

**The Kingdom of Akkad, Applicant**

**v.**

**The Republic of Heronia, Respondent**

# **RECORD**

**Tenth Annual  
International Environmental  
Moot Court Competition  
2005**



COLLEGE OF LAW

*Florida's First Law School*

NOTIFICATION, DATED 18 MAY 2005, ADDRESSED TO  
THE MINISTER FOR FOREIGN AFFAIRS OF THE KINGDOM OF AKKAD  
AND  
THE MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF HERONIA

The Hague, 18 May 2005.

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 11 May 2005. I have the further honor to inform you that the case of the Kingdom of Akkad, Applicant v. the Republic of Heronia, Respondent, has been entered as 2005 General List No. 110. The written proceedings shall consist of memorials to be submitted to the Court. Oral proceedings are scheduled for 26-29 October 2005.

/s/ \_\_\_\_\_  
Registrar  
International Court of Justice

-----  
JOINT NOTIFICATION, DATED 11 MAY 2005, ADDRESSED TO  
THE REGISTRAR OF THE COURT

The Hague, 11 May 2005.

On behalf of the Kingdom of Akkad and the Republic of Heronia, 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 the Kingdom of Akkad and the Republic of Heronia for Submission to the International Court of Justice of Differences Between Them Concerning an Off-Shore Wind Farm, signed at Freiburg, Germany, on 11 May 2005.

For the Kingdom of Akkad:

/s/ \_\_\_\_\_  
N. Aram-sin  
Minister for Foreign Affairs

For the Republic of Heronia:

/s/ \_\_\_\_\_  
A.L. Tamont  
Minister for Foreign Affairs

SPECIAL AGREEMENT  
BETWEEN  
THE KINGDOM OF AKKAD  
AND  
THE REPUBLIC OF HERONIA  
FOR SUBMISSION TO THE  
INTERNATIONAL COURT OF JUSTICE  
OF DIFFERENCES BETWEEN THEM  
CONCERNING  
AN OFF-SHORE WIND FARM

The Kingdom of Akkad and the Republic of Heronia,

Recalling that the Kingdom of Akkad and the Republic of Heronia are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Bearing in mind the Kyoto Protocol to the United Nations Framework Convention on Climate Change and the need to reduce greenhouse gas emissions,

Conscious that the Kingdom of Akkad and the Republic of Heronia are State Parties to the United Nations Convention on the Law of the Sea,

Considering that the Kingdom of Akkad and the Republic of Heronia are Contracting Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, also known as the Ramsar Convention on Wetlands,

Observing that the Kingdom of Akkad and the Republic of Heronia are Contracting Parties to the Convention on Biological Diversity,

Recognizing that differences have arisen concerning the construction and operation of an off-shore wind farm located in the exclusive economic zone of the Republic of Heronia,

Noting that the Kingdom of Akkad and the Republic of Heronia have been unable to settle their differences through negotiation and mediation,

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

The Kingdom of Akkad and the Republic of Heronia, 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.

## 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 jurisdiction of the Court and the rights and obligations of the Parties, arising from any Judgment on the questions presented in this matter. The Parties shall neither address nor request the Court to address the issue of monetary damages, which may be a subject of future discussions between the Parties.

## Article III

1. The proceedings shall consist of written pleadings and an oral hearing.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.

## 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 Freiburg, Germany, this eleventh day of May 2005, in two copies, each in the English language, and each being equally authentic.

FOR THE KINGDOM OF AKKAD:

FOR THE REPUBLIC OF HERONIA:

/s/  
\_\_\_\_\_  
N. Aram-sin  
Minister for Foreign Affairs

/s/  
\_\_\_\_\_  
A.L. Tamont  
Minister for Foreign Affairs

ANNEX A  
AGREED STATEMENT OF FACTS

1. The Republic of Heronia is a developed country with a diversified economy and a population of approximately 45 million people. The territory of the Republic of Heronia consists primarily of an island with an area of approximately 377,000 square kilometers. The territory of the Republic of Heronia does not contain any significant deposits of fossil fuels.
2. The Kingdom of Akkad is a developing country with a population of approximately 16 million people. The Kingdom of Akkad is an island nation; its area is approximately 51,000 square kilometers.
3. The Republic of Heronia lies 120 nautical miles to the west of the Kingdom of Akkad. The Republic of Heronia and the Kingdom of Akkad each claim an exclusive economic zone (EEZ) that extends approximately 60 nautical miles from the baselines from which the breadth of their respective territorial seas are measured. There is no dispute concerning the boundaries of their respective EEZs.
4. The Kingdom of Akkad and the Republic of Heronia are Members of the United Nations, and are Parties to the Statute of the International Court of Justice.
5. The Kingdom of Akkad and the Republic of Heronia are Parties to the Vienna Convention on the Law of Treaties.
6. The Kingdom of Akkad and the Republic of Heronia are Contracting Parties to the Convention on Wetlands of International Importance especially as Waterfowl Habitat, also known as the Ramsar Convention on Wetlands. The Kingdom of Akkad became a Contracting Party in 1976; the Republic of Heronia became a Contracting Party in 1978.
7. In accordance with the Ramsar Convention on Wetlands, in 1976 the Kingdom of Akkad designated Sargon National Park as a wetland of international importance. Sargon National Park is located on the western coast of the Kingdom of Akkad. It is a freshwater marsh and is not an estuary.
8. In accordance with the Ramsar Convention on Wetlands, in 1979 the Republic of Heronia designated Eadiedra National Wildlife Refuge as a wetland of international importance. Eadiedra National Wildlife Refuge is located on the eastern coast of the Republic of Heronia. It is a freshwater marsh and is not an estuary.
9. The Akkadian spotted scoter is a species of waterfowl that migrates back and forth between Sargon National Park and Eadiedra National Wildlife Refuge. Once plentiful, the Akkadian spotted scoter's population declined primarily due to habitat loss; hunting has accounted for 5% of the decline. In 2002, it was estimated that the total remaining population of the Akkadian spotted scoter was approximately 3,000. At that time, the

Kingdom of Akkad and the Republic of Heronia considered the species to be threatened, but not in danger of extinction.

10. In 1980, the Kingdom of Akkad and the Republic of Heronia entered into a bilateral agreement entitled Convention Between the Kingdom of Akkad and the Republic of Heronia for the Protection of Migrating Birds and Birds in Danger of Extinction, and Their Environment, also known as the Migrating Bird Convention. The Migrating Bird Convention contains the following relevant provisions:

CONVENTION BETWEEN THE KINGDOM OF AKKAD AND  
THE REPUBLIC OF HERONIA FOR THE PROTECTION OF  
MIGRATING BIRDS AND BIRDS IN DANGER OF  
EXTINCTION, AND THEIR ENVIRONMENT

The Government of the Kingdom of Akkad and the Government of the Republic of Heronia,

Considering that birds constitute a natural resource of great value for recreational, aesthetic, scientific, and economic purposes, and that this value can be increased with proper management,

Considering that many species of birds migrate between areas of the Kingdom of Akkad and the Republic of Heronia, where such birds live temporarily,

Considering that island environments are particularly susceptible to disturbance, that many species of island birds have been exterminated, and that some other species of birds are in danger of extinction, and

Desiring to cooperate in taking measures for the management, protection, and prevention of the extinction of certain birds,

Therefore, have agreed as follows:

\*\*\*

Article II

1. In this Convention the term “migratory birds” includes:

\*\*\*

(g) Akkadian spotted scoter;

\*\*\*

### Article III

1. The hunting of migratory birds shall be prohibited.
2. The taking of migratory bird eggs shall be prohibited.
3. Any sale, purchase or exchange of these birds or their eggs, taken illegally, alive or dead, and any sale, purchase or exchange of the products thereof or their parts shall also be prohibited.

### Article IV

1. The Contracting Parties shall exchange data and publications regarding research on migratory birds and birds in danger of extinction.
2. The Contracting Parties shall encourage the establishment of joint research programs on, and conservation of, migratory birds and birds in danger of extinction.

### Article V

Each Contracting Party shall endeavor to take appropriate measures to preserve and enhance the environment of migratory birds protected under this Convention. In particular each Contracting Party shall:

1. Seek means to prevent damage to such birds resulting from pollution of the seas;
2. Endeavor to take such measures as may be necessary to control the importation of live animals and plants which it determines to be hazardous to the preservation of such birds; and
3. Endeavor to take such measures as may be necessary to conserve migratory bird habitat, especially habitat areas identified as wetlands of international importance under the Ramsar Convention.

### Article VI

1. Any dispute that may arise with respect to the interpretation or application of this Convention shall be subject to negotiation between the Contracting Parties.

