

2005 General List No. 110

IN THE
INTERNATIONAL COURT OF JUSTICE
AT THE PEACE PALACE, THE HAGUE,
THE NETHERLANDS

Case Concerning
Differences Between the Parties Concerning an Off-Shore Wind Farm

THE KINGDOM OF AKKAD
APPLICANT

v.

THE REPUBLIC OF HERONIA
RESPONDENT

MEMORIAL FOR RESPONDENT

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	iv
STATEMENT OF FACTS.....	ix
STATEMENT OF JURISDICTION.....	xi
QUESTIONS PRESENTED.....	xii
SUMMARY OF ARGUMENTS.....	xii
ARGUMENT.....	1
I. THIS HONOURABLE COURT DOES NOT HAVE JURISDICTION TO CONSIDER THE MERITS OF THE DISPUTE.....	1
A. The Migrating Bird Convention is the only instrument applicable to this case..	1
1. The Special Agreement concluded between the Parties does not confer jurisdiction as to the merits.....	1
2. The Migrating Bird Convention exclusively controls the obligations of the Parties with respect to the scoter.....	2
3. The Migrating Bird Convention is a <i>lex specialis</i>	3
B. There is no dispute under other international treaties in the present case	4
1. UNCLOS is inapplicable in the present case.....	4
(i) the Akkadian spotted scoter because it does not form part of the marine environment	
(ii) Living resources do not have international legal status	
2. The Convention on Biological Diversity is inapplicable in the present case.....	8
3. The Ramsar Convention is inapplicable in the present case.....	8
C. The Migrating Birds Convention does not provide for submission of disputes to this Honourable Court and the Republic of Heronia does not consent to such a method of dispute resolution.....	9
II. THE CONSTRUCTION AND OPERATION OF THE KENNEDY WIND FARM WILL NOT VIOLATE INTERNATIONAL LAW	13
A. The Republic of Heronia has a sovereign right to exploit its resources within its Exclusive Economic Zone.....	13
B. International Law does not confer a veto right to neighbouring states on the free use of Heronia’s Exclusive Economic Zone.....	15
C. The Republic of Heronia is obliged to fulfil its obligations under the Kyoto Protocol.....	17

D. The Principle of Sustainable Development should be applied in this case.....	18
1. Sustainable Development is a norm of Customary International Law.....	18
2. The obligations assumed by the Republic of Heronia under the Kyoto Protocol are in pursuance of Sustainable Development and seek to preserve Next Generation Rights.....	19
CONCLUSION.....	21

INDEX OF AUTHORITIES

International Cases and Arbitral Decisions

Ambatielos Case, ICJ Reports, 1952

Anglo-Iranian Oil Company, ICJ Reports, 1952

Barcelona Traction Case, ICJ Reports, 1970

Case Concerning certain Phosphate Lands in Nauru (Australia v Nauru), ICJ Reports, 1992

Case Concerning Land Reclamation by Singapore in and around the Straits of Johore (Malaysia v Singapore), ITLOS, Case No. 12, 2003

Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya), ICJ Rep. 38, 1982

Chorzów Factory (Jurisdiction) Case, Series A No. 9, 1927

Chorzów Factory Case, PCIJ, Series A No. 17, 1928

Corfu Channel Case, ICJ Reports, 1949

East Timor Case, ICJ Reports, 1995

German External Debts Case, 19 ILM, 1980

Icelandic Fisheries Case (Germany v Iceland), ICJ Reports, 1974

Icelandic Fisheries Case (UK v Iceland), ICJ Reports, 1974

Import Prohibition of Certain Shrimp and Shrimp Products, WTO Case Nos. 58 (and 61). ruling adopted on 6 November 1998

Lac Lanoux Arbitration, 24 ILR, 1957

Legality of the Threat or Use of Nuclear Weapons, ICJ Reports, Advisory Opinion, 1996

Monetary Gold Removed from Rome Case, ICJ Reports, 1954

MOX Plant Case, ITLOS Case No. 10, 2001

North Sea Continental Shelf Cases (Federal Republic of Germany v Denmark; FRG v The Netherlands), ICJ Reports, 1969, 3

Norwegian Loans Case, ICJ Reports, 1957

Nuclear Tests Case (Australia v. France) (Interim Measures), ICJ Reports, 1973

Nuclear Tests Case (Australia v. France) (Interim Measures), ICJ Reports, 1974

Nuclear Tests Case (Jurisdiction), ICJ Reports, 1974

Railway Traffic between Lithuania and Poland, PCIJ, Series A/B No. 42

Rights of Minorities in Upper Silesia (Minority Schools), PCIJ, Series A, No. 15

Southern Bluefin Tuna (Australia and New Zealand v. Japan) Cases (Provisional Measures)

South West Africa (Second Phase) Case, ICJ Reports, 1966

Tuna-Dolphin I: GATT Panel Report, 'United States – Restrictions on Imports of Tuna', GATT BISD, 39S/155, 1991

Tuna Dolphin II: GATT Panel Report, 'United States – Restrictions on Imports of Tuna', GATT Doc. DS29/R, 1994

National Case-Law

Australia and New Zealand Bank v Commonwealth of Australia, 1989, Transcript

Treatises and Digests

Birnie & Boyle, International Law and the Environment, Clarendon Press, 1994

Birnie & Boyle, International Law and the Environment, 2nd ed., Oxford, 2002

Brownlie, Principles of Public International Law, 6th ed., Oxford, 2003

Hunter, Salzman & Zaelke, International Environmental Law and Policy, 1998

Kiss & Shelton, International Environmental Law, 1991

Nordquist (ed.), The United Nations Convention on the Law of the Sea: A Commentary, Dordrecht, 1991

Rosenne, The Law and Practice of the International Court, 1920-1996, Volume II, Kluwer Law International, 1997

Rosenne, The Law and Practice of the International Court, 1920-1996, Volume III, Kluwer Law International, 1997

Sands, Principles of International Environmental Law, 2nd ed., Cambridge, 2003

Shaw, International Law, 4th ed., Cambridge, 1997

Shaw, International Law, 5th ed., Cambridge, 2003

Weiss, McCaffrey, McGraw, Szasz & Lutz, International Environmental Law and Policy, 1998

Essays, Articles and Journals

Bodansky, What's so Bad about Unilateral Action to Protect the Environment?, EJIL, Vol. 11 No. 2, 2000

