

**The Kingdom of Acropora, Applicant**

**v.**

**The Republic of DeLand, Respondent**

# **RECORD**

**Eleventh Annual  
International Environmental  
Moot Court Competition  
2006**



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NOTIFICATION, DATED 22 MAY 2006, ADDRESSED TO  
THE MINISTER FOR FOREIGN AFFAIRS OF THE KINGDOM OF ACROPORA  
AND  
THE MINISTER FOR FOREIGN AFFAIRS OF THE REPUBLIC OF DELAND

The Hague, 22 May 2006.

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 2006. I have the further honor to inform you that the case of the Kingdom of Acropora, Applicant v. the Republic of DeLand, Respondent, has been entered as 2006 General List No. 111. The written proceedings shall consist of memorials to be submitted to the Court. Oral proceedings are scheduled for 8-11 November 2006.

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

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JOINT NOTIFICATION, DATED 11 MAY, 2006, ADDRESSED TO  
THE REGISTRAR OF THE COURT

The Hague, 11 May 2006.

On behalf of the Kingdom of Acropora and the Republic of DeLand, 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 Acropora and the Republic of DeLand for Submission to the International Court of Justice of Differences Between Them Concerning Coral Reefs and Climate Change, signed at Buenos Aires, Argentina, on 11 May 2006.

For the Kingdom of Acropora:

/s/  
\_\_\_\_\_  
E. Kolbert  
Minister of Foreign Affairs

For the Republic of DeLand:

/s/  
\_\_\_\_\_  
M. Crichton  
Minister of Foreign Affairs

SPECIAL AGREEMENT  
BETWEEN  
THE KINGDOM OF ACROPORA  
AND  
THE REPUBLIC OF DELAND  
FOR SUBMISSION TO THE  
INTERNATIONAL COURT OF JUSTICE  
OF DIFFERENCES BETWEEN THEM  
CONCERNING  
CORAL REEFS AND CLIMATE CHANGE

The Kingdom of Acropora and the Republic of DeLand,

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

Conscious that the Kingdom of Acropora and the Republic of DeLand are States Parties to the United Nations Convention on the Law of the Sea,

Considering that the Kingdom of Acropora and the Republic of DeLand are States Parties to the International Covenant on Economic, Social and Cultural Rights,

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

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

Recognizing that differences have arisen concerning greenhouse gas emissions in the Republic of DeLand and coral bleaching in the Kingdom of Acropora, and the response by the Kingdom of Acropora,

Noting that the Kingdom of Acropora and the Republic of DeLand 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 Acropora and the Republic of DeLand, 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 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 Buenos Aires, Argentina, this eleventh day of May 2006, in two copies, each in the English language, and each being equally authentic.

FOR THE KINGDOM OF ACROPORA:

/s/ \_\_\_\_\_  
E. Kolbert  
Minister of Foreign Affairs

FOR THE REPUBLIC OF DELAND:

/s/ \_\_\_\_\_  
M. Crichton  
Minister of Foreign Affairs

ANNEX A  
AGREED STATEMENT OF FACTS

1. The Panthalassa Ocean contains several seas, including the Disston Sea. Six independent states are located in or border the Disston Sea. The Kingdom of Acropora is the smallest in the region, both in terms of size and population; the Republic of DeLand is the largest in the region in size and population.
2. The Kingdom of Acropora is a small island state in the Disston Sea. It is a developing country with a population of approximately 75,000 people. The Kingdom of Acropora's territory consists of a main island, Hebrides, which has an area of 4,000 square kilometers, and several small uninhabited islands. The northern coast of the main island is ringed with coral reefs. The Hebrides Coral Reef has been included on the World Heritage List since 1981.
3. The Kingdom of Acropora has two main ethnic groups. Approximately two-thirds of the population is considered Acroporans, who are descendants of a native indigenous people, dating back well before the modern Kingdom of Acropora came into existence in the early 1400s. The Acroporans tend to live in the center of the main island and are farmers who raise fruit and livestock. Approximately one-third of the population is considered Maroons, who are descendants of slaves who escaped their servitude in the 1700s from nearby countries. The Maroons in the Kingdom of Acropora live on the northern coast of Hebrides. The Maroons continue to live in their own communities and maintain their cultural traditions. The Maroons rely on subsistence fishing of reef fish, which is their main source of food and provides 90% of their protein needs. Both the Acroporans and the Maroons are citizens of the Kingdom of Acropora.
4. The Republic of DeLand is a developed country with a diversified, heavily industrial economy and a population of 350 million people. It borders the Disston Sea, approximately 250 kilometers north of the Kingdom of Acropora.
5. The Kingdom of Acropora and the Republic of DeLand are Members of the United Nations, and are Parties to the Statute of the International Court of Justice.
6. The Kingdom of Acropora and the Republic of DeLand are Parties to the Vienna Convention on the Law of Treaties.
7. The Kingdom of Acropora and the Republic of DeLand became States Parties to the United Nation Convention on the Law of the Sea in 1994.
8. The Kingdom of Acropora and the Republic of DeLand became Contracting Parties to the Convention on Biological Diversity in 1993.

