

IN THE MATTER OF AN ARBITRATION

- before -

**AN ARBITRAL TRIBUNAL CONSTITUTED UNDER ANNEX VII
OF THE 1982 UNITED NATIONS CONVENTION ON THE LAW OF THE SEA**

- between -

THE REPUBLIC OF MAURITIUS

- and -

**THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND**

RULES OF PROCEDURE

ARBITRAL TRIBUNAL:

**Professor Ivan Shearer (President)
Judge James Kateka
Judge Albert Hoffmann
Sir Christopher Greenwood
Judge Rüdiger Wolfrum**

REGISTRY:

The Permanent Court of Arbitration

29 March 2012

Whereas Mauritius and the United Kingdom are Parties to the United Nations Convention on the Law of the Sea (“the Convention”);

Whereas article 286 of the Convention provides that: “Subject to section 3, any dispute concerning the interpretation or application of this Convention shall, where no settlement has been reached by recourse to section 1, be submitted at the request of any Party to the dispute to the court or tribunal having jurisdiction under this section”;

Whereas article 287(5) of the Convention provides that: “If the Parties to a dispute have not accepted the same procedure for the settlement of the dispute, it may be submitted only to arbitration in accordance with Annex VII, unless the Parties otherwise agree”;

Whereas article 1 of Annex VII to the Convention provides that: “Subject to the provisions of Part XV, any Party to a dispute may submit the dispute to the arbitral procedure provided for in this Annex by written notification addressed to the other Party or Parties to the dispute. The notification shall be accompanied by a statement of the claim and the grounds on which it is based”;

Whereas Mauritius has invoked article 287 of the Convention and article 1 of Annex VII to the Convention with regard to a dispute concerning the “Marine Protected Area Related to the Chagos Archipelago” (Mauritius v. United Kingdom) (“the Dispute”), as set out in Mauritius’ Notification under article 287 of the Convention and article 1 of Annex VII to the Convention and Statement of Claim and Grounds on which it is based dated 20 December 2010 (“the Notification and Statement of Claim”);

Whereas in accordance with articles 3(b) and 3(c) respectively of Annex VII to the Convention, Mauritius has appointed Judge Rudiger Wolfrum as member of the Arbitral Tribunal in respect of the Dispute (the “Arbitral Tribunal”) and the United Kingdom has appointed Judge Sir Christopher Greenwood QC as member of the Arbitral Tribunal;

Whereas in accordance with article 3(e) of Annex VII to the Convention, Mauritius and the United Kingdom (together, the “Parties”) having been unable to reach agreement on the appointment of the remaining members of the Arbitral Tribunal, by decision dated 25 March 2011 Judge José Luis Jesus, then President of the International Tribunal for the Law of the Sea, appointed Professor Ivan Shearer (as President) and Judge James Kateka and Judge Albert Hoffmann as members of the Arbitral Tribunal;

Whereas article 5 of Annex VII to the Convention provides that “Unless the Parties to the dispute otherwise agree, the arbitral tribunal shall determine its own procedure, assuring to each Party a full opportunity to be heard and to present its case”;

Whereas the Arbitral Tribunal, in consultation with the Parties, has adopted the following Rules of Procedure (the “Rules”) for the arbitration;

The arbitration shall be in accordance with these Rules.

SECTION I. INTRODUCTION

Scope of Application

Article 1

1. The Arbitral Tribunal shall function in accordance with these Rules, the relevant provisions of the Convention and Annex VII to the Convention. These Rules are subject to such modifications or additions as the Parties may agree in writing after consultation with the Arbitral Tribunal.
2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, and the Parties have not otherwise agreed, the question shall be decided by the Arbitral Tribunal after consultation with the Parties.
3. The International Bureau of the Permanent Court of Arbitration (the “International Bureau”) shall serve as the Registry and shall take charge of the archives of the arbitration proceedings.

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received by the International Bureau or by a Party when it has been delivered to the International Bureau or to the agent of the Party appointed pursuant to Article 4.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State of the Party or in The Netherlands, the period is extended until the first work day which follows. Official holidays or non-work days occurring during the running of the period of time are included in calculating the period.

Commencement of Proceedings

Article 3

The proceedings are deemed to have commenced on 20 December 2010.

Representation and Assistance

Article 4

Each Party shall be represented by an agent and, if it so decides, one or more deputy agents. The Parties may also be assisted by persons of their choice. The name and address of the agent and any deputy agent or agents must be communicated in writing to the other Party, to the International Bureau, and to all members of the Arbitral Tribunal.

SECTION II. COMPOSITION OF THE TRIBUNAL

Number and Appointment of Arbitrators

Article 5

The Arbitral Tribunal consists of five members appointed in accordance with article 3 of Annex VII to the Convention.

