reports and informal surveys indicate that there are fewer than 200 adherents to the Pivzao traditions among the population of Rakkab.

9. A major component of Rakkab's economic success has been its investment, beginning in the 1960s, in research and development. The mandate of the government's Department of Research, Technology & Application, established in 1965, included "the pursuit and dissemination of scientific discoveries, including ... new medicines and treatments." The Department received between three and five percent of the annual national budget from 1965 to 1996, which it spent on training, international linkages, development of research infrastructure, and incentives to government researchers and inventors. Two of the last ten Nobel Laureates in Chemistry were from Rakkab, and Rakkab's universities and scientific research facilities are regularly ranked among the world's best.

10. Over the first three decades of its existence, the Department of Research, Technology & Application applied for and was granted numerous patents and government approvals to market its inventions, especially in the health-care sector. In February 1996, Rakkab's Parliament adopted legislation to privatize the Department. The newly private company, DORTA M/S ("DORTA") was incorporated in Rakkab on 6 April 1996, and public trading of its shares began on the New York Stock Exchange a month later. According to the legislative act privatizing the Department – and according to DORTA's private charter – the government of Rakkab must always own no less than 9.9 percent and no more than 19.9 percent of the shares of DORTA. As of the present date, Rakkab holds approximately 12% of DORTA's stock.

11. Today, DORTA is the world's eighth-largest manufacturer of pharmaceuticals, with subsidiaries in over 50 countries (although it has no subsidiary in Aurok). DORTA possesses a legislatively-granted and government-enforced monopoly on the sale of prescription medication within Rakkab, and the government subsidizes DORTA's research and development activities inside and outside Rakkab. DORTA's 15-member Board of Directors includes four former Rakkabi Cabinet Ministers and three former leaders of Rakkab's major political parties, although



its charter prohibits the employment or appointment to the Board of current Rakkabi government officials.

12. Rakkab has since the middle of the 20<sup>th</sup> century witnessed a significant increase in its rates of childhood and adult obesity, diabetes, and several other lifestyle-related diseases.

13. Dr. Isaac Bello is a Rakkabi-licensed medical doctor and a citizen of Rakkab. Since 1997, he has been employed by DORTA in its pharmaceutical development division and also works in a DORTA-operated private hospital in Rakkab near the border with Aurok. During his hospital practice in 1998-2000, Dr. Bello observed that the incidence of diabetes and obesity was consistently and markedly lower among his Aurokan patients than among his Rakkabi patients. In 2001, he spent a year living in rural Aurok, investigating Aurokan dietary and cultural practices. Based upon his fieldwork and subsequent laboratory studies, Dr. Bello concluded that the discrepancy was correlated with a never-before-identified enzyme found in the gallbladder of the Yak, a key ingredient in *Tirhinga Nos Lustuk*. In an article summarizing his findings, published in the British peer-reviewed medical journal *The Lancet* in 2002, Dr. Bello referred to his discovery as “the Lustuk Enzyme,” and noted “many Aurokans observe their traditional religious rites, obtaining the meat and organs of the Kayleff Yak according to their age-old processes. I am quite confident that their ingestion of the Lustuk Enzyme in substantial quantities is what provides their remarkable protection against diabetes and obesity.”

14. By 2003, Dr. Bello and a team of DORTA biologists isolated the Lustuk Enzyme and used it to produce an experimental medication. DORTA then applied to the Rakkab Ministry of Health for permission to begin clinical trials, including trials on human subjects, to test its efficacy. Over the course of two years of testing, they determined that the drug was highly effective in the treatment of diabetes and related disorders.

15. On 11 November 2004, DORTA filed a patent application with the Rakkabi Intellectual Property Ministry for the medication derived from the Lustuk Enzyme, which it named “Gallvectra,” to treat insulin resistance-related diseases. The application listed Dr. Bello as the inventor. According to Rakkabi law, patent applications are published in the Official Journal and

on the Ministry's website and are open to public comment for a period of 18 months before a final decision is made. Once issued, the term of a patent is 20 years from the date of first filing.