9. The Kingdom of Acropora and the Republic of DeLand have been States Parties to the International Covenant on Economic, Social and Cultural Rights since 1976. The Republic of DeLand sent a representative to participate in the January 1997 meeting in Maastricht that resulted in the adoption of the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights. [Note: the guidelines are available at [http://www1.umn.edu/humanrts/instree/Maastrichtguidelines\\_.html](http://www1.umn.edu/humanrts/instree/Maastrichtguidelines_.html).]
10. The Kingdom of Acropora is a Party to the Convention Concerning the Protection of the World Cultural and Natural Heritage (World Heritage Convention). The Republic of DeLand is not a Party to the World Heritage Convention.
11. High-level representatives from the Kingdom of Acropora and the Republic of DeLand 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.
12. The Republic of DeLand is a Party to the United Nations Framework Convention on Climate Change, and is included in Annex I. The Republic of DeLand signed the Kyoto Protocol in March 1998, but has not ratified it. The Republic of DeLand is listed in Annex B of the Kyoto Protocol, which states that the Republic of DeLand is to reduce its greenhouse gas emissions to 92% of its 1990 levels.
13. The Kingdom of Acropora is a Party to the United Nations Convention on Climate Change, and is not included in Annex I. The Kingdom of Acropora signed the Kyoto Protocol in March 1998 and deposited its instrument of ratification in April 1998.
14. The Republic of DeLand is a Member of the World Trade Organization. The Kingdom of Acropora is not a Member of the World Trade Organization.
15. All six states in the Disston Sea region are Parties to a 2001 treaty entitled Trade Agreement for the Disston Region (TADR).
16. The relevant portions of the TADR provide:

**Article 1: Establishment of the Free Trade Area**

The Parties to this Agreement hereby establish a free trade area within the Disston Sea region.

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**Article 5: 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.

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**Article 15: General Exceptions**

Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any party of measures:

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(b) necessary to protect human, animal or plant life or health;

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(f) imposed for the protection of national treasures of artistic, historic or archaeological value;

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

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**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. Wherever 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.

