

**Questions Relating to Transboundary Haze  
and Species Protection  
(Federal States of Abellii/Republic of Redox)**

**RECORD**  
**Seventeenth Annual**  
**Stetson International Environmental**  
**Moot Court Competition**  
**2012–2013**



**STETSON LAW**

NOTIFICATION, DATED 27 JUNE 2012, ADDRESSED TO  
THE MINISTER OF FOREIGN AFFAIRS OF THE FEDERAL STATES OF ABELII  
AND  
THE MINISTER OF FOREIGN AFFAIRS OF THE REPUBLIC OF REDOX

The Hague, 27 June 2012.

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 25 June 2012. I have the further honor to inform you that the case of Questions Relating to Transboundary Haze and Species Protection (Federal States of Abellii/Republic of Redox) has been entered as 2012 General List No. 117. The written proceedings shall consist of memorials to be submitted to the Court by 16 November 2012. Oral proceedings are scheduled for 21–23 March 2013.

/s/

Registrar  
International Court of Justice

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JOINT NOTIFICATION, DATED 25 JUNE 2012, ADDRESSED TO  
THE REGISTRAR OF THE COURT

The Hague, 25 June 2012.

On behalf of the Federal States of Abellii and the Republic of Redox, 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 Federal States of Abellii and the Republic of Redox for Submission to the International Court of Justice of Differences Between Them Concerning Questions Relating to Transboundary Haze and Species Protection, signed at Rio de Janeiro, Brazil, on 25 June 2012.

For the Federal States of Abellii:

/s/

Meg A. Gosunypop  
Minister of Foreign Affairs

For the Republic of Redox:

/s/

Randy A. Subtorn  
Minister of Foreign Affairs

SPECIAL AGREEMENT  
BETWEEN  
THE FEDERAL STATES OF ABELII  
AND  
THE REPUBLIC OF REDOX  
FOR SUBMISSION TO THE  
INTERNATIONAL COURT OF JUSTICE OF DIFFERENCES  
BETWEEN THEM CONCERNING  
QUESTIONS RELATING TO TRANSBOUNDARY HAZE AND SPECIES PROTECTION

The Federal States of Abellii and the Republic of Redox,

Recalling that the Federal States of Abellii and the Republic of Redox are Members of the United Nations and that the Charter of the United Nations calls on Members to settle international disputes by peaceful means,

Observing that the Federal States of Abellii and the Republic of Redox are Contracting Parties to the Convention on Biological Diversity and the Ramsar Convention,

Recognizing that differences have arisen concerning peatland burning in the territory of the Republic of Redox,

Noting that the Federal States of Abellii and the Republic of Redox have been unable to settle their differences through negotiation,

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

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

Have agreed as follows:

Article I

The Federal States of Abellii and the Republic of Redox, 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.

### Article III

1. The proceedings shall consist of written pleadings and oral arguments.
2. The written pleadings shall consist of memorials to be submitted simultaneously to the Court by the Parties.
3. The written pleadings shall be consistent with the Rules of the 2012–2013 Stetson International Environmental Moot Court Competition (International Finals).
4. No changes may be made to any written pleading once it has been submitted to a Regional Round. A written pleading submitted to the International Finals must be an exact copy of the written pleading submitted to the Regional Round.

### Article IV

1. The Parties shall accept the Judgment of the Court as final and binding upon them and shall execute it in its entirety and in good faith.
2. Immediately after the transmission of the Judgment, the Parties shall enter into negotiations on the modalities for its execution.
3. If the Parties are unable to reach agreement within six months, either Party may request the Court to render an additional Judgment to determine the modalities for executing its Judgment.

### Article V

This Special Agreement shall enter into force upon signature.

DONE at Rio de Janeiro, Brazil, this 25th day of June 2012, in two copies, each in the English language, and each being equally authentic.