Challenge of an Arbitrator

Article 6

1. Each arbitrator shall make a full written statement disclosing any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence.
2. Either Party may, no later than thirty days from the notification to it of the written statement referred to in paragraph 1 above, or from the emergence of new facts, challenge the appointment on the ground that circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or that he/she does not have the qualifications suitable for the function. Any such challenge shall be in writing and shall be notified to the International Bureau and to all members of the Arbitral Tribunal.
3. The arbitrator whose appointment is challenged may withdraw and shall do so if both Parties so request, but in the absence of such withdrawal, the other members of the Arbitral Tribunal shall decide on the challenge, if possible within 30 days or otherwise not later than 60 days from the date of the challenge.

Replacement of an Arbitrator

Article 7

1. If a challenge to the appointment of an arbitrator is sustained or in the event of the death or withdrawal of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed:
 - (a) Where the arbitrator being replaced was originally appointed by one of the Parties in accordance with articles 3(b) or 3(c) of Annex VII to the Convention, by the Party making the original appointment if possible within 30 days, or otherwise not later than 60 days, from the date of any challenge being sustained or the death or withdrawal of an arbitrator;
 - (b) Where the arbitrator being replaced was originally appointed by the President of the International Tribunal for the Law of the Sea in accordance with article 3(e) of Annex VII to the Convention, if the Parties do not agree otherwise within 30 days of the challenge being sustained or of the death or withdrawal of the arbitrator, by the President of the International Tribunal for the Law of the Sea, after consultation with the Parties.
2. In such an event, prior hearings may be repeated at the discretion of the Arbitral Tribunal.

SECTION III. THE PROCEEDINGS

General Provisions

Article 8

1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties are treated with equality and that at any stage of the proceedings each Party is given a full opportunity to be heard and to present its case.
2. Subject to these Rules, the Parties shall facilitate the work of the Arbitral Tribunal in accordance with article 6 of Annex VII to the Convention.

Place of and Language of Arbitration

Article 9

1. The place where the arbitration is to be held shall be The Hague, the Netherlands.
2. The place of hearings shall be Dubai, United Arab Emirates.
3. The Award shall be made at the place of arbitration.
4. The language of the arbitration is English.

Order and Content of Pleading

Article 10

1. On or before 1 August 2012, Mauritius shall communicate in writing to the United Kingdom, to the International Bureau and to each of the arbitrators a Memorial containing:
 - (a) A statement of any facts on which Mauritius relies;
 - (b) Mauritius's submissions on law;
 - (c) A statement of the relief or remedy sought by Mauritius.
2. On or before 1 March 2013, the United Kingdom shall submit a Counter-Memorial containing:
 - (a) An admission or denial of any facts alleged in the Memorial and a statement of any additional facts on which the United Kingdom relies;
 - (b) Observations concerning the submissions on law in the Memorial; the United Kingdom's submissions on law in answer thereto;
 - (c) The form of order sought by the United Kingdom.
3. On or before 1 July 2013, Mauritius may submit a Reply.
4. On or before 1 November 2013, the United Kingdom may submit a Rejoinder.
5. At the request of either Party, and after having ascertained the views of the other Party, the Arbitral Tribunal may extend the time specified in paragraphs 1, 2, 3 and 4 of this Article for the submission of pleadings.

6. There shall be annexed to the original of every pleading certified copies of any relevant documents adduced in support of any facts alleged in it.
7. During the course of the arbitral proceedings either Party may, if given leave by the Arbitral Tribunal to do so, amend or supplement its claim or defence, provided that a claim may not (without the consent of the other Party) be amended or supplemented in such a manner that it falls outside the scope of the Dispute.

Preliminary Objections

Article 11

1. The Arbitral Tribunal shall have the power to rule on objections to its jurisdiction or to the admissibility of the Notification or of any claim made in the proceedings.
2. A submission that the Arbitral Tribunal does not have jurisdiction or that the Notification or a claim made in the pleadings is inadmissible shall be raised either:
 - (a) where the United Kingdom requests that the submissions be dealt with as a preliminary issue, as soon as possible but not later than three months from the time of the filing of the Memorial; or
 - (b) in all other circumstances, in the Counter-Memorial or, with respect to the Reply, in the Rejoinder.
3. The Arbitral Tribunal may, after ascertaining the views of the Parties, determine whether objections to jurisdiction or admissibility shall be addressed as a preliminary matter or deferred to the Tribunal's final award. If either Party so requests, the Arbitral Tribunal shall hold hearings prior to ruling on any objection to jurisdiction or admissibility.
4. Should the United Kingdom request that any objection to jurisdiction or admissibility be dealt with as a preliminary matter, such request shall state whether the United Kingdom seeks a separate hearing on the question of bifurcating objections to jurisdiction or admissibility from the Tribunal's consideration of the merits. Within three weeks from the receipt of the United Kingdom's objections, Mauritius shall provide any comments it may have on the question of bifurcation. Within two weeks from the receipt of such comments, the United Kingdom may submit a reply to any views expressed by Mauritius on the question of bifurcation.
5. In the interest of efficient scheduling – and without prejudice to any determination that the Tribunal may make as to the appropriateness of such a hearing, if requested – the Tribunal has reserved the following alternative dates for a possible one-day hearing on the question of bifurcation:
 - (a) In the event that the United Kingdom's objections to jurisdiction or admissibility and request for a hearing are made on or before 14 September 2012: any hearing will be held on Friday, 9 November 2012;
 - (b) In the event that the United Kingdom's objections to jurisdiction or admissibility and request for a hearing are made after 14 September 2012: any hearing will be held on Friday, 11 January 2013.