16. In January 2005, the British anthropologist Cressida Cauty, a world-renowned expert on rural Aurok, published an article in the international peer-reviewed sociology journal *Human Organization* entitled "The Lustuk Enzyme in the Aurokan Diet." Professor Cauty noted that through their consumption of *Tirhinga Nos Lustuk*, observant Aurokans ingested hundreds of grams of the Lustuk Enzyme each year. Her article also referenced the history and importance of Yak gallbladder consumption:

Believing that Kayleff provided the Yak not only for their sustenance but also for their protection against disease, the Pivzao civilization attributed significant health benefits in particular to the gallbladder. Aurokans who continue to observe the ancient traditions regularly consume *Tirhinga Nos Lustuk*, containing the gallbladder of the Yak along with roots, wild grains, and other ingredients. Even today, it is commonplace for the soup to be recommended as a promoter of well-being and an aid in recovery from illness.

17. In March 2005, the Aurokan Minister of Intellectual Property, Tom Wynet, wrote to his Rakkabi counterpart, enclosing a copy of Dr. Cauty's article. In his cover letter he noted that, "Dr. Bello's discovery of the Lustuk Enzyme can be attributed directly to his study of the Aurokan people and their use of Yak gallbladders to promote good health." The letter, which was released to the media, concluded, "Governments grant patents to encourage creativity and novelty, to protect original inventors. But in this case, DORTA seeks protection for a drug it did not actually invent. No one except those who first discovered the health benefits of the gallbladders should be allowed to profit from the Lustuk Enzyme." A group of leading biologists replied in a public letter in the next quarter's issue of *Human Organization* that "Gallvectra, indeed, appears to have been inspired by the traditional beliefs of Aurokans in the health-protecting properties of the Yak gallbladders." Major newspapers in Rakkab received and published numerous letters to the editors from Aurokans, who also sent emails to the Ministry's general-inquiries address, protesting the grant of a patent on what they claimed was a long-known use of the Enzyme contained in the Yak gallbladder to promote their health.

18. Patent attorneys for DORTA replied to Minister Wynet's letter in April 2005 stating, "The work of Dr. Bello and other scientists at DORTA led directly to the isolation of the Lustuk Enzyme and its discovery as a medical treatment of insulin-resistant diseases. Although Aurokan people have consumed Yak gallbladders for many years and continue to do so, they never produced a reliable, consistent prescription drug for human use." The letter concluded, "Our reasoning poses no threat to Aurok and to traditional Aurokan consumers of Yak meat. If issued, the patent proposed in the DORTA application will not inhibit the use of Yak gallbladders in accordance with Aurokan traditions."

19. The Rakkabi Ministry published both letters and all other correspondence pertaining to the patent application in its Official Journal, along with its order granting the patent, on 6 October 2005. Minister Wynet issued a statement expressing dismay at Rakkab's decision to issue the patent.

20. On 11 November 2005 DORTA proceeded to pursue intellectual property protection for Gallvectra as a human pharmaceutical in all of the countries in which it has subsidiaries. In its patent applications, DORTA reiterated the arguments raised by its attorneys in Rakkab, and emphasized that the patent would not preclude traditional use of the Enzyme. In May 2011, DORTA began marketing Gallvectra in countries that had approved it for prescription use, including Rakkab, and subsequently expanded to additional countries as their approvals were obtained. Global demand for Gallvectra was enormous. As of 2018, Gallvectra has been approved for use and sale by DORTA for the treatment of insulin resistance-related diseases in more than 85 countries.