For the Federal States of Abellii:

/s/  
Meg A. Gosunypop  
Minister of Foreign Affairs

For the Republic of Redox:

/s/  
Randy A. Subtorn  
Minister of Foreign Affairs

## Annex A

1. The Federal States of Abellii (hereinafter Abellii) and the Republic of Redox (hereinafter Redox) are neighboring states that share a common territorial sea. They are located in the Heinze region in the Southern hemisphere, along with eight other states. Annex B is a map that provides the relative location of the states in the Heinze region.
2. Abellii is a developing island nation that consists of three islands, each of which is an individual (sub-national) state. The population of Abellii is approximately 400,000 people. Crude oil and natural gas production from offshore projects accounts for about 70% of its gross domestic product. Tourism, with an emphasis on ecotourism, accounts for approximately 10% of its gross domestic product.
3. Redox is a developing island nation that consists of four islands, each of which is a (sub-national) province under the Redox Constitution. The population of Redox is approximately 20 million people. Traditionally, Redox has had an agriculturally based economy. Twelve percent of its territory is peat swamp forest. One particular forest, the Fahy Peatlands, is home to the endemic Redox orangutan, which is listed as critically endangered on the IUCN Red List of Threatened Species.
4. Abellii and Redox are Members of the United Nations and are Parties to the Statute of the International Court of Justice.
5. Abellii and Redox are Parties to the Vienna Convention on the Law of Treaties.
6. Abellii and Redox are Contracting Parties to the Convention on Biological Diversity (CBD) and the Ramsar Convention.
7. High-level representatives from Abellii and Redox 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; the 2002 World Summit on Sustainable Development at Johannesburg; and the 2012 Rio+20 Conference at Rio de Janeiro.
8. Abellii is a party to the 1998 Heinze Regional Agreement on Transboundary Haze Pollution (known as the HRA). Redox has signed the HRA but has not ratified it. The eight other states in the Heinze region are parties to the HRA. The relevant portions of the HRA are attached as Annex C.
9. The HRA has been registered in accordance with Article 102 of the Charter of the United Nations.

10. The HRA was negotiated after states in the region observed the effects of the fires in Southeast Asia in 1997. [Note: the Heinze region is not in Southeast Asia.] All states within the Heinze region quickly signed the HRA, which entered into force in December 1998. By December 1999, all HRA Parties had adopted “zero burning” legislation at the national level, which makes it illegal to conduct open burning for purposes of land clearing. All HRA Parties have rigorously enforced their national laws that prohibit open burning for purposes of land clearing.
11. The federal government of Redox has adopted “zero burning” as a national goal. It is, however, within the discretion of each individual province to decide how and to what extent it will seek to achieve the goal of zero burning. Under the Redox Constitution, the federal government has very limited powers regarding land use. Instead, the provincial governments have the authority to regulate land use activities, including open burning for purposes of land clearing.
12. The westernmost province in Redox is Cienaga. In 2007, a massive fire occurred on peatlands owned by P-Eco, Inc., a multinational timber company, shortly after the peatlands had been clear cut and the timber harvested. The cause of the fire, which lasted for four months, was never determined. The smoke from the fire was the cause of haze pollution in Abellii for four months. After the fire was extinguished, P-Eco planted a palm oil plantation on the former peatlands.
13. Tourism in Abellii declined by 75% in 2007, as compared to the previous year, due to the haze pollution. In 2008, tourism returned to its 2006 levels.
14. In 2009, another massive fire occurred in Cienaga on peatlands owned by P-Eco after an area had been harvested for its timber. This time, Cienagan environmental officials identified two low-level P-Eco employees as arsonists and the cause of the fire. P-Eco fired the two employees, who later pled guilty to illegal burning. The employees were fined the equivalent of 1,000 U.S. dollars and sentenced to serve five years in prison. The provincial governor commuted the prison sentence to thirty days.
15. The 2009 fire lasted three months. Once it was extinguished, P-Eco planted a palm oil plantation on the former peatlands.
16. The 2009 fire caused haze pollution in Abellii, which saw a decline in tourism of 60% from the previous year. In 2010, tourism rebounded slightly, but was still down 30% as compared to 2008.
17. In January 2011, another fire occurred on P-Eco’s peatlands in Cienaga after a timber harvest. When it became clear that the smoke from the fire would be causing haze

pollution in Abellii, the following diplomatic note was forwarded to the Government of the Republic of Redox on 21 January 2011:

The Embassy of the Federal States of Abellii presents its compliments to the Government of the Republic of Redox and wishes to convey its concern over the pattern of timber harvesting and peatland burning that is occurring in the Republic of Redox.