Botchway, The Context of Trans-Boundary Energy Resource Exploitation: The Environment,

the State and the Methods, 14 Colo J. Int'l Envtl L & Pol'y, 2003

Currie, The International Law of Shipments of Ultrahazardous Radioactive Materials: Strategies and Options to Protect the Marine Environment, Paper given to South Pacific Regional Workshop on Criminal Law and its Administration in International Environmental Conventions, Apia, Western Samoa, 22-26 June 1998

Dzidornu, Coastal State Obligations and Powers- Respecting EEZ Environmental Protection under Part XII of the UNCLOS: A Descriptive Analysis, 8 Colo. J. Int'l Envtl. L. & Pol'y 283, 1997

Hodas, The Role of Law in Defining Sustainable Development: NEPA reconsidered, 3 Widener Law Symposium J. 1, 1998

Hollis, Why State Consent Still Matters- Non-State Actors, Treaties and the Changing Sources of International Law, 23 Berkley J. Int'l L., 2005

Jinnah, Emissions Trading Under the Kyoto Protocol: NAFTA and WTO Concerns, 15 Geo. Int'l Envt'l L. Rev., 2003

Johnson, The Earth Summit, Dordrecht, 1993

Kirgis, Prior Consultation in International Law, Charlottesville, Va., 1983

Knox, The Myth and Reality of Transboundary Environmental Impact Assessment, 96 Am. J. Int'l L. 291, 2002

Larocque, The Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean: Can Tuna Promote Development of Pacific Island Nations?, 2 Asian Pacific L. & Pol'y

Lauterpacht, De l'Interprétation des Traités: Rapport et Projet de Résolutions, 43 Annuaire de l'Institute de Droit International, 1950

Lisley & Thonauer, An Expanding International Regime: Environmental Protection & Radioactive Waste Management, IAFA Bulletin 12/3/2000

Perrez, The relationship between 'Permanent Sovereignty' and the obligation not to cause transboundary environmental damage, 26 Envtl. L. 1187, 1996

Sachariew, The Definition of Thresholds of Tolerance for Transboundary Environmental Injury under International Law: Development and Present Status, NILR, 1990

Schaeter, The Emergence of International Environmental Law, J. Int'l Affairs, 457, 1991

Schiffman, The Southern Bluefin Tuna Case: ITLOS Hears Its First Fishery Dispute, 2(3) Journal of Wildlife Law and Policy, 1999

Schwarte, Environmental Concerns in the Adjudication of the International Tribunal for the Law of the Sea, 16 Geo. Int'l. Envtl. L. Rev. 421

Smith, Ecologically Sustainable Development: Integrating Economics, Ecology and Law, 31 Willamette Law Review, 263, 1995

Sohn, Unratified Treaties as a Source of Customary International Law, in Realism in Law

Making: Essays in Honor of William Ripphagen”, 231, (Adrian Bos & Hugo Siblesz, ed., 1986

Wirth, The Rio Declaration on Environment and Development: Two Steps Forward and One Back or Vice Versa?, GA. L. Rev., 599, 1995

Wolfrum, Purposes and Principles of International Environmental Law, 1990, GYBIL

Treaties

Charter of the United Nations, San Francisco, 26 June, 1945, in force 24 October, 1945 (UN Charter)

Convention on Biological Diversity, United Nations Conference on Environment and Development, 5 June 1992 (the CBD)

Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean, 5 September, 2000 (Honolulu Convention)

Convention on Conservation of Antarctic Marine Living Resources, 1980

Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 19 ILM, 1980 (the Bonn Convention)

Convention on Environmental Impact in a Transboundary Context, 25 February, 1991 (Espoo Convention)

Convention on Wetlands of International Importance especially as Waterfowl Habitat, Paris, 1971, as amended in 1982 and 1987 (Ramsar Convention)

Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 1997, in force 16 February, 2005 (Kyoto Protocol)

Statute of the International Court of Justice, June 26, 1945, 59 Stat., 1031 (Statute of the ICJ)

United Nations Framework Convention on Climate Change, 3 ILM, 1992

United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982 (UNCLOS)

Vienna Convention on the Law of Treaties, Vienna, 22 May 1969 (VCLT)

United Nations Documents

Declaration of the United Nations Conference on Environment and Development, 14 June, 1992, UN A. Doc. A/CONF.151/5/26Rev.1, Report of the UNCED vol. 1 (the Rio Declaration)

Declaration on Principles of International Law Concerning Friendly Relations among States, General Assembly Resolution 2625 (XXV) (GA Res.2625)

Declaration on the Prevention and Removal of Disputes and Situations which may Threaten International Peace and Security, Resolution 43/51 (Res. 43/51)

Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, in Report of the International Law Commission, 53rd Session, UN GAOR, 56th Sess., Supp. No. 10, at 370-436, UN Doc. A 56/10, 2001 (ILC Draft Articles)

General Assembly Resolution 1803, UN GAOR, 17th Session, 1194th plen. mtg., Supp. No. 17, at 15, UN Doc A/5217, 1962 (GA Res. 1803)

Manila Declaration on the Peaceful Settlement of International Disputes, General Assembly Resolution 37/590 (GA Res. 37/590)

Report of the United Nations Conference on the Sustainable Development of Small Island Developing States, Barbados, 25 April- 6 May 1994, Resolutions adopted by the Conference (available at www.un.org), resolution 1, annex I. (Barbados Declaration)

UN Secretary-General, Rio Declaration on Environment and Development: Application and Implementation, UN Doc. E/CN.17/1997/8, § 23

Other Sources

Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3

Statement of H.E. Ambassador Slade On Behalf of The Alliance of Small Island States to The Meeting of the Intergovernmental Group of Experts on Energy and Sustainable Development, New York, 6 April, 2000 (Statement of Ambassador Slade)

Statement of Nitin Desai, Under Secretary-General for Economic and Social Affairs to the Second Committee, Introducing Item 98: Environment and Sustainable Development, New York, October, 2001 (Statement of Nitin Desai)

World Commission on Environment and Development, Our Common Future, 1987 (Our Common Future)

STATEMENT OF FACTS

This case concerns the tensions between sovereign coastal States where one State disputes the environmental policy pursued by its neighbour.