2. If the dispute cannot be resolved by negotiation, the Contracting Parties shall submit the matter to mediation.

\*\*\*

11. The Kingdom of Akkad and the Republic of Heronia each became State Parties to the United Nations Convention on the Law of the Sea (UNCLOS) in 1995. In accordance with paragraph 1 of Article 287 of UNCLOS, the Kingdom of Akkad and the Republic of Heronia chose, through written declarations, the International Court of Justice to be the means for the settlement of disputes concerning the interpretation or application of UNCLOS.
12. The Kingdom of Akkad and the Republic of Heronia each became Contracting Parties to the Convention on Biological Diversity (CBD) in 1996. In accordance with Article 27.3 of the CBD, the Kingdom of Akkad and the Republic of Heronia declared in separate writings that each accepted submission of a dispute concerning the interpretation or application of the CBD to the International Court of Justice as the means of compulsory dispute settlement.
13. High-level representatives from the Kingdom of Akkad and the Republic of Heronia attended and fully participated in the 1972 United Nations Conference on the Human Environment at Stockholm, the 1992 United Nations Conference on Environment and Development at Rio de Janeiro, and the 2002 World Summit on Sustainable Development at Johannesburg.
14. The Republic of Heronia is a Party to the United Nations Framework Convention on Climate Change, and is listed in Annex I. The Republic of Heronia is also a Party to the Kyoto Protocol, where in Annex B it agreed to reduce its greenhouse gas emissions to 92% of its 1990 levels.
15. The Kingdom of Akkad signed, but has not ratified, the United Nations Framework Convention on Climate Change. The Kingdom of Akkad has not signed the Kyoto Protocol.
16. In December 2002, the Ministry of Energy for the Republic of Heronia announced its intention to construct 180 wind turbines of 2 megawatts (MW) each, a project known as the “Kennedy Wind Farm.” The Ministry of Energy stated that the Kennedy Wind Farm would produce more than 1.3 billion kilowatt-hours (kWh) annually, which would supply the energy requirements of approximately 425,000 households in the Republic of Heronia.
17. The proposed location of the 180 wind turbines was in the Republic of Heronia’s eastern EEZ, directly in the flyway of the Akkadian spotted scoter.

18. On 15 December 2002, the following diplomatic note was forwarded to the Government of Republic of Heronia:

The Embassy of the Kingdom of Akkad presents its compliments to the Government of the Republic of Heronia and has the honor to request that the Republic of Heronia enter into consultations with the Kingdom of Akkad with respect to the Republic of Heronia's recently announced intention to construct an off-shore wind farm in the migratory path of the Akkadian spotted scoter.

The Government of the Kingdom of Akkad notes with concern the likely negative impact that this proposed project would have on the Akkadian spotted scoter.

The Government of the Kingdom of Akkad respectfully requests an opportunity to review the environmental impact assessment prepared for the construction and operation of the off-shore wind farm. The Government of the Kingdom of Akkad welcomes the opportunity to discuss these matters at the highest levels, in accordance with the Convention Between the Kingdom of Akkad and the Republic of Heronia for the Protection of Migrating Birds and Birds in Danger of Extinction, and their Environment.

Please accept the assurance of my highest consideration.

---

E. Kolbert  
Ambassador

19. On 21 December 2002, the following diplomatic note was forwarded to the Government of the Kingdom of Akkad:

The Embassy of the Republic of Heronia presents its compliments to the Government of the Kingdom of Akkad and has the honor to acknowledge receipt of the diplomatic note dated 15 December 2002.

At the outset, the Government of the Republic of Heronia notes that it would welcome the opportunity to consult regarding the proposed Kennedy Wind Farm, which would be located within the Republic of Heronia's exclusive economic zone.

The Government of the Republic of Heronia also wishes to observe that the proposed project is contemplated to shift our nation to clean, renewable energy in a manner that would permit us to satisfy the Kyoto Protocol's obligations. Moreover, the proposed project is an important

first step toward energy independence and reducing the Republic of Heronia's reliance on foreign oil.

Please accept the assurance of my highest consideration.

---

G. Stellata  
Ambassador

20. In February 2003, formal consultation concerning the proposed off-shore wind farm was conducted in a series of meetings between the Ministry of Environment of the Kingdom of Akkad and the Ministry of Energy and the Ministry of Environment of the Republic of Heronia.
21. During the consultation, the Ministry of Environment of the Kingdom of Akkad expressed its understanding that the Republic of Heronia desired to develop renewable energy sources, but objected to the proposed site of the wind farm because of its likely impact on migratory birds, including the Akkadian spotted scoter. The Ministry of Environment of the Kingdom of Akkad noted that the Kingdom of Akkad was seeking to develop an ecotourism industry, with its national park system as the foundation.
22. The Ministry of Environment of the Kingdom of Akkad produced a study that found that the Akkadian spotted scoter frequently migrates at night and at low altitudes. The study concluded that if the Kennedy Wind Farm moved forward, then in light of the design and location of the turbines, the status of the Akkadian spotted scoter should be considered endangered. The Republic of Heronia does not dispute this conclusion.
23. In November 2003, the Ministry of Energy of the Republic of Heronia announced the final approval for the proposed wind farm. In its announcement, the Ministry of Energy noted that although it deeply regretted the likely impact to certain bird species, no other alternative site provided the sustained winds necessary for a productive wind farm. The Ministry of Energy also observed that renewable energy projects such as the Kennedy Wind Farm are in the long-term interest of all island nations, as these projects reduce global warming, a phenomenon that has particularly adverse effects on island nations coping with rising sea levels.
24. The Government of the Kingdom of Akkad responded on 5 December 2003 with a diplomatic note that stated in part:

While the Republic of Heronia may have satisfied its procedural duties under international law, it is deplorable that the Republic of Heronia is not satisfying its substantive obligations. In particular, the location and size of the proposed wind farm violates a number of treaties to which both the

Republic of Heronia and the Kingdom of Akkad are parties.