As you are aware, the Federal States of Abellii suffered serious economic damages as a result of the transboundary haze that these fires have caused. The refusal of the Republic of Redox to take the necessary action to prevent this transboundary harm is a violation of basic international legal principles and is contrary to the terms and spirit of the Heinze Regional Agreement on Transboundary Haze Pollution.

We demand a halt to these peatland fires and request consultations at the highest levels most expeditiously.

Please accept the assurance of my highest consideration.

/s/

Eric Mootus  
Ambassador

18. On 2 February 2011, the following diplomatic note was forwarded from the Government of the Republic of Redox to the Government of the Federal States of Abellii:

The Embassy of the Republic of Redox presents its compliments to the Government of the Federal States of Abellii and has the honor to acknowledge receipt of the diplomatic note dated 21 January 2010.

As an initial matter, the Government of the Republic of Redox appreciates the concern expressed by the Government of the Federal States of Abellii. We must note, however, that the authority and powers of our federal government are quite limited. As such, the federal government has no ability to regulate timber harvests and land-clearing operations on privately owned property in provincial territory.

Please be assured that the Redox Ministry of the Environment has contacted the local authorities in Cienaga to request that a proper investigation be made. We do not believe, however, that the Republic of Redox has violated international law. Indeed, the Republic of Redox is not a party to the Heinze Regional Agreement on Transboundary Haze Pollution.

Please accept the assurance of my highest consideration.

/s/

Lila Inrootup  
Ambassador

19. On 9 February 2011, the Government of the Federal States of Abellii replied to the Government of the Republic of Redox with a diplomatic note that stated in part:

We strongly disagree with your assertion that the Republic of Redox has not violated international law. Redox may not be a party to the HRA, but having signed the HRA, it is obliged to refrain from acts that would defeat the HRA's object and purpose. Moreover, in light of the near universal acceptance of the HRA, its provisions constitute regional customary law. Finally, the *Trail Smelter* case long ago established that customary international law prohibits transboundary air pollution.

20. On 22 February 2011, the Government of the Republic of Redox replied to the Federal States of Abellii with a diplomatic note that stated in part:

Please be assured that our federal government has done all it is permitted to do under our constitution.

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With respect to the argument that the Republic of Redox is somehow bound by the HRA, we most emphatically reject that. A treaty cannot pass into custom and apply to us when we are not a party to that treaty. Such an approach would undermine basic notions of national sovereignty.

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*Trail Smelter* was an arbitration between the United States and Canada, which was governed by a very specific agreement. It does not affect the rights and obligations of the Republic of Redox.

21. The 2011 fire lasted three months; its origin was never confirmed. Once it was extinguished, P-Eco planted a palm oil plantation on the former peatlands.
22. Because of the transboundary haze resulting from the 2011 fire, tourism in Abellii was down 75% from 2008 levels. Tourism has recovered slightly, but today remains at about 50% of 2008 levels.



23. In January 2012, P-Eco sought permission to clear, drain, and burn the Fahy Peatlands, which are located in the easternmost province of Huiledepalme. The provincial government of Huiledepalme granted permission for a controlled burn. The environmental impact assessment for the controlled burn anticipated that any smoke from the controlled burn would not significantly affect the territory of Abellii.

24. On 14 February 2012, a diplomatic note from the Government of the Federal States of Abellii was forwarded to the Government of the Republic of Redox, which stated in part:

Although we concede that this particular burning operation will not significantly affect air quality in Abellii, we must object to the planned activity because it will result in the extermination of a critically endangered species, the Redox orangutan. Intentionally causing an extinction of a species is a clear violation of the Convention on Biological Diversity and customary international law.

25. On 3 March 2012, the Government of the Republic of Redox replied to the Federal States of Abellii with a diplomatic note that stated in part:

Redox has the sovereign right to exploit its own resources pursuant to its own environmental and developmental policies. Abellii concedes that there will be no transboundary impact from P-Eco's actions, so we fail to understand Abellii's continued attempts to meddle in the internal matters of Redox.

While it is regrettable that, as the environmental impact assessment indicates, P-Eco's actions will likely result in no Redox orangutans surviving in the wild, we note that the provincial government of Huiledepalme has embarked on a captive breeding program in conjunction with the Huiledepalme Zoo. The Huiledepalme Zoo is now home to ten adult Redox orangutans (six female and four male) and two juvenile male Redox orangutans.