The Republic of Heronia is a developed densely populated coastal state. It lies to the west of the Kingdom of Akkad. The States have abutting exclusive economic zones. The Kingdom of Akkad is a larger, developing island nation and is sparsely populated.

Both States are Members of the United Nations and Parties to the Statute of the ICJ, the VCLT, UNCLOS, the CBD, and the Ramsar Convention. Under this last instrument, the Sargon National Park and the Eadiedra National Wildlife Refuge, a freshwater marsh in eastern Heronia, have been designated as wetlands of international importance.

The Akkadian spotted scoter migrates between the two wetlands. In 1980, the Parties entered into the Convention for the Protection of Migrating Birds and Birds in Danger of Extinction, and their Environment which protects the scoter. In the event of a dispute the Convention provides for negotiation between the Parties and, in the final instance, mediation.

Both States participated in the 1972 UN Conference in Stockholm and the 2002 World Summit on Sustainable Development in Johannesburg. The Republic of Heronia acceded to both the United Nations Framework Convention on Climate Change and to the Kyoto Protocol. Despite its high dependence on imported fossil fuels the Republic has given an undertaking to reduce its greenhouse gas emissions. The Kingdom of Akkad has signed the Convention on Climate Change only.

The Kennedy Wind Farm is a clean renewable energy source with the potential to supply approximately 425,000 Heronian households. It is to be located off-shore in the Heronian Exclusive Economic Zone and aims to help Heronia meet its Kyoto obligations.

The proposed wind farm was publicly announced in December 2002. On 15 December the Kingdom of Akkad requested consultations, which Heronia immediately welcomed. During consultations in February 2003 Akkad expressed objections to the site of the proposed wind farm based on concerns as to the impact on the scoter. A study was produced supporting their concerns. Given that there is no alternative site for the wind farm and that island nations are particularly vulnerable to the effects of global warming, approval for the Kennedy Wind Farm was announced in November 2003.

On 5 December Akkad alleged that Heronia had breached a number of Treaties but recognised that the Republic had observed all international law procedures. Heronia disputes these contentions and maintains its sovereign right to pursue its development policies in its exclusive economic zone. In February 2004 the Akkadian government stated that the dispute between the Parties was governed by UNLCOS and the CBD. The Heronian government states that the MBC is the exclusive means for resolution of the dispute.

In March 2004 the Parties entered negotiations. Negotiations were unsuccessful and in August 2004 the matter was submitted to mediation in accordance with the MBC. Neither Party waived its jurisdictional arguments. No resolution was forthcoming.

In February 2005, one year and two months behind schedule, construction of the Kennedy Wind Farm commenced. Discussions between the Parties continued culminating in a Special Agreement signed in Freiburg on 11 May 2005 submitting the matter to this Honourable Court for determination.

STATEMENT OF JURISDICTION

The Kingdom of Akkad and the Republic of Heronia have submitted by Special Agreement their differences concerning an off-shore wind farm and transmitted a copy thereof to the Registrar of the Court pursuant to Article 40 (1) Statute of the ICJ. The Republic of Heronia disputes the jurisdiction of the Court to consider the merits of this case and awaits a decision of the Court pursuant to Article 36 (6) Statute of the ICJ.

QUESTIONS PRESENTED

1. Whether the International Court of Justice has jurisdiction to consider the merits of the dispute.
2. If the International Court of Justice has jurisdiction to consider the merits of the dispute, whether the Republic of Heronia will violate international law by constructing and operating the Kennedy Wind Farm.

SUMMARY OF ARGUMENTS

This Honourable Court has no jurisdiction to rule on the merits of this dispute. The Migrating Bird Convention, the *lex specialis*, does not submit jurisdiction to it.

The Respondent's sovereign right to exploit resources in its Exclusive Economic Zone includes economic exploitation. The Applicant has no veto over this exploitation or over Heronian domestic policy. Promotion of renewable energy sources is obligatory for the Respondent under its Kyoto obligations. The principle of Sustainable Development applies.

I. THIS HONOURABLE COURT DOES NOT HAVE JURISDICTION TO CONSIDER THE MERITS OF THE DISPUTE

A. The Migrating Bird Convention is the only instrument applicable to this case

1. The Special Agreement concluded between the Parties does not confer jurisdiction as to the merits

For this Honourable Court to rule on the merits of the present dispute it must be seized in accordance with Article 36(1) of its Statute. Restrictions are permissible under Article 36(6), 'In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.' The agreed Statement of Facts¹ and the Special Agreement is such a restriction and it accords jurisdiction to this Court only over those matters submitted.

Although this Honourable Court has been validly seized of, in the circumstances, it cannot exercise its jurisdiction. The Respondent has a valid legal right to raise this question, without prejudice to the merits of the dispute between the parties. As Judge Lauterpacht stated in his Separate Opinion on *Norwegian Loans*, "In accepting the jurisdiction of the Court Governments are free to limit its jurisdiction in a drastic manner. As a result, there may be little left in the Acceptance, which is subject to the jurisdiction of the Court."²

In both the *South West Africa* case³ and the *Barcelona Traction* case⁴ this Honourable Court found that neither applicant possessed *jus standi* but only after the parties had raised the matter as preliminary objections and pleaded fully to the merits.⁵

¹ Annex A to Special Agreement.

² Lauterpacht, Separate Opinion in the Norwegian Loans Case, 46.

³ South West Africa (Second Phase) Case, 294-9.

⁴ Barcelona Traction Case, 4.

⁵ Rosenne, Volume II, 856.

The procedure for dispute resolution under 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 (MBC) is clearly set out in that convention. The Respondent has at all times adhered to the procedures set out therein. The Applicant cannot circumvent the MBC by seeking to found jurisdiction on other international instruments because it is bound by the MBC and obliged to comply with it in good faith.⁶ The merits of the claims made by the Applicant do not come within the scope of jurisdiction of this Honourable Court.

2. The Migrating Bird Convention exclusively controls the obligations of the Parties with respect to the scoter

The MBC governs cooperation between Heronia and Akkad in relation to the protection of migrating birds and birds in danger of extinction. Article II (1) MBC states that, “In this Convention the term “migratory birds” includes...(g) Akkadian spotted scoter.” No other instrument specifically governs the scoter, the subject matter of this dispute.