Evidence and Hearings

Article 12

1. Each Party shall have the burden of proving the facts relied on to support its claim or defence. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
2. The Arbitral Tribunal may take all appropriate measures in order to establish the facts, including a site visit.
3. At any time during the proceedings the Arbitral Tribunal may call upon a party to produce documents, exhibits or other evidence within such a period of time as the Arbitral Tribunal shall determine.
4. After having obtained the views of the Parties, and having regard to the factual issues arising, the Arbitral Tribunal may upon notice to the Parties appoint one or more experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the Parties.
5. The Parties shall cooperate in pursuance of article 6 of Annex VII to the Convention with any expert(s) the Arbitral Tribunal may wish to appoint pursuant to paragraph 4 of this Article.

Article 13

1. There shall be such hearings as the Arbitral Tribunal considers appropriate at which the Parties may make their oral submissions.
2. The hearings shall commence no later than three months after the Rejoinder has been submitted.
3. If witnesses, including expert witnesses, are to be heard, each Party shall, at least thirty days before the hearing, communicate to the International Bureau, to the members of the Arbitral Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony. Where a language other than English is to be used by a witness, the necessary arrangements for interpretation into English shall be made by the International Bureau, at the expense of the Party concerned.
4. No expert witness may be heard unless he or she has provided a written expert report, which shall form part of the pleadings as set out in Article 10. In respect of any other witness or witnesses to be heard who have not provided a witness statement or affidavit which has been included in the pleadings, the Party shall communicate to the International Bureau, to the members of the Arbitral Tribunal and to the other Party the subject matter of the testimony, a list of the topics to be addressed and a summary of conclusions. This communication shall be made at the time that the witnesses are identified in the initial or final communications specified in Article 13(3).
5. The Arbitral Tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of other witnesses. Taking account of the views of the Parties, the Arbitral Tribunal shall determine the manner in which witnesses are examined.
6. The written pleadings of the Parties and any documentary material or evidence submitted by them shall remain confidential until the opening of the hearing to which they relate at which point the Arbitral Tribunal, following consultation with the Parties, may decide that they be made public.

7. The hearings shall not be open to the public. The Arbitral Tribunal, following consultation with the Parties, may decide that transcripts of hearings be made public.
8. The International Bureau shall make arrangements for a verbatim record of each hearing to be produced.

Decisions on Administration and Routine Procedure

Article 14

Decisions of the Arbitral Tribunal, both on procedure and substance, shall be taken by a majority vote of its members, except that questions of administration or routine procedure may be decided by the President of the Arbitral Tribunal, unless the President wishes to have the opinion of the other members of the Arbitral Tribunal or the Parties request a decision of the Arbitral Tribunal.

SECTION IV. THE AWARD

Publication of the Award

Article 15

1. The Award of the Arbitral Tribunal shall be rendered in accordance with articles 10 and 11 of Annex VII to the Convention.
2. In addition to making a final Award, the Arbitral Tribunal shall be empowered to make interim, interlocutory, or partial awards.
3. The Award shall be made public.

Interpretation of the Award

Article 16

1. Any request for interpretation of the Award, in accordance with article 12 of Annex VII to the Convention, shall be made within thirty days after the receipt of the Award, by giving notice to the Arbitral Tribunal and the other Party.
2. The interpretation shall be given in writing within forty-five days after receipt of the request. The interpretation shall form part of the Award and the provisions of Article 15 above shall apply.

Correction of the Award

Article 17

1. Within thirty days after the receipt of the Award, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the Award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within thirty days after the communication of the Award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of Article 15 of these Rules shall apply.

Expenses and Costs

Article 18

1. Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the expenses of the Arbitral Tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.
2. The expenses of the Arbitral Tribunal shall be reasonable in amount, taking into account the complexity of the subject-matter, the time spent by the arbitrators, the amount in dispute, if any, and any other relevant circumstances of the case.
3. The International Bureau shall keep a record of all expenses, and shall furnish a final statement thereof to the Parties.

Article 19

The Arbitral Tribunal may make such award as appears to it appropriate in respect of the costs incurred by the Parties in presenting their respective cases.

Deposit for Expenses

Article 20

1. The International Bureau may request each Party to deposit an equal amount as an advance for the expenses referred to in Article 18. All amounts deposited by the Parties pursuant to this Article shall be directed to the International Bureau, and disbursed by it for such expenses, including, inter alia, fees to the arbitrators, and the International Bureau.
2. During the course of the proceedings, the International Bureau or the Arbitral Tribunal may request supplementary deposits from the Parties in respect of the expenses referred to in Article 18.
3. If the requested deposits are not paid in full within sixty days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the proceedings.
4. After the Award has been made, the International Bureau shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.

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