26. On 5 March 2012, the Government of the Federal States of Abellii replied to the Government of the Republic of Redox with a diplomatic note that stated in part:

The International Court of Justice has recognized in *Barcelona Traction, Light and Power Co., Ltd.* (Belgium v. Spain), the concept of rights and obligations *erga omnes*. The intentional extirpation of a species in the wild violates an obligation *erga omnes*, and thus Abellii has a right under international to intercede.

27. On 10 March 2012, the Republic of Redox replied with a diplomatic note stating:

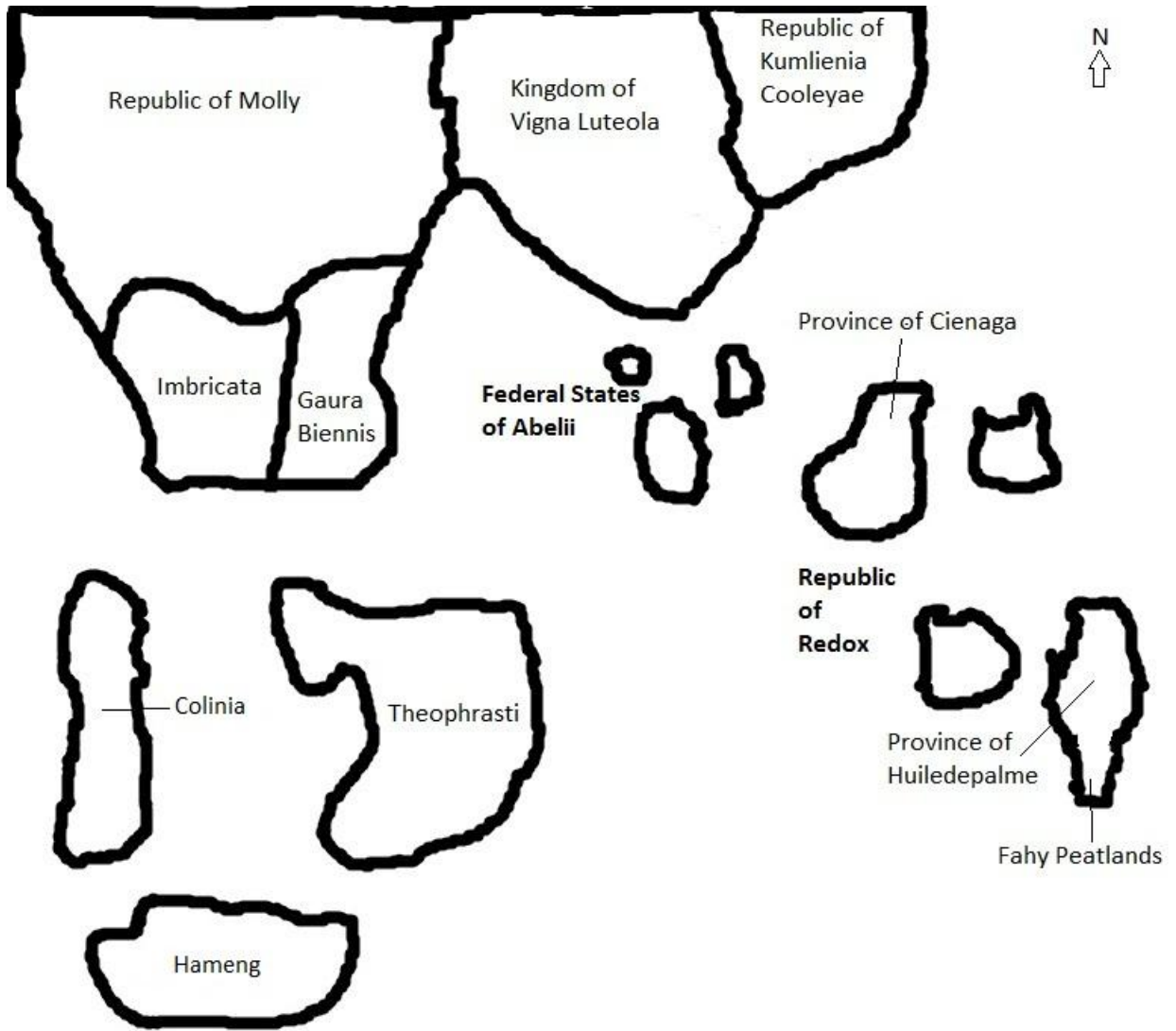
We reject the notion that the concept of *erga omnes* is somehow implicated in this matter. Furthermore, we are compelled to observe that the majority shareholder of P-Eco is Rae Wheresuey, who is an Abelii citizen.