The MBC provides for procedural duties only. The Republic of Heronia has fully satisfied its obligations to the Kingdom of Akkad. The regime established therein obliges the Contracting Parties to submit any dispute with respect to interpretation or application to, “negotiation between the Contracting Parties”.⁷ In the event that the dispute could not be resolved by negotiation, by mediation.”⁸ These obligations, and customary international law, oblige the Republic of Heronia to negotiate and consult in good faith but do not grant the Kingdom of Akkad a veto over Heronian domestic development policy.⁹

⁶ Art.26, VCLT.

⁷ Art. VI (1), MBC.

⁸ Art. VI (2), MBC.

⁹ Lac Lanoux Arbitration; Icelandic Fisheries Case (UK), 3; Icelandic Fisheries Case (Germany), 175.

Inherent in the duty to consult is the duty to inform or notify. This Honourable Court recognised this duty in the *Corfu Channel* case,¹⁰ where Albania was held to have the duty to disclose the presence of mines in the channel. Likewise France was required to consult in good faith with Spain over riparian rights in the *Lac Lanoux* case.¹¹ In that case, France was held to have complied with its duties under a treaty and customary law before diverting a watercourse shared with Spain. Spain's consent was not required.¹²

No provision was made between the Parties for the submission of disputes under the bilateral agreement to this Honourable Court. This reflects that the intention of the Parties at the time of concluding the agreement was to specifically exclude that method of dispute resolution. Other treaties do not apply.

3. The Migrating Bird Convention is a *lex specialis*

The provisions of a *lex specialis* not only specify and implement the principles of an anterior framework agreement, they exhaust and supplant those principles as long as the implementing agreement remains in force. The International Tribunal on the Law of the Sea (ITLOS) upheld the principle of *lex specialis* in *Southern Bluefin Tuna*.¹³ The MBC applies here to the exclusion of all other instruments as it fulfils and implements the framework established by UNCLOS, the Ramsar Convention and the CBD.

The provisions of UNCLOS on which the Applicants rely, Articles 61-68, are supplanted by the more specific provisions of the MBC. The MBC contemplates the discharge of Heronia's obligations in

¹⁰ ICJ Rep., 1949, 1

¹¹ Currie, The International Law of Shipments of Ultrahazardous Radioactive Materials: Strategies and Options to Protect the Marine Environment; Lisle and Thonauer, An Expanding International Legal Regime: Environmental Protection & Radioactive Waste Management, IAFA Bulletin 12/3/2000

¹² *Lac Lanoux*, 101, 111- 12, 123-4.

¹³ Schiffman, The Southern Bluefin Tuna Case: ITLOS Hears Its First Fishery Dispute, 1999; Schwarte, Environmental Concerns in the Adjudication of the International Tribunal for the Law of the Sea.

respect of the scoter by providing the institutional structure that UNCLOS contemplates and the substantive detail that is absent in UNCLOS. The scoter is neither a highly migratory species (such as fish stocks contemplated by Article 64 UNCLOS) nor simultaneously present in the EEZs of both coastal states (as contemplated by Article 63 UNCLOS). Further, the CBD, a framework convention, simply does not apply. Article 8 is a general in-situ conservation provision that imposes a duty to, “promote the protection of ecosystems”. Articles 2 and 4 of the Ramsar Convention, pleaded by the Applicant, impose similar conservation considerations.

These are supplanted by Article V (3) MBC which deals with conservation of, “migratory bird habitat”, and specifically that of the Akkadian spotted scoter. The *lex specialis* prevails substantively and procedurally, and hence Article VI MBC determines jurisdiction.

B. There is no dispute under other international treaties in the present case

Following the ITLOS decision in *Southern Bluefin Tuna*, it is possible that a given act may violate more than one treaty. On the facts of this case it is not possible because no parallelism of international instruments is present. Unilateral action on the part of the Applicant invoking the jurisdiction of this Honourable Court is contrary to the spirit of the MBC.

1. UNCLOS is inapplicable in the present case:

(i) The Akkadian spotted scoter does not form part of the marine environment

The scoter may be a ‘shared natural resource’, but it is not part of the marine environment. The Applicant cannot invoke compulsory jurisdiction under Part XV UNCLOS unless it can show that the questions at issue arise in the context of UNCLOS and not the MBC. UNCLOS applies to ‘pollution of the marine environment’, that is, “the introduction by man, directly or indirectly, of substances or energy into the marine environment, including estuaries, which results or is likely to result in such deleterious effects as harm to living resources and marine life...”.¹⁴ Migrating birds, such as the scoter,

¹⁴ Art.1, UNCLOS

are not part of the “marine environment” simply because they fly over high seas. This phrase, and article 192 UNCLOS, properly understood refer to species that live at sea.

Most conventions, including UNCLOS, avoid defining “marine environment”. The absence of definition in UNCLOS is particularly significant given that Malta proposed a term¹⁵ that would clearly have included birds at the Third UN Law of the Sea Conference. The Maltese suggested that the marine environment, “comprises the surface of the sea, the air space above, the water column and the sea-bed beyond the hightide mark including the biosystems therein or dependent thereon”. Even before UNCLOS entered into force, limitations on as to straddling and highly migratory species (fish stocks) were acknowledged and negotiations opened for a new agreement to address the issue.¹⁶

The absence is because birds, even if migratory, are land-based species. Unlike marine species, terrestrially-based species fall wholly under the sovereignty of the state within whose land frontiers or airspace they are found. The regulation of migratory birds, for purposes of conservation and sustainable use, “necessitates that state’s co-operation”.¹⁷ It is common case that this co-operation has been forthcoming on the part of the Republic of Heronia.

In light of past failed efforts to manage the ocean’s resources, that relied solely on international co-operation to follow reasonable use standards, UNCLOS created an EEZ that extends certain sovereign rights of coastal states 200 nautical miles from the baseline into the surrounding waters for purposes of exploring, exploiting, conserving and managing their living resources. The theory behind UNCLOS is that coastal states are best suited to protect those resources.¹⁸

¹⁵ Nordquist (ed.), The United Nations Convention on the Law of the Sea: A Commentary, Dordrecht, 1991, 42.

¹⁶ Larocque, The Convention on the Conservation and Management of Highly Migratory Fish stocks in the Western and Central Pacific Ocean: Can Tuna Promote Development of Pacific Island Nations?; Honolulu Convention

¹⁷ Birnie & Boyle, International Law & The Environment, 443.

