

ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA

REPUBLIC OF MAURITIUS

v.

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

**WRITTEN OBSERVATIONS SUBMITTED BY THE REPUBLIC
OF MAURITIUS ON THE QUESTION OF BIFURCATION**

21 November 2012

INTRODUCTION

1. The Republic of Mauritius submits these Written Observations pursuant to the Tribunal's Rules of Procedure, Article 11 of which provides that:

“(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.”

2. On 31 October 2012, the United Kingdom filed preliminary objections to jurisdiction, and requested that those objections be dealt with as a preliminary matter, separate from the Tribunal's consideration of the merits. The United Kingdom invited Mauritius to agree to this proposal. For the reasons summarised below, Mauritius considers that none of the United Kingdom's jurisdictional objections are suitable for resolution as preliminary matters. Mauritius confirmed its position by letter to the Registry dated 2 November 2012. The Registry notified the Parties by letter of 5 November 2012 that the Tribunal has decided to hold a one-day hearing on bifurcation on 11 January 2013.
3. The purpose of the present observations is to assist the Tribunal by setting out Mauritius' views on bifurcation. Accordingly, these observations do not address the legal and factual merits of the UK's preliminary objections, which will be a matter for pleadings and argument in due course. For the avoidance of doubt, Mauritius should not be taken to agree with any factual assertion or

legal argument contained in the UK’s preliminary objections, by reason of the fact that it does not specifically address it below. The present observations are strictly confined to an examination of the appropriate timing for the resolution of the UK’s preliminary objections, with reference to the law and facts where necessary.

4. **Part I** of these comments sets out, by way of brief summary, the legal principles applicable to the issue of bifurcation. **Part II** applies these principles to the UK’s objections, explaining why Mauritius considers that those objections are not suitable for resolution as a preliminary matter separate from the merits.

PART I: APPLICABLE LEGAL PRINCIPLES

THE RULES OF PROCEDURE AGREED BY THE PARTIES

5. The Tribunal’s power to deal with preliminary objections is contained in Article 11 of the Rules of Procedure, which the Parties and the Tribunal agreed. Articles 11(3) and (4) of the Rules of Procedure are set out above. The UK argues that:

“It is inherent in the very notion of ‘preliminary objections’, which is what Article 11 deals with, that they should be dealt with as a preliminary matter, unless there is good reason to adopt a different procedure.” [PO para.6.3(a)]

6. Mauritius submits that, on a proper reading of Article 11, it is entirely neutral as to the stage at which jurisdictional objections should be resolved. No presumption in favour of or against bifurcation can be drawn from the fact that the Article is entitled “Preliminary Objections”, which is the conventional term for objections to jurisdiction. Article 11(3) makes it quite clear that, where such objections are raised, the Tribunal has the power either to address them as a preliminary matter or to defer them to the final award. It is clear from the language of this Article that there is no presumption in either direction.

7. The UK makes the uncontentious observation that “[i]t is implicit in the formulation of Article 11(3) that the underlying question is whether any given objections are or are not suitable to be dealt with as a preliminary matter” [PO 6.3(b)] However, Mauritius disagrees with the UK’s attempt to create a presumption in favour of bifurcation when it goes on to frame the issue as “whether dealing with [the objections] as a preliminary matter would be inappropriate for some particular reason.” As framed, this places the onus on Mauritius to demonstrate that it would be *inappropriate* to bifurcate the preliminary objections. As noted above, such a presumption is entirely absent from the neutral text of Article 11. In fact, so far as there is an evidential burden on either party, Mauritius submits that it is for the UK, which has raised the preliminary objections and seeks to separate them from the merits, to satisfy the Tribunal that this course of action – which involves an attempt to terminate Mauritius’ claim without any consideration of the underlying merits and evidence – is appropriate and does not risk causing injustice to Mauritius.
8. Article 11 makes it clear that it was the intention of the Parties and the Tribunal that proceedings on the merits would not be suspended automatically in the event that the United Kingdom raised preliminary objections. Article 11(3) is materially identical to Article 10(3) of the Rules of Procedure in the *Guyana v Suriname* Annex VII arbitration¹ (which the Parties used as a precedent when drafting the Rules of Procedure in the present case). The Tribunal’s decision on bifurcation in *Guyana v Suriname* is of assistance in the present case, as are the pleadings in that case.² Suriname filed three preliminary objections to jurisdiction. By its Order No. 2 of 18 July 2005, the Tribunal refused to suspend the proceedings and joined Suriname’s objections to the merits, ruling that:

“because the facts and arguments in support of Suriname’s submissions in its Preliminary Objections are in significant measure the same as the facts and arguments on which the merits of the case depend, and the objections are not of an exclusively preliminary character, the Tribunal does not consider it appropriate to rule on the Preliminary Objections at this stage;

¹ *Maritime Delimitation (Guyana v Suriname), Jurisdiction and Merits*, Award of 17 September 2007 (2008) 47 ILM 166.

² Available at http://www.pca-cpa.org/showpage.asp?pag_id=1268.

[H]aving ascertained the views of the parties, the Tribunal shall, in accordance with Article 10(3) of the Tribunal’s Rules of Procedure,³ rule on Suriname’s Preliminary Objections to jurisdiction and admissibility in its final award.”⁴

9. In its discussion of this decision, the UK observes that:

(1) Suriname contended that the Tribunal had no jurisdiction to delimit the maritime boundary in circumstances where there was no agreed terminus to the land boundary, but recognised that the Tribunal had jurisdiction to determine whether there was any such agreed terminus.

(2) Suriname also raised objections to admissibility of the claims on the basis of an absence of any legal or factual basis and lack of clean hands. [PO fn 223, p.73]

10. Mauritius does not dispute this characterisation, or the UK’s observation that Suriname’s objections “inevitably meant that the Tribunal would have to resolve a complex array of anterior factual and legal questions (including issues of alleged acquiescence and estoppel) in order to decide the jurisdictional objection.” [PO fn 223, p.73] For the reasons given in Part II below, Mauritius submits that an equally broad array of factual and legal questions would inevitably come into play and have to be determined if the Tribunal were to rule on the UK’s objections to jurisdiction at a preliminary stage.

11. In arguing for a “natural default position” of bifurcation, the UK relies on the practice of the ICJ and ITLOS [PO 6.3(c)]. But in adopting a flexible approach to bifurcation, the Rules of Procedure in the present case, as in *Guyana v Suriname*, depart from the rules of procedure of those two institutions, which provide expressly for the suspension of proceedings on the merits when a party raises preliminary objections (International Court of Justice, Rules of

³ This was in similar terms to Rule 11(3) of the Rules of Procedure in the present case, stating that “The Arbitral Tribunal, after ascertaining the views of the Parties, may rule on objections to jurisdiction or admissibility as a preliminary issue or in its final Award.”

⁴ Mauritius also notes that there is nothing in the Order, or the transcript of the hearing on bifurcation, to suggest that the Tribunal applied any presumption in favour of bifurcation, as the UK contends should be applied in the present case.

Court, Article 79(5); International Tribunal for the Law of the Sea, Rules of the Tribunal, Article 97(3)).

12. The different wording of those two sets of Rules means that the procedure adopted by those institutions when a party files jurisdictional objections gives no guidance on the question of bifurcation in the present case. Because of the wording of the ICJ's Rules, the party raising the preliminary objections need only label them as such, and file them in a timely fashion, in order to bring about the suspension of the proceedings and the determination of those objections as a preliminary matter. The Rules of that Court provide for *mandatory* bifurcation, at least in the sense that the objections to jurisdiction will be dealt with separately in the first instance.
13. As discussed below, however, that preliminary jurisdiction phase will result in joinder to the merits of any preliminary issue which the Court considers is not of an "exclusively preliminary character". The ICJ's approach is, therefore, the same *in substance* to that applied in *Guyana v Suriname*, save that it – and ITLOS – lack the discretion which this Tribunal enjoys to avoid a lengthy, costly and unnecessary initial jurisdictional phase where the party seeking bifurcation cannot satisfy it of the exclusively preliminary character of its objections.
14. In summary, the Rules of Procedure in the present case reflect the intention of the Parties and the Tribunal to ensure that there should be no automatic suspension of the proceedings on the merits, and a desire to leave it to the Tribunal to determine whether it should rule on the UK's objections as a preliminary issue or in its final Award. This depends entirely on the suitability of those preliminary objections for resolution in isolation from the facts and the merits.