21. At an October 2015 meeting of shareholders, Carla Alexander, the Chief Executive Officer of DORTA (and Rakkabi Minister of Intellectual Property from 1981 to 1989), reported that 2014 worldwide sales of the drug topped €2 billion. "This is without question the most successful pharmaceutical product in the history of this company," she said. During a press conference days later, Aurokan Prime Minister Sumun expressed "grave concerns" that the demand for Gallvectra would "negatively impact our indigenous culture."

22. Following Prime Minister Sumun's press conference, Aurokan newspapers, politicians, and Facebook groups were inundated by messages predicting ruin for the Aurokan way of life. Some warned of Kayleff's inevitable displeasure. An unsigned editorial entitled "What Will Happen When the Yak Do Not Return?" was published in the 13 January 2016 issue of *Aurok Truth*, the nation's only daily newspaper. It read:

In eight weeks, the Yak will begin their migration, as they have for thousands of generations. Our holy texts, our history, and our traditions tell us that it is so. For the next six months, our elders will hunt. Our children will hunt, and they will thereby become adults. We will prepare the traditional meals that have sustained us for centuries. And, as Autumn begins, we will hunt the last of the herds and preserve what we can for the long Winter ahead.

But today the Yak are being killed in their Winter grounds, in great numbers. What will happen when the Yak do not return?

23. In February 2016, the Brisbane-based *Courier-Mail* published a lengthy investigative report entitled, "Gallvectra Saves Lives: But Where Are All the Yak Gallbladders Coming From?" The article reported that to meet supply requirements, DORTA had since 2011 been offering a substantial cash reward for Yak gallbladders through advertisements in hunting enthusiast magazines. In response to the notices, hundreds of private Rakkabi citizens applied to their government for and were granted Yak hunting licenses. The article noted:

In order to hunt Yak – or, indeed, any other wild animal in Rakkab – an individual must be awarded a license, specific to the animal to be hunted. According to Rakkabi government records, from 1950 to 2010, the number of Yak licenses varied between 20 and 30 per year. In 2011, after DORTA's advertisements, the number of Yak hunting license applications increased to more than 300, nearly all of which were granted; the number of licenses has increased every year since then.

24. According to the *Courier Mail*, from October 2015 to February 2016, hunters killed nearly 30,000 Yak within the territory of Rakkab and delivered their gallbladders to DORTA. This number represented an increase from 2014 and prior years. The article concluded:

Once seen as a religious and cultural icon, an avatar of the Great God, the Kayleff Yak today is succumbing to modern human

appetites, technologies ... and greed. Hunters in 4x4s snipe these noble beasts from hundreds of metres away, swooping in after the herd has departed to gut the carcasses and carry away their tiny – but lucrative – prizes. Meanwhile, the grazing grounds are littered with dead Yak, left behind to rot in the sun.

The authors quoted a spokesperson for DORTA as stating, “The harvest of Kayleff Yak is sustainable. There are around 680,000 Yak in the Gaur Highlands, of which only about 4 percent per year have been taken to produce Gallvectra. By contrast, Aurokans have for decades culled hundreds of thousands of Yak for their traditional purposes. DORTA’s effect on the population is a ‘drop in the ocean.’ But let us not forget the most important issue: Gallvectra saves human lives.” The article was widely distributed on the Internet and on social media, including in Aurok.

25. For several weeks, the Aurokan Parliament debated the likely effects of the DORTA harvesting. At the conclusion of debate, the Parliament enacted a bill in late February 2016 to fund Yak research, with emphasis on attempting to develop successful breeding methods for Yak in captivity. With support from village leaders, the Parliament also legislated a five-year moratorium on the hunting of female Yak of breeding age.

26. In March 2016, leaders of the Aurokan Parliament met with DORTA researchers to discuss the sustainability of the Yak population. At the conclusion of the meetings, DORTA announced that it was initiating a captive breeding program of its own. To date, neither the Aurokan nor the DORTA efforts have met with any success.