¹⁸ See Larocque, note 16 (above).

The 1980 Convention on Conservation of Antarctic Marine Living Resources (CCAMLR) is instructive in the present context. Although it does not define the Antarctic environment, it identifies the marine living resources forming part of the Antarctic marine ecosystem as “the populations of fin fish, molluscs, crustaceans and all other species of living organisms, including birds, found south of the Antarctic Convergence.”¹⁹ While this definition includes birds, the CCAMLR is the exception and not the rule in international conventions. The CCAMLR adopts a holistic ecological approach given the absence of economic use in that ecosystem. In contrast to the present dispute (see section II. D.3 below) there are no human interests to be respected. Accordingly jurisdiction cannot be founded on UNCLOS.

(ii) Living resources do not have international legal status

The Applicant cannot allege any breach or potential breach of Article 194 UNCLOS. This would require living resources to have international legal status. That is not the case. UNCLOS states that Parties should, “protect and preserve the marine environment”,²⁰ and try to, “prevent, reduce and control pollution of the marine environment from any source”.²¹ The Eadiedra National Wildlife Refuge is neither part of the marine environment nor an estuary but a freshwater marsh. The construction of the Kennedy off-shore wind farm, and turbines in particular, cannot therefore constitute “pollution of the marine environment”. “Living resources” do not *per se* have international legal status.

It also follows from the 1979 Bonn Convention on the Conservation of Migratory Species of Wild Animals that these are, at best, “matters of community interest”. Only the Preamble goes as far as to suggest that wild animals are, “an irreplaceable part of the earth’s natural system which must be

¹⁹ Art.1, § 2.

²⁰ Art.192, UNCLOS.

²¹ Art.194, UNCLOS.

conserved for the good of mankind”. This convention has not been well-ratified and the Preamble emphasises that *states* are the protectors of species within natural boundaries, although conservation and effective management of migratory species require the concerted actions of all states within whose boundaries they spend part of their life-cycle.²²

Analysis of the leading conservation agreements at international, regional, and bilateral level, illustrates that international law neither recognises that living resources in general or migratory species in particular are ‘common heritage’ in the UNCLOS sense nor inter-generational rights as such.²³ Under the Honolulu Convention a coastal state does not have to accept compulsory procedures in any dispute relating to its sovereign rights with respect to the living resources (highly migratory fish stocks) in the EEZ or the exercise of those rights.²⁴

The Kingdom of Akkad can only impose measures aimed at conservation of exhaustible living resources within its own jurisdiction. In the GATT Dispute Resolution Panel decision, *Tuna/Dolphin I* dispute,²⁵ the US was not justified in imposing unilateral sanctions aimed at conserving dolphins in areas under Mexican jurisdiction. In considering the ability of a nation to apply unilateral sanctions the Panel ruled that living things could only be protected under provisions that were solely within the geographical jurisdiction of the country concerned.²⁶ While the decision in *Tuna/Dolphin II*²⁷ allowed some extraterritoriality this was limited to application in respect of the countries’ own nationals and vessels. The migratory scoter cannot be said to be Akkadian any more than it is Heronian. Unlike nationals and vessels, scoters do not have international legal status.

²² Birnie & Boyle, 448- 450, authors’ emphasis.

²³ Birnie and Boyle, 452-3.

²⁴ See Laroque, note 16 (above), 8; Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Central and Western Pacific Ocean, Art. 10

²⁵ Tuna-Dolphin I: GATT Panel Report, ‘United States – Restrictions on Imports of Tuna’, GATT BISD, 39S/155, 1991

²⁶ Jinnah, Emissions Trading Under the Kyoto Protocol: NAFTA and WTO Concerns, 709 at 724.

²⁷ Tuna Dolphin II: GATT Panel Report, ‘United States – Restrictions on Imports of Tuna, GATT Doc. DS29/R,

2. The Convention on Biological Diversity is inapplicable in the present case

This matter is not a dispute concerning interpretation or application of the CBD within the meaning of Article 27.3 and so cannot found compulsory ICJ jurisdiction. The CBD, a framework convention, simply does not apply in accordance with the principle of *lex specialis* (section I.A.3). The Kingdom of Akkad has no standing under Article 4.2(b) because neither Article 3 nor Article 8 applies.

3. The Ramsar Convention is inapplicable in the present case

The Kennedy Wind Farm will be located in Heronia's eastern EEZ and is therefore irrelevant to any wetlands of international importance.²⁸ Furthermore, the provisions of Ramsar are too vague to produce obligations. The Applicant claims that the Republic of Heronia has breached Article 2 of the Ramsar Convention that requires Contracting Parties to, "*consider* its international responsibilities for the conservation, management and wise use of migratory stocks of waterfowl", and Article 4 of the Ramsar Convention which states that Contracting Parties, "shall *endeavour* through management to increase waterfowl populations".

The Espoo Convention treats of the assessment of transboundary environmental effects of actions within the jurisdiction of contracting states and their resulting obligations. It provides that, "The Parties shall, either individually or jointly, take all appropriate and effective measures to prevent, reduce and control significant adverse transboundary environmental impact from proposed activities."²⁹ This type of language has been described as soft and ambiguous to the extent that it is emptied of any substantive meaning.³⁰ The language of Ramsar is similarly vague therefore no obligations can be ascertained from its provisions. Without obligations it is impossible to found jurisdiction on it.

²⁸ Record, § 17, 9 and § 25, 12.

²⁹ Art.2 (1), Espoo Convention.

³⁰ Knox, The Myth and Reality of Transboundary Environmental Assessment, 291.

C. The Migrating Birds Convention does not provide for submission of disputes to this Honourable Court and the Republic of Heronia does not consent to such a method of dispute resolution

The MBC governs this dispute and does not provide for submission to this Court (section I.A.1). It is accepted that States are not obliged to settle their disputes but that if they choose to do so the method of resolution is a decision for the parties.³¹ The UN Charter stipulates that parties should, "...seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice."³² States are not obliged to submit their disputes to the ICJ unless they have made a declaration in accordance with Article 36(2) of its Statute.