RELEVANT INTERNATIONAL PRACTICE

15. For the reasons set out above, Mauritius disagrees with the UK's interpretation of Article 11, and in particular (a) its attempt to read in a presumption in

favour of bifurcation, and (b) the relevance of ICJ and ITLOS practice on the issue, given the different rules which govern preliminary objections in those two fora. However, Mauritius does agree with the UK's ultimate conclusion that the applicable test is whether the objection has an "exclusively preliminary character". [PO 6.4]

16. It appears, therefore, that subject to the question of interpretation of Article 11, addressed above, the parties are in fact in broad agreement on the test to be applied by the Tribunal in considering the issue of bifurcation. Accordingly, the following review of international practice can be set out in summary form, to place the applicable legal test in context and to give some examples of its application in practice.
17. The Rules of Procedure (and Annex VII and the Convention) do not identify the criteria to be applied by the Tribunal in reaching its decision, beyond requiring the Tribunal to ascertain the views of the parties. Mauritius submits that it is appropriate for the Tribunal to take into account general principles of international law and the practice of other courts and tribunals.
18. International practice indicates that, where a party raises preliminary objections to the jurisdiction of an international tribunal, there is a need to ensure a balance between two competing objectives:
 - (1) to ensure that the tribunal in the course of adjudicating upon the preliminary objections neither prejudices a decision on the merits, nor considers factual and legal arguments which are so intertwined with the merits that they may have to be assessed twice; and on the other hand
 - (2) to ensure that unnecessary time and expense are not expended in arguing and resolving the substantive merits of a dispute which a tribunal has no jurisdiction to hear.
19. In balancing these competing considerations, the Tribunal should take into account the requirements of the good administration of justice and general principles of international law. There are considerations of fairness on both

sides of the balance: fairness to a claimant State which ought not to have its case terminated for lack of jurisdiction without any assessment of the merits where, in reality, the issue of jurisdiction can only be determined alongside a consideration of the facts of the case; and fairness to a respondent State which ought not to have to fight a case to the merits which could properly have been terminated at a preliminary stage for lack of jurisdiction. Where the balance lies in any particular case will depend on the relationship between the respondent State's jurisdictional arguments and the underlying merits and evidence in the case.

20. In approaching this issue, it is appropriate to keep in mind the approach first identified by the Permanent Court of International Justice in the *Mavrommatis Palestine Concessions* case. The 1936 Rules of the PCIJ gave that Court power to join an objection to the merits “whenever the interests of good administration of justice require it”, and in particular where the Court, were it to decide on the objection, “would run the risk of adjudicating on questions which appertain to the merits of the case or of prejudging their solution.”⁵ The PCIJ considered that it was free to adopt “the principle which it considers best calculated to ensure the administration of justice.”⁶

21. Turning to the practice of the International Court of Justice, in the *Right of Passage* case, the Court rejected four out of six preliminary objections, but ordered that India's remaining two objections to the Court's jurisdiction be joined to the merits.⁷ The Court explained that the facts on which one of those objections was based (the fifth) were not admitted, and the elucidation of those facts and their legal consequences would involve an examination of the actual practice of the British, Indian and Portuguese authorities in the matter of the right of passage in such a way as would involve prejudging the merits of the case. As for the sixth objection, the Court, having heard conflicting arguments, did not consider itself in a position to decide the question at the preliminary stage.

⁵ *Panevezys-Saldutiskis Railway*, PCIJ, Series A/B, No. 75, p.56, cited by the ICJ in *Nicaragua v United States* 1986 ICJ 14, paras. 39-40.

⁶ *Mavrommatis Palestine Concessions*, 1924 PCIJ (ser. A) No.2, at 16 (30 Aug).

⁷ *Right of Passage over Indian Territory (Portugal v India)*, 1947 ICJ 125, at 149-51.