27. The Yak Life Sciences Academy (YLSA) is an international NGO devoted to the study and preservation of all species of yak. Since 1994, YLSA has surveyed Yak migration along the Aurok-Rakkab border. YLSA’s 2016 report, published in June of that year, expressed grave concern at what it called “the disruption of the delicate balance between the Yak and human population in the region.” The report concluded as follows:

The Kayleff Yak and the Aurokan people have coexisted for millennia. Aurokan cultural practices have evolved to fit not only the migration patterns of the Yak, but also such other factors as the animal’s reproduction rate. In short, the culture of the Aurokan nation and the life cycle of the Yak exist in a delicate equilibrium.

Even a small change – such as the introduction of DORTA-financed hunters – can upset that equilibrium. Our best estimate is that the total Kayleff Yak population has decreased by more than five percent since last year at this time. This change is not attributable to natural causes. The only possible conclusion is that it is a consequence of the DORTA-sponsored harvesting of the herd within Rakkab.

Yes, the number of Yak harvested by Aurokans (about 120,000 in 2015, according to our survey) is *much* larger than the 30,000 or so killed by DORTA hunters last winter. But evolution is slow, and the Yak population has thus far been unable to recover from this shock. Our research indicates that Aurokans harvested an average of more than 140,000 Yak annually until 2011; that number has already declined, and we anticipate that it will decline further.

Perhaps most alarming is that the effects are not evenly distributed across the Yak population. For reasons unknown, we have observed particularly high rates of decline among the young and female of the species. This will have particularly worrisome repercussions for future generations. If present trends continue, we have reason to fear that the Yak will be extinct, or perilously near extinction, by 2040. We strongly encourage the governments of both Aurok and Rakkab to consider and adopt measures, including those set out in international conventions, to protect the Yak before it is too late.

28. Following the release of the YLSA report, Prime Minister Sumun issued a statement depicting the DORTA Yak harvest as “a danger to Aurokan culture,” and calling on Rakkab “to act in accordance with its international obligations.” YLSA studies based on subsequent annual surveys have reiterated its estimate of potential extinction by 2040, but no other independent research of Yak population trends has been conducted.

29. Aurokan villagers throughout the country also described a significant decline in the size of Yak herds in the spring of 2016. In a nationwide survey, YLSA reported that townspeople were seeing herd sizes notably smaller than in 2010. YLSA observed that the villages in the remote northernmost region of Aurok were most significantly impacted.

30. Aurokan villagers, in print and social media, continued to protest the DORTA-financed harvest. On 10 September 2016, the Aurokan national holiday marking the departure of the Yak for the south, 8,000 villagers demonstrated outside the Prime Minister’s office in Transcentral,

calling for “urgent action to save our Yak and our way of life.” Videos of the speeches made by the villagers went viral on social media platforms, accompanied with the hashtags #Yaktivists, #DortaDestroys and #YakSelfies.

31. On 2 October 2016, Prime Minister Sumun visited Rakkab to discuss the issue of the Yak with Rakkabi Prime Minister Derlap Frangie and with DORTA CEO Ms. Alexander. Prime Minister Sumun asked that DORTA cease the Yak harvest for the 2016-17 winter months, to allow time for more study and for the herds to recover. Ms. Alexander declined to commit to any particular course of action, but stated afterward in a company press release: “Sustainability of the Yak herd is as important to DORTA and to Rakkab as it is to the Aurokan people. We are well aware of the fragility of the situation. All may rest assured that we will proceed carefully.” Rakkabi Prime Minister Frangie expressed his confidence that “DORTA will act responsibly to conserve this vital cultural and health resource,” and promised to monitor the issue and to cooperate with Aurok.

32. Prime Minister Sumun summarized the meeting in an Aurokan Parliament session the following week. In response, the leader of the opposition party accused her of “capitulating in the face of provably false arguments,” saying “Rakkab claims that this catastrophe is purely the concern of a private company. However, the Rakkabi government owns a sizeable piece of DORTA and subsidizes its activities around the world. This is no ‘private matter’ for a company to sort out. The government is responsible, and we must hold them so!” He proposed legislation to impose a variety of sanctions on Rakkab and Rakkabi companies.