This is not the case in the present dispute because there is no consent to submit to the ICJ. The Special Agreement does not so provide. The Applicant's Memorial signally fails to indicate any basis of consent to the jurisdiction of the Court in accordance with Article 36 of the Statute. Justiciability in international law is founded on consent and not on legal expectation.³³ As this Court has frequently recalled the, "well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent" prevails.³⁴

Both Parties have made declarations, in accordance with Article 27(3) CBD, to accept submission of a dispute concerning the interpretation or application of the CBD to this Honourable Court as the means of compulsory dispute settlement. Similarly, in accordance with Article 287 UNCLOS the parties to

³¹ Shaw, International Law, 1997, 718; GA Res. 2625; Section I (3) & (10), GA Res.37/590; Res. 43/51.

³² Art.33(1), UN Charter

³³ Rosenne, Vol II, 563; Chorzów Factory (Jurisdiction) Case, 32.

³⁴ Monetary Gold Removed from Rome Case, 32; Rights of Minorities in Upper Silesia, 22; Anglo-Iranian Oil Co., 102-103; Ambatielos, 19; Phosphate Lands in Nauru, 260; East Timor, 101.

the dispute have made written declarations, to submit any disputes concerning the interpretation or application of UNCLOS to this Honourable Court.

When this dispute arose the Parties entered into negotiation and subsequently mediation, as contemplated by the MBC,³⁵ in an effort to reach a resolution. Neither avenue was successful. The Republic of Heronia fulfilled its obligation to engage in meaningful negotiation with a view to reaching a solution.³⁶ Although no agreement was reached there is no breach of the duty once serious resolution efforts were made.³⁷ Following negotiation Heronia engaged in mediation again displaying its commitment to reaching a solution. When mediation failed the methods of dispute resolution under the MBC were exhausted because the Convention makes no provision for any further form of dispute resolution.

The method of dispute resolution chosen by the parties confirms common ground that the dispute arose under the MBC. If the parties had considered, at that that the dispute arose under either UNCLOS or the CBD, then they would have immediately submitted to the jurisdiction of this Honourable Court or pursued some other form of dispute resolution under one or both of those treaties. The Republic of Heronia has complied with its obligations under the MBC and this is not at issue for jurisdiction. Negotiations have taken place in good faith under the MBC.

The scoter is a 'shared natural resource' that migrates back and forth between Sargon National Park, Akkad and Eadiedra National Wildlife Refuge, Heronia. Practice and jurisprudence have established

³⁵ Annex A to the Special Agreement, § 28 & 29

³⁶ North Sea Continental Shelf cases, 3, 47; Railway Traffic between Lithuania and Poland case, 116; Lac Lanoux arbitration, 101, 119.

³⁷ German External Debts Case, 418, 454

the basic principle that states must co-operate in avoiding adverse effects on their neighbours through a system of notification, consultation and negotiation³⁸. The MBC reflects this practice.

Not only is the decision of the Applicant to institute proceedings before this Court non-consensual, it is also premature. While consultations are ongoing institution of proceedings is premature. The fact that construction has commenced does not side-step the fact that the Republic of Heronia has engaged in good faith negotiations. In *Land Reclamation Activities*,³⁹ Singapore had provided Malaysia with relevant information and was willing to enter into further consultations and negotiations. The dispute was resolved when Singapore's commitment not to take any irreversible action in the relevant area of Pulau Tekong, pending the completion of a study by an independent expert panel. There had been insufficient cooperation between the parties before the institution of proceedings.⁴⁰

In the absence of foreseeable harm, there was no customary law obligation to consult with neighbouring states, but the Respondent nonetheless entered into formal consultation in February 2003.⁴¹ Much like the *Land Reclamation Activities* case, the situation under review does not pose an immediate threat of serious harm or irreparable prejudice to the rights of the Applicant. The only rights arising from the duty of cooperation for the purpose of environmental protection merited interim injunction. Accordingly, the Applicant's rights under the convention are of a procedural character only.⁴²

³⁸ Nuclear Tests Cases (Australia –v- France), 99; Nuclear Tests Cases (New Zealand –v- France), 135; Jurisdiction, 457; Kirgis, Prior Consultation in International Law.

³⁹ Case concerning Land Reclamation

⁴⁰ Order, § 97

⁴¹ Record, § 20

⁴² Schwarte, note 13 (above), 429; Mox Plant Case, Separate Opinion Judge Mensah, 5,

The principle of effectiveness is used in treaty interpretation to give effect to provisions in accordance with the intentions of the parties that adopted an agreement.⁴³ In this case it should be applied and this Honourable Court should decline jurisdiction over the merits of this dispute because the Contracting Parties did not envisage that disputes under the MBC be so resolved.

⁴³ Ambatielos Case, 28; Corfu Channel Case, 4, 24; Lauterpacht, De l'Interprétation des Traités: Rapport et Projet de Résolutions, 43 *Annuaire de l'Institut de Droit International*, 366.

II. The construction and operation of the Kennedy Wind Farm will not violate international law

The Respondent has a sovereign right to exploit resources in its Exclusive Economic Zone that includes economic exploitation (A). The Applicant has not veto over this exploitation or over Heronian domestic policy (B). Promotion of renewable energy sources is obligatory for the Respondent under its Kyoto obligations (C). The principle of Sustainable Development applies (D).

A. The Republic of Heronia has a sovereign right to exploit its resources within its Exclusive Economic Zone

The principle of sovereignty is enshrined in the UN Charter⁴⁴ and is widely reflected in the international environmental declarations and agreements including those which the Kingdom of Akkad claims have been breached by the Respondent. Heronia, a sovereign state, has the right to act unilaterally.⁴⁵ Sovereignty extends to economic use of its EEZ and the right to use its natural resources in the interest of its development and of the well-being of its people.⁴⁶ This means the right to be free from external interference in the exploitation of natural resources.⁴⁷ The Applicant cannot interfere with the Respondent's decision to construct the Kennedy Wind Farm.

The instruments on which the Applicant relies recognise the sovereign rights of Heronia within its EEZ. The Kennedy Wind Farm is located in the EEZ where the Respondent has 'sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living'.⁴⁸ Under Article 60 UNCLOS, Heronia has the exclusive right to authorise and regulate the construction, operation and use of structures for the purpose of exploiting natural resources, in this case wind energy. Article 3 CBD states that, "States have, in accordance with the

⁴⁴ Art. 2(1), UN Charter.