17. In April 2006, the Republic of DeLand issued a report on its inventory of greenhouse gas emissions and sinks, which provided data from 1990 – 2004. The report established that the Republic of DeLand is the greatest net emitter of greenhouse gases in the world, both in terms of actual emissions (approximately 25% of worldwide anthropogenic emissions) and per capita emissions. The Republic of DeLand's total greenhouse gas emissions, measured in tetragrams of CO<sub>2</sub> equivalents (Tg CO<sub>2</sub> Eq.), have risen by more than 20% since 1990. Most of the increase in greenhouse gas emissions is attributable to increases in emissions of CO<sub>2</sub>, CH<sub>4</sub>, PFCs, and SF<sub>6</sub>. It is expected that the data for 2005 and 2006 will show a similar trend.
18. The Republic of DeLand has no program that regulates the emission of CO<sub>2</sub>, CH<sub>4</sub>, PFCs, and SF<sub>6</sub>. Instead, the Republic of DeLand relies on industries to adopt voluntary limits.
19. Coral reefs, such as those in the Disston Sea, are highly productive ecosystems that provide critical habitat for many fish species. Corals "bleach" when the symbiotic, single-celled algae within the coral animal cells (which give corals their color) are expelled as corals are stressed by disease or environmental changes, such as high seawater temperatures. If the period of stress is prolonged, bleached corals may die.
20. In 1998, average sea temperatures in the Disston Sea began to rise. The coral reefs off the northern coast of Hebrides began to suffer from bleaching. The Maroons reported that their fish harvest declined by 30% from its usual level.
21. In 2000, concerned that declining fish harvests would dramatically alter their way of life, a group of Maroons brought a lawsuit, along with Bluewatch (a non-governmental organization in DeLand), against the Republic of DeLand in its domestic court system. The lawsuit alleged that the Republic of DeLand was violating its international obligation to regulate greenhouse gases. In particular, the lawsuit alleged violations of the U.N. Law of the Sea Convention, the Convention on Biological Diversity, and the U.N. Framework Convention on Climate Change, and charged that the Republic of DeLand's actions and inactions constituted a human rights offense. The trial court did not reach the merits of the claims, but dismissed the lawsuit on procedural grounds. The proper forum, according to the trial court, was the executive or legislative branches of the Republic of DeLand. Alternatively, the trial court viewed this matter as one that should be addressed between sovereign states. The decision was affirmed by the appellate court, and no further judicial appeals are possible in the Republic of DeLand.
22. In 2005, the Disston Sea had the highest temperatures ever recorded since 1987, when measurements were first taken in a systematic way. Scientists reported that more than two-thirds of the coral reefs off the northern coast of Hebrides have suffered from bleaching and died, including a colony of 700-year-old star coral. The Maroons reported that their fish harvest declined by 60% from its usual level.

23. On 19 August 2005, the following diplomatic note was forwarded to the Government of the Republic of DeLand:

The Embassy of the Kingdom of Acropora presents its compliments to the Government of the Republic of DeLand and has the honor to request that the Republic of DeLand enter into urgent consultations with the Kingdom of Acropora concerning the impact of rising sea temperatures on the health of its coral reefs, fisheries, and citizens.

The Government of the Kingdom of Acropora notes with concern the failure of the Republic of DeLand to take any measures to reduce its greenhouse gas emissions. The Government of the Kingdom of Acropora recalls the position of the Association of Small Island States in Kyoto in 1997: a 20% reduction of greenhouse gas emissions from 1990 levels by 2005. While the Kyoto Protocol did not adopt this position, it was viewed as an initial step to necessary action. It is therefore regrettable that the Republic of DeLand has not satisfied its many international obligations.

The Government of the Kingdom of Acropora welcomes the opportunity to discuss these matters at the highest levels, as contemplated by the Framework Convention on Climate Change, the Convention on the Law of the Sea, and the Convention on Biological Diversity.

Please accept the assurance of my highest consideration.

/s/ \_\_\_\_\_  
L. Sapodorado  
Ambassador

24. On 26 August 2005, the following diplomatic note was forwarded to the Government of the Kingdom of Acropora:

The Embassy of the Republic of DeLand presents its compliments to the Government of the Kingdom of Acropora and has the honor to acknowledge receipt of the diplomatic note dated 19 August 2005.

At the outset, the Government of the Republic of DeLand observes that the Republic of DeLand is not a Party to the

Kyoto Protocol and that the Republic of DeLand is satisfying all its international legal obligations.

While the request for bilateral consultations is understandable, the Government of the Republic of DeLand respectfully declines at this time. The matter of climate change is a serious issue that deserves to be considered in a multilateral context among the organizations of the U.N. Framework Convention on Climate Change.

Please accept the assurance of my highest consideration.

/s/  
\_\_\_\_\_  
J. Kenner  
Ambassador

25. On 7 September 2005, the Government of the Kingdom of Acropora responded with a diplomatic note that stated in part:

While it is our position that the Republic of DeLand has failed to fulfill the legal obligations imposed on it by the Climate Change Convention and the Kyoto Protocol, we also assert that Republic of DeLand has violated other duties.