33. The Yak returned to their winter grounds in Rakkab over September and October of 2016. On 1 November 2016, at DORTA’s annual shareholder meeting, an attendee asked whether the company was concerned about the sustainability of the herd, or the capacity to maintain the required supply of Yak gallbladders. Ms. Alexander replied:

I appreciate your concern, but your fears are unfounded. Our experts have advised me that there are more than enough Yak to sustain harvesting at present levels, at only a quarter of the number killed each year by the Aurokans themselves, for more than ten years. Our scientists are researching a synthetic alternative to the Lustuk Enzyme. But meanwhile, Gallvectra continues to help



countless people worldwide who have come to depend on this drug to protect and extend their lives. Current circumstances do not warrant lowering the harvesting levels.

We have cooperated with and will continue to work closely with the Rakkabi government, and we will continue to comply with all applicable laws and regulations. Our goal has always been to ensure that this precious natural resource is utilized efficiently, so that the Kayleff Yak's gift of life-saving medicine is available to the world.

34. On 16 November 2016, the Rakkabi Ministry of Agriculture released on all major digital platforms an application called "YakTrakker" which drew from government owned and controlled unmanned drones and satellites to provide real-time tracking of Yak herds in Rakkab. The Ministry claimed that the purpose of the application was "to allow scientists and conservationists to make accurate estimates of the health and vitality of the Yak population."

35. Two weeks later, YLSA published a press release, observing that "While YakTrakker is indeed a useful tool for conservationists and Yak activists, we have seen anecdotal evidence that it is also being used by Yak hunters to follow and hunt the herds more efficiently." YLSA called upon the Rakkabi government to remove the application and cancel YakTrakker. Prime Minister Sumun also issued a statement referring to the YLSA press release, adding that "Rakkab should take down the YakTrakker program to bring the country into compliance with its international obligations." Rakkab made no reply, and the YakTrakker app remains in operation and available for download to the present day.

36. During the winter of 2016-17, private hunters paid by DORTA killed approximately 30,000 Yak – roughly 5 percent of the entire Yak population, and about one-third of the number of Yak harvested by Aurokans in the summer of 2016. A subsequent survey by YLSA scientists at the border concluded that "the Yak population is down nearly 10 percent from two years ago, with a disproportionate impact continuing to be seen among females of breeding age."

37. At the 20<sup>th</sup> Expert Committee on the Selection and Use of Essential Medicines in March 2017, Gallvectra was added to the WHO Model List of Essential Medicines. DORTA welcomed the decision in a press release, stating that the company "appreciates the recognition by the



international community of the fundamental importance and enormous value of Gallvectra.” In a subsequent press release, the Aurokan Minister of Health criticized the decision:

Like all civilized countries, Aurok supports international cooperation to promote and protect human health. However, we must always be mindful of the fact that it was, after all, the Aurokan people who first realized the health-protecting properties of the organs of the Kayleff Yak. We are the ones who have traditionally consumed the flesh of the Yak, as part of our sacred traditions and to prolong our lives. In effect, we are the ones who discovered this wonderful drug, Gallvectra. Is it not ironic, then, that the Aurokan people see no profit from their discovery and, indeed, are the very ones harmed by the irresponsible harvesting of the noble beast that is the centerpiece of our religion, culture, and lifestyle?

38. By the time of its June 2017 annual shareholder meeting, DORTA reported gross sales of Gallvectra of more than €3.2 billion worldwide.