28. Additional negotiations between the Federal States of Abelii and the Republic of Redox failed to resolve the disputes regarding both the transboundary haze and the Redox orangutan. The Parties agreed to submit these matters to the International Court of Justice under a Special Agreement pursuant to Article 36, paragraph 1, of the Statute of the International Court of Justice. The Provincial Governor of Huiledpalme agreed to suspend the permit authorizing the proposed actions in the Fahy Peatlands until the International Court of Justice could consider the matter.

29. The Federal States of Abelii seeks an order declaring that the Republic of Redox violated international law by (1) failing to enforce a zero burning policy that would prevent transboundary haze in Abelii; and (2) intentionally authorizing the extinction of the Redox orangutan.

30. The Republic of Redox opposes the claims in previous paragraph 29 and seeks an order declaring that the Republic of Redox has not violated international law with respect to transboundary haze and that the Republic of Redox has legally exercised its sovereign right to exploit its own natural resources.

Annex B



## **Annex C**

### **Heinze Regional Agreement on Transboundary Haze Pollution**

The Parties to this Agreement,

**RECOGNIZING** that possible adverse effects of transboundary haze pollution exist,

**OBSERVING** the impacts of transboundary haze pollution in other parts of the world, such as Southeast Asia,

**CONCERNED** that an increase in the level of emissions of air pollutants within the Heinze region will likely lead to similar adverse effects,

**AFFIRMING** their commitment to strengthen international cooperation and to develop national policies for preventing and monitoring transboundary haze pollution,

**Have agreed as follows:**

#### **Article 1 Definition of Terms**

For the purposes of this Agreement:

1. “Controlled burning” means any fire, combustion, or smoldering that occurs in the open air, which is controlled by national laws, rules, regulations, or guidelines and does not cause transboundary haze pollution.
2. “Haze pollution” means smoke resulting from land and/or forest fires that cause deleterious effects of such a nature as to endanger human health, harm living resources and ecosystems and material property, and impair or interfere with amenities and other legitimate uses of the environment.
3. “Land and/or forest fires” means fires such as peat fires and plantation fires.
4. “Open burning” means any fire, combustion, or smoldering that occurs in the open air.
5. “Transboundary haze pollution” means haze pollution whose physical origin is situated wholly or in part within the area under the national jurisdiction of one Party and which is transported into the area under the jurisdiction of another Party.
6. “Zero burning policy” means a policy that prohibits open burning but may allow some forms of controlled burning.

## **Article 2 Objective**

The objective of this Agreement is to prevent and monitor transboundary haze pollution as a result of land and/or forest fires, through concerted national efforts and intensified regional and international cooperation. Such efforts should be pursued in the overall context of sustainable development and in accordance with the provisions of this Agreement.

## **Article 3 Principles**

The Parties shall be guided by the following principles in the implementation of this Agreement:

1. The Parties have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources, pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment and harm to human health of other States or of areas beyond the limits of national jurisdiction.
2. The Parties shall, in the spirit of solidarity and partnership and in accordance with their respective needs, capabilities, and situations, strengthen cooperation and coordination to prevent and monitor transboundary haze pollution as a result of land and/or forest fires.

## **Article 4 General Obligation**

In pursuing the objective of this Agreement, the Parties shall take legislative, administrative, and/or other measures to implement their obligations under this Agreement.

## **Article 5 Prevention**

Each Party shall undertake measures to prevent and control activities related to land and/or forest fires that may lead to transboundary haze pollution, which include:

1. Developing and implementing legislative and other regulatory measures, as well as programs and strategies to promote zero burning policy to deal with land and/or forest fires resulting in transboundary haze pollution;
2. Developing other appropriate policies to curb activities that may lead to land and/or forest fires; and
3. Ensuring that legislative, administrative, and/or other relevant measures are taken to control open burning and to prevent land clearing using fire.

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**Article 22**  
**Settlement of Disputes**

Any dispute between Parties as to the interpretation or application of, or compliance with, this Agreement or any protocol thereto, shall be settled amicably by consultation or negotiation.