⁴⁵ Bodansky, What's so Bad about Unilateral Action to Protect the Environment?, 339-347; Hollis, Why State Consent Still Matters- Non-State Actors, Treaties and the Changing Sources of International Law.

⁴⁶ GA Res.1803

⁴⁷ Sands, Principles of International Environmental Law, 237; Botchway, The Context of Trans-Boundary Energy Resource Exploitation: The Environment, the State and the Methods, 191.

⁴⁸ Art. 56 (1) UNCLOS.

Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies”. The Applicant further claims that the Respondent has breached the Ramsar Convention by engaging in a project that potentially decreases the waterfowl population. However Ramsar clearly states that the designation of wetlands and the obligations of contracting parties are without prejudice to their sovereign rights.⁴⁹

There is no transboundary harm to the Kingdom of Akkad because the wind farm is located in the Heronian EEZ. The duty to promote ecosystems, under Article 8(d) CBD, is prefaced by the limitation that conservation shall be “as far as possible and as appropriate”. The Republic of Heronia has, through consultation, minimized any potential adverse impacts on the Kingdom of Akkad within the meaning of Article 14(1) (c) CBD. In light of this fact there can be no effect on rights and obligations on the Parties deriving from the existing MBC, as set out in Article 22.

Further support for Heronian sovereign rights is found in customary international law. Principle 21 of the Stockholm Declaration of the UN Conference on Human Environment, 1972 restates Principle 2 of the Rio Declaration.⁵⁰ It affords the Respondent, the sovereign right to exploit its own resources pursuant to its own environmental policies. Principle 21 is considered to be customary international law⁵¹ and has been recognised as such by this Honourable Court.⁵²

⁴⁹ Art. 2(3), Ramsar Convention

⁵⁰ Johnson, “The Earth Summit”

⁵¹ Kiss & Shelton, International Environmental Law, 130; Hunter, Salzman & Zaelke, International Environmental Law and Policy, 321, 345; Weiss, McCaffrey, McGraw, Szasz & Lutz, International Environmental Law and Policy, 317; Wirth, The Rio Declaration on Environment and Development: Two Steps Forward and One Back or Vice Versa?, GA. L. Rev.599, 620; Wolfrum, Purposes and Principles of International Environmental Law, 308, 310.

⁵² The Legality of the Threat or Use of Nuclear Weapons.

B. International Law does not confer a veto right to neighbouring states on the free use of Heronia's Exclusive Economic Zone

Heronia's permanent sovereignty over its natural resources is accompanied by an obligation to refrain from transboundary pollution likely to cause significant harm to the environment of other states or to areas beyond the limits of national jurisdiction.⁵³ Principle 21 stipulates that states must ensure that activities within their territory or under their control do not harm the environment beyond their territory. However, given state practice, it is clear that not all detrimental transboundary effects arising from the use of natural resources is prohibited.⁵⁴ Indeed UN Secretary General stated that, "Certainly not all instances of transboundary damage resulting from activities within a State's territory can be prevented or are unlawful."⁵⁵ It is widely accepted that there is a limitation on the obligation set out in Principle 21 and that the actual obligation on states is to prevent all 'significant or substantial' transboundary environmental harm from activities under their jurisdiction or control.⁵⁶ Any veto over Heronian use of its EEZ would have to be founded on this principle.

The Kennedy Wind Farm will not produce any transboundary emissions within the meaning of the *Trail Smelter Arbitration*.⁵⁷ There is no injury, for example by fumes, to or in the territory of the Kingdom of Akkad or the properties or persons therein. Unlike the *Corfu Channel Case*⁵⁸ and *Nuclear Tests*,⁵⁹ the alleged damage is purely intra-boundary. The scoter simply flies into the Heronian EEZ.

⁵³ Shaw, 600; Dzidornu, Coastal State Obligations and Powers- Respecting EEZ Environmental Protection under Part XII of the UNCLOS : A Descriptive Analysis, 283

⁵⁴ Perez, The relationship between 'Permanent Sovereignty' and the obligation not to cause transboundary environmental damage, 1187; Schaeter, The Emergence of International Environmental Law; Knox, The Myth and Reality of Transboundary Environmental Impact Assessment, 291; Shaw, 593.

⁵⁵ UN Secretary-General, Rio Declaration on Environment and Development: Application and Implementation, § 23

⁵⁶ Sachariew, The Definition of Thresholds of Tolerance for Transboundary Environmental Injury under International Law: Development and Present Status, 193, 196

⁵⁷ 182, 684; .315; The Trail Smelter Arbitration, 213

⁵⁸ See note 10 above.

⁵⁹ See note 38 above.

In this context, international law does not confer veto rights on neighbouring states over Heronian domestic policy.

The Kingdom of Akkad does not have extra-territorial jurisdiction. In the *Shrimp/Turtle*⁶⁰ case the WTO Appellate Body held that sea turtles were highly migratory animals passing in and out of the waters subject to the rights of jurisdiction of various coastal states. The concept of ‘sustainable development’ informed the conclusion that there was a nexus between the turtles and the interest of the US in the proper conservation of this distant natural resource located from time-to-time outside its jurisdiction.⁶¹ However, the Appellate Body confirmed that requirement for ‘serious across-the-board’ negotiations did not imply that agreements on environmental resources had to be actually concluded, since that would amount to a veto right that cannot be permitted.

The Republic of Heronia is fully compliant with its obligations including under the principle of prevention of transboundary harm. It has even fulfilled soft-law duties. The ILC Draft Articles on the Prevention of Transboundary Harm provide that, “The State of Origin shall take all appropriate measures to prevent significant transboundary harm or at any event to minimise the risk thereof.”⁶² In addressing dispute resolution, the Draft Articles provide that the potentially affected State does not have a right of veto even if the state of origin has completely failed to comply with its procedural obligations. Heronia ought to, “take into account the interests of the states likely to be affected”, but is nevertheless, “permitted to go ahead with the activity”.⁶³ Accordingly, the Kennedy Wind Farm is not subject to veto.

⁶⁰WTO, 1998

⁶¹Sands, Principles of International Environmental Law, 968

⁶² Art.3, ILC Draft Articles

⁶³ Commentary on Art.9, ILC Draft Articles.