39. In June 2017, while more than 20,000 Aurokan villagers demonstrated outside the Prime Minister’s office, the Aurokan Parliament adopted the Yak Protection Act, which entered into force on 1 July 2017. The Act prohibited the export of Yak products, subjected hunting of the Yak within Aurok to strict licensing requirements, and imposed travel and financial sanctions on Rakkab and Rakkabi companies and individuals present or doing business in Aurok. With respect to licenses, the Act provides, in relevant part:

Section 3.2 Kayleff Yak may be hunted or killed only by a person issued a license by the Ministry of Environmental Affairs. The Ministry shall issue such a license to designated individuals in any village in Aurok, permitting them to take a specified number of Yak by traditional means, and for traditional purposes only. Such licenses shall be limited in geographical scope, shall be valid for one year, and shall be renewable.

40. On 1 July 2017, the Aurok Ministry of Foreign Affairs sent a notification to the Secretariat of the Convention on International Trade in Endangered Species of Wild Flora and Fauna (“CITES”), requesting that the Kayleff Yak be included in Appendix III of CITES. Rakkab did not communicate a reservation or an objection, and the Yak was duly included in Appendix III effective 29 September 2017.

41. In her address to the United Nations General Assembly on 19 September 2017, Prime Minister Sumun said, “Aurokan villagers fear that our Yak, intimately tied and essential to our traditional and religious practices, will become extinct during our lifetimes. While the rest of the world benefits from the curative properties of Gallvectra, *Tirhinga Nos Lustuk*, which we have been using as a medicine for hundreds of years, becomes ever more scarce in Aurok.” The Prime Minister referred to the northernmost Aurokan settlements, which saw so few Yak that young residents had no opportunity to participate in a successful Yak hunt. She noted that without formally passing into adulthood through that rite, strong religious tradition discouraged them from starting a family, owning a home, or participating in village governance. The extinction of the Yak, in her words, “would lead to the end of Aurokan life as we know it. We cannot let that happen. DORTA and Rakkab must bring this cruel and unsustainable hunting to an end.”

42. Following her address, on 5 October 2017, Prime Ministers Sumun and Frangie met in Transcentral. Prime Minister Sumun presented her counterpart a demarche demanding that the DORTA-sponsored Yak harvest cease, and that the Rakkabi government “pay Aurok and the Aurokan people their rightful share of the profits that DORTA has made from the Aurokan people’s traditions, and from their ancestors’ knowledge of which they are the current custodians.” The Rakkabi Prime Minister denied that his government was legally or practically responsible for the actions of DORTA in manufacturing or selling Gallvectra. At the press conference after the meeting, Prime Minister Sumun said that Rakkab’s position was “in flagrant disregard of its international obligations to indigenous peoples and the environment.”

43. At the Twelfth Meeting of the Conference of Parties to the Convention on Migratory Species (“CMS”) in October 2017, the Yak was included in Appendix I of the CMS on the recommendation of the CMS Scientific Council. The move was taken over the objection of the delegate from Rakkab, who stated, “while Rakkab appreciates the interest of YLSA and of other enthusiasts in this majestic species, current cull rates are sustainable. The Yak is not in danger. There is no credible reason to believe that the Yak will be extinct in any of our lifetimes. And let me remind my fellow delegates: harvesting the Yak allows the manufacture of a medicine vital and necessary for the promotion of the right to health worldwide.”

44. In response to the CMS decision, and in accordance with applicable law, on 15 November 2017, the Rakkabi Ministry of Agriculture promulgated Regulation AG/2017-0300, which provides:

1. All licenses permitting the hunting of the Kayleff Yak issued prior to the date of this Regulation are hereby terminated and declared no longer valid, effective immediately;
2. The killing of Yak in the territory of Rakkab by an individual not in possession of a valid license issued by the Ministry of Agriculture is prohibited;
3. The Ministry shall issue a license for any taking of Yak it considers to be consistent with Section 5 of Article III of the CMS and may impose limits on the number of Yak that any license holder may take, as it deems appropriate;
4. The Ministry may issue licenses hereunder to private companies, whose employees or agents of those companies shall be deemed licensed individuals pursuant to this Regulation, so long as any hunting limit imposed on the license holder is understood to apply to its employees or agents in aggregate; and
5. The Ministry within its discretion may require that license applicants demonstrate their familiarity with relevant safety and environmental rules, may monitor compliance with the requirements of this Regulation and any license issued hereunder, and may impose fines on violators of the conditions attached to any license.