Although the Migrating Bird Convention calls on the Republic of Heronia to “preserve and enhance” the environment of the Akkadian spotted scoter, the proposed Kennedy Wind Farm would actually degrade the flyway of this threatened species. Indeed, the proposed turbines can be viewed as “pollution of the seas.” Moreover, the Migrating Bird Convention reaffirms the Republic of Heronia’s obligations under the Ramsar Convention. Particularly noteworthy is that the Ramsar Convention requires the Republic of Heronia to “consider its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl” (Article 2) and “shall endeavour through management to increase waterfowl populations” (Article 4). A project that decreases waterfowl population is contrary to the very heart of the Ramsar Convention.

Proceeding with this project also would violate UNCLOS, which imposes on the Republic of Heronia the obligation “to protect and preserve the marine environment” (Article 192) and “to prevent, reduce and control pollution of the marine environment from any source” (Article 194). In addition, the proposed project would be inconsistent with the duties imposed by the Convention on Biological Diversity, including the duty to avoid transboundary harm (Article 3) and the duty to promote the protection of ecosystems (Article 8).

25. The Government of the Republic of Heronia responded on 10 January 2004 with a diplomatic note that stated in part:

It is the position of the Republic of Heronia that the more specific treaty, the Migrating Bird Convention, controls the obligations of the parties with respect to the Akkadian spotted scoter. Furthermore, it is the position of the Republic of Heronia that it has fully satisfied its obligations under the Migrating Bird Convention. With respect to the Ramsar Convention, it is noteworthy to recall that the wind farm will not be operating within any wetland of international importance. Furthermore, while UNCLOS contains a general duty to protect the “marine environment,” the Republic of Heronia suggests that migratory birds are not part of the “marine environment” simply because they fly over the high seas. Understood in its proper context, the phrase “marine environment” refers to species that live at sea.

Finally, the Republic of Heronia observes that the Convention on Biological Diversity, a framework convention, recognizes that the Republic of Heronia has the sovereign right to exploit its resources pursuant to its own environmental policies. In this case, the paramount environmental policy is to reduce greenhouse gas emissions.

26. The Government of the Kingdom of Akkad replied on 2 February 2004 with a diplomatic note that stated in part:

It is our view that UNCLOS and the Convention on Biological Diversity, which are later in time than the Migrating Bird Convention and the Ramsar Convention, are not only relevant with respect to duties, but are dispositive with respect to the dispute resolution process.
27. The Republic of Heronia disagrees with the contention that UNCLOS and the CBD override and supplant the dispute resolution procedure of the Migrating Bird Convention; rather, the Republic of Heronia asserts that the procedures outlined in the Migrating Bird Convention are the exclusive means for resolving any dispute concerning the Akkadian spotted scoter, citing *Southern Bluefin Tuna (Australia and New Zealand v. Japan)* for support.

[The Tribunal's decision may be found at [www.worldbank.org/icsid/bluefintuna/main.htm](http://www.worldbank.org/icsid/bluefintuna/main.htm).]
28. In March 2004, the Kingdom of Akkad and the Republic of Heronia agreed to enter into negotiations, as contemplated by the Migrating Bird Convention, with the recognition that such an action should not be interpreted as waiving the jurisdictional arguments of either party.
29. After negotiations failed to resolve the matter, in August 2004 the Kingdom of Akkad and the Republic of Heronia agreed to enter into mediation as contemplated by the Migrating Bird Convention, with the recognition that such an action should not be interpreted as waiving the jurisdictional arguments of either party.
30. The mediation failed to resolve the matter, and in February 2005 the Republic of Heronia commenced the construction of the Kennedy Wind Farm.
31. After continued discussions, the Government of the Kingdom of Akkad and the Government of the Republic of Heronia signed an agreement on 11 May 2005 that submits the matter to the International Court of Justice.
32. The Kingdom of Akkad opposes the claims in paragraph 33 of this Annex and seeks an order declaring: (1) that the International Court of Justice has jurisdiction to consider this dispute under UNCLOS and the CBD, and (2) that the Republic of Heronia will violate international law by completing construction of and operating the Kennedy Wind Farm.
33. The Republic of Heronia opposes the claims in paragraph 32 of this Annex and seeks an order declaring that the International Court of Justice does not have jurisdiction to consider the merits of this dispute. If the International Court of Justice determines that it does have jurisdiction to consider the merits of this dispute, the Republic of Heronia seeks an order declaring that the Republic of Heronia will not violate international law by constructing and operating the Kennedy Wind Farm.