C. The Republic of Heronia is obliged to fulfil its obligations under the Kyoto Protocol

Heronia is a party to the United Nations Framework Convention on Climate change and a party to the Kyoto Protocol. It is bound by customary international law to perform in good faith its specific obligations under the Protocol.⁶⁴ Kyoto is a global agreement that will particularly benefit developing small island nations such as the Kingdom of Akkad which are particularly susceptible to sea-level rise resulting from climate change and,

“...are among those vulnerable States that need assistance under the United Nations Framework Convention on Climate Change, including adaptation measures and mitigation efforts.”⁶⁵

Under Kyoto Heronia is required to have made demonstrable progress in achieving its commitments by 2005⁶⁶ and to reduce greenhouse gas emissions to approximately five percent below 1990 levels by the year 2012.

The Kennedy Wind Farm is the only means of meeting Heronian obligations under Kyoto as there are no other efficient renewable resources available to small island nations. Solar resources are underdeveloped, hydroelectric power is a possibility for only some small island developing states (SIDS), biomass is common but unequal and the potential for geothermal, ocean thermal and wave energy remains experimental.⁶⁷ Wind potential is variable with location and Heronia does not have the means to invest in other renewables. It is established that there is no alternative site for the Kennedy Wind Farm⁶⁸ therefore its construction and operation will not violate international law.

Furthermore, Article 18 VCLT states that where a state has signed a treaty subject to ratification it is obliged to refrain from acts which would defeat the object and purpose of that treaty until it makes

⁶⁴ Shaw, 633; Nuclear Tests Cases 253, 268

⁶⁵ Barbados Declaration, Resolutions adopted by the Conference (www.un.org), resolution 1, annex I.

⁶⁶ Art. 3(2), Kyoto Protocol

⁶⁷ Statement of H.E. Ambassador Slade On Behalf of The Alliance of Small Island States to The Meeting of the Intergovernmental Group of Experts on Energy and Sustainable Development, New York, 6 April, 2000.

⁶⁸ Record, § 23

clear its intention not to become a party. The Applicant has signed but not ratified the Convention on Climate Change and has not indicated an intention not to ratify the Convention. It cannot therefore protest against valid measures taken by the Respondent to fulfil its obligations under Kyoto which was made, “in pursuit of the ultimate objective of the Convention as stated in its Article 2”.⁶⁹

D. Principle of Sustainable Development should be applied in this case

1. Sustainable Development is a norm of customary international law

The principle of Sustainable Development accords the right to nations to exploit their own resources, without compromising the ability of others, including future generations, to meet their needs.⁷⁰ The Appellate Body of the WTO in *Shrimp/Turtle*⁷¹ concluded that this principle ‘has been generally accepted as integrating economic and social development and environmental protection’. It is supported by international conventions and declarations including UNCLOS.⁷²

The integration of economic and environmental concerns is the controlling objective of sustainable development.⁷³ Renewable energy resources are integral to Heronian development policy. The principle finds further support in the Declaration of Barbados⁷⁴ based on the principle of the right to development, small island States should endeavour to achieve the goals of sustainable development.⁷⁵ In almost every region, for SIDS development and environment are ‘closely interdependent’.⁷⁶

⁶⁹ Preamble to Kyoto Protocol

⁷⁰ Our Common Future, 8; Statement of Nitin Desai, Introducing Item 98: Environment and Sustainable Development; Hodas, The Role of Law in Defining Sustainable Development: NEPA reconsidered.

⁷¹ See note 60 above

⁷² Art.56(1)

⁷³ Smith, Ecologically Sustainable Development: Integrating Economics, Ecology and Law, 263

⁷⁴ Declaration of Barbados, resolution 1, annex I; later incorporated into a General Assembly Resolution 47/189 of 22 December 1992.

⁷⁵ Statement of Nitin Desai, Under Secretary-General for Economic and Social Affairs to the Second Committee, “Introducing Item 98: Environment and Sustainable Development”, New York, (29.10.2001).

⁷⁶ Declaration of Barbados, resolution 1, annex II.

Although now a developed country, the Republic of Heronia is still subject to disadvantages deriving from its small size and oil costs amongst the highest prices in the world.⁷⁷

Sustainable Development is a norm of customary international law.⁷⁸ The Rio Declaration and Declaration of Barbados provide evidence of state practice.⁷⁹ The length of time over which a practice has endured is not crucial to the formation of custom.⁸⁰ Commenting on the 2002 World Summit on Sustainable Development, US Secretary of State, Colin Powell said, “I think it shows that we have a shared vision of how to move forward... that the world is committed to sustainable development”.⁸¹

2. The obligations assumed by the Republic of Heronia under the Kyoto Protocol are in pursuance of Sustainable Development and seek to preserve Next Generation Rights

Sustainable development is a process and not a phenomenon. The General Assembly special session held in September 1999 to review the Barbados Programme of Action underlined the aim of establishing renewable energy initiatives at regional level.⁸² The Kennedy Wind Farm is environmentally sound technology promoting sustainable development.

The Rio Declaration identifies human beings at the centre of concerns for sustainable development. For this reason, the Republic of Heronia has taken the view that, “Development initiatives should be seen in relation to both the needs and aspirations of human beings and their responsibility towards

⁷⁷ Slade, see note 67 (above)

⁷⁸ See Larocque, note 17 (above).

⁷⁹ Rio Declaration, Principle 7; Declaration of Barbados, resolution 1, annex II.

⁸⁰ Case Concerning the Continental Shelf (Tunisia/Libyan Arab Jamahiriya); Sohn, Unratified Treaties as a Source of Customary International Law, 234.

⁸¹ The Johannesburg Summit Test: What Will Change?, www.johannesburgsummit.org

⁸² Slade, see note 67 (above).

Statement of H.E. Ambassador Slade On Behalf of The Alliance of Small Island States to The Meeting of the Intergovernmental Group of Experts on Energy and Sustainable Development, New York, 6 June, 2000.

present and future generations”.⁸³ The most valuable asset of a small island State is its human resources. Sustainable Development has been legitimately privileged in Heronian domestic policy.

⁸³ Rio Declaration, Resolutions adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum) resolution 1, annex II.

CONCLUSION

For the foregoing reasons the Republic of Heronia respectfully requests this Honourable Court to DECLARE that:

1. it does not have jurisdiction to consider the merits of the dispute; and
2. that the Respondent will not violate international law by constructing and operating the Kennedy Wind Farm

Respectfully submitted

Agents for the Republic of Heronia