45. DORTA promptly announced that it was suspending its payments for Yak gallbladders until it received a license and called the attention of all hunters whom it had previously paid for gallbladders to the new Regulation. On 22 November 2017, DORTA applied to the Rakkabi Ministry of Agriculture for a license, which was granted on 20 December 2017. The license authorized “DORTA, its employees and agents, in view of the important scientific and medical benefits of the gallbladder of the Yak, to harvest on the territory of Rakkab as many Yak as are required for the development and manufacture of Gallvectra, but in no event more than 30,000 Yak annually, for a period of three years.” The Ministry indicated that upon the expiration of the DORTA license, the authorities “will review the continuing scientific and medical benefits of then-current hunting levels, and the impact upon the Yak population.” The Aurokan Ambassador in Rakkab sent a formal diplomatic note to the Foreign Ministry, protesting the issuance of the

license as “plainly a violation of the CMS.” He indicated that Aurok would seek the inclusion of the Yak in Appendix I of CITES at its 18th Conference of the Parties in May 2019. YLSA, which will celebrate the 25<sup>th</sup> anniversary of its founding on 23 May 2019, has agreed to take charge of Aurok’s presentation.

46. On 2 January 2018, DORTA publicly announced that it was again offering payment for Yak gallbladders, but only to registered agents of the company. By 31 January 2018, more than 200 Rakkabis signed one-year contracts that committed DORTA to pay for gallbladders upon delivery, obligated the hunters to abide by all relevant Rakkabi laws, and capped DORTA’s annual harvest at 30,000 Yak. YLSA’s annual survey indicated that DORTA agents killed approximately 28,500 Yak during January and February of that year.

47. Upon the urging of the Executive Director of the United Nations Environment Programme in spring 2018, the parties agreed to submit their disputes for resolution by the International Court of Justice. They negotiated and submitted to the Registry this Special Agreement.

48. Aurok and Rakkab both joined the United Nations and several of its specialized agencies, including the World Health Organization, in 1962. Both are also, and at all relevant times have been, parties to the Vienna Convention on the Law of Treaties, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Paris Convention for the Protection of Industrial Property of 1883 as amended, the Convention on International Trade in Endangered Species of Wild Flora and Fauna of 1973, the Convention on the Conservation of Migratory Species of Wild Animals of 1979, the Indigenous and Tribal Peoples Convention of 1989, and the Convention on Biological Diversity of 1992 and its 2010 Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization. Neither State has issued any relevant reservations to those treaties.

49. Aurok respectfully requests that the Court adjudge and declare:

- a. Rakkab is responsible for the internationally wrongful acts described in subparagraphs (b)-(d), *infra*, because DORTA’s actions are attributable to Rakkab, or

in the alternative, Rakkab is responsible for its own failure to prevent DORTA from committing those wrongful acts;

- b. The harvesting of the Yak in Rakkab violates Rakkab's international obligations relating to the protection of endangered species and the environment, including those under relevant conventions, and Rakkab is obligated to end Yak harvesting on its territory;
- c. The harvesting of the Yak in Rakkab violates the cultural and religious rights of the people of Aurok, and Rakkab must prohibit such hunting forthwith; and
- d. Rakkab must pay Aurok, as *parens patriae* for the Aurokan people, a portion (to be determined in subsequent proceedings) of the profits realized from sales of the drug Gallvectra, because the appropriation and exploitation of traditional knowledge belonging to the Aurokan people without compensation is inconsistent with international law.

50. Rakkab respectfully requests that the Court reject each of Applicant's claims in its entirety.