For example, the U.N. Convention on the Law of the Sea requires the Republic of DeLand to protect and preserve the marine environment. A failure to regulate greenhouse gases, thereby contributing to sea surface temperature increases and coral death, can give rise to a legal cause of action. See William C.G. Burns, *Potential Causes of Action for Climate Change Damages in International Fora: The Law of the Sea Convention*, 2 McGill Int'l J. Sustainable Dev. L. & Pol'y 27 (2005). [Note: the article is available at <http://policy.mii.edu/programs/BurnsFT.pdf>.]

Furthermore, the Republic of DeLand's failure to regulate greenhouse gases, and its contributory effect on the Maroons, constitutes an additional international offense by interfering with their right to fish, right to food, and right to culture. Many international documents impose a special duty with respect to the protection of indigenous peoples and local communities, including the Rio Declaration and the Convention on Biological Diversity. The International

Covenant on Economic, Social and Cultural Rights also protects the right to culture, the right to “adequate food,” and the right “to be free from hunger.” By contributing to rising sea temperatures, the Republic of DeLand has failed to live up to its international obligations.

26. On 21 September 2005, the Government of the Republic of DeLand responded with a diplomatic note that stated in part:

Article 197 of the U.N. Convention on the Law of the Sea calls on States to cooperate “through competent international organizations” for the protection of the marine environment. Article 212 reinforces this notion with respect to atmospheric pollution. The Republic of DeLand is cooperating through the organizations of the U.N. Framework Convention on Climate Change and accordingly has satisfied its obligations under the Law of the Sea Convention.

With respect to alleged human rights violations, we note that Maroons, while citizens of the Kingdom of Acropora, are not an indigenous people. See Conference Report of the Ninth Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands, ¶ 310 (2005) (statement of Suriname distinguishing between Indigenous Peoples and Maroons). [Note: report is at [http://www.ramsar.org/cop9/cop9\\_conf\\_rpt\\_e.htm](http://www.ramsar.org/cop9/cop9_conf_rpt_e.htm).] Moreover, if any duty is owed to the Maroons, the obligation is that of the Kingdom of Acropora, not the Republic of DeLand.

27. On 28 September 2005, in a nationally broadcast speech, the Minister of Trade for the Kingdom of Acropora stated: “Because the Republic of DeLand refused to reduce its greenhouse gas emissions and comply with its international obligations, the Kingdom of Acropora must act in self-defense. Effective 1 October 2005, we shall prohibit the importation of any goods produced or manufactured in the Republic of DeLand. We will not be complicit in our own death. . . . While this act may be seen as solely symbolic, it is but a first step, as is the Kyoto Protocol. Accordingly, we call on all our fellow states in the Disston Sea region – indeed, all states all over the world – to ban and boycott goods from DeLand.”

28. On 2 October 2005, at a regionally broadcast press conference, the Trade Representative for the Republic of DeLand said: “We believe that the actions by the Kingdom of Acropora are a direct breach of the TADR. While we are not necessarily concerned about the loss of trade with Acropora, we do not want to permit such an aggressive trade violation to stand. Such a precedent would be intolerable in a liberalized trading system. . . . Accordingly, we will enter into discussions with Acropora regarding this matter.”
29. After consultations and negotiations failed to resolve the matter, in December 2005 the Kingdom of Acropora and the Republic of DeLand agreed to enter into mediation.
30. The mediation failed to resolve the dispute, and after continued discussion the Kingdom of Acropora and the Republic of DeLand signed an agreement on 11 May 2006 that submitted the matter to the International Court of Justice.
31. The Kingdom of Acropora opposes the claims in paragraph 32 of this Annex and seeks an order declaring: (1) that by failing to regulate greenhouse gases, the Republic of DeLand is responsible under international law for damages, including environmental and cultural, associated with coral bleaching in the Kingdom of Acropora and (2) that the Kingdom of Acropora has not violated international law by banning the importation of goods produced or manufactured in the Republic of DeLand.
32. The Republic of DeLand opposes the claims in paragraph 31 and seeks an order declaring that the Kingdom of Acropora has violated international law by banning the importation of goods produced or manufactured in the Republic of DeLand.