22. The ICJ adopted a similar approach in the *Barcelona Traction* case,⁸ in applying the 1946 Rules of Court, Article 62 of which provided that after a preliminary objection had been lodged, the Court could either give a decision on the objection or join it to the merits. The Court explained that:

“the Court may find that the objection is properly a preliminary one as, for example, to the jurisdiction of the Court, and it may dispose of it forthwith, either upholding it or rejecting it. In other situations, of which examples are given in the cases referred to above, the Court may find that the objection is so related to the merits, or to questions of fact or law touching the merits, that it cannot be considered separately without going into the merits (which the Court cannot do while proceedings on the merits stand suspended under Article 62), or without prejudging the merits before these have been fully argued. In these latter situations, the Court will join the preliminary objection to the merits. It will not do so except for good cause, seeing that the object of a preliminary objection is to avoid not merely a decision on, but even any discussion of the merits.”

23. The ICJ’s analysis of a preliminary objection as avoiding “any discussion of the merits” makes clear that, where such an objection *does* require any discussion of the merits, it is not suitable for resolution at a preliminary stage.

24. The 1978 Rules do not contain any provision expressly empowering the ICJ to join a preliminary objection to the merits. However, Article 79(9) of the Rules (as amended in 2000), which governs preliminary objections on jurisdictional and other grounds, provides that:

“After hearing the parties, the Court shall give its decision in the form of a judgment, by which it shall either uphold the objection, reject it, or declare that the objection does not possess, in the circumstances of the case, an exclusively preliminary character. If the Court rejects the objection or declares that it does not possess an exclusively preliminary character, it shall fix time-limits for the further proceedings.” [emphasis added]

25. This provision of the 1978 Rules was considered by the Court in *Nicaragua v United States*, where it explained that:

“While the variety of issues raised by preliminary objections cannot possibly be foreseen, practice has shown that there are certain kinds of

⁸ *Case Concerning the Barcelona Traction, Light and Power Company, Ltd (Belgium v Spain)*, 1964 ICJ 6, at 41-44, emphasis added.

preliminary objections which can be disposed of by the Court at an early stage without examination of the merits. Above all, it is clear that a question of jurisdiction is one which requires decision at the preliminary stage of the proceedings. [...] [The new rule] presents one clear advantage: that it qualifies certain objections as preliminary, making it quite clear that when they are exclusively of that character they will have to be decided upon immediately, but if they are not, especially when the character of the objections is not exclusively preliminary because they contain both preliminary aspects and other aspects relating to the merits, they will have to be dealt with at the stage of the merits. This approach also tends to discourage the unnecessary prolongation of proceedings at the jurisdictional stage.”⁹

The same approach has been adopted by the ICJ in subsequent cases.¹⁰

CONCLUSION

26. Article 11 of the Rules of Procedure allows the Tribunal to take a flexible approach to bifurcation. It is for the UK to satisfy the Tribunal that its preliminary objections are of an *exclusively* preliminary nature, and are suitable for resolution without consideration of the facts and merits of the case. The consistent practice of international courts and tribunals is to join jurisdictional objections to the merits where they cannot be fairly resolved without examination of the merits. For the reasons given in Part II below, Mauritius submits that this is just such a case.

PART II: THE UK’S JURISDICTIONAL OBJECTIONS ARE NOT OF AN EXCLUSIVELY PRELIMINARY CHARACTER

27. The UK’s objections are examined in turn below. Mauritius submits that these objections are bound up with substantive factual and legal issues that are inextricably connected to the merits of the case. As the ICJ recognised in the *Barcelona Traction* case, it is not appropriate at the preliminary objections phase to enter into any consideration of the merits, and it is impossible to see

⁹ *Military and Paramilitary Activities (Nicaragua v United States of America)*, 1986 ICJ 14, at 30-31 (emphasis added).

¹⁰ See for example *Case Concerning the Maritime Boundary Between Cameroon and Nigeria (Preliminary Objections)* 1998 ICJ Reports 275, 324-325, where the Court joined the eighth of Nigeria’s objections to the merits on the grounds that its determination would require the Court to examine Cameroon’s case on the merits.

how the Tribunal could entertain the UK's objections without entering into the forbidden domain of the merits. The UK's preliminary objections cannot be separated from the merits, and the good administration of justice would not be served by a futile attempt to do so.

1. THE UK'S OBJECTION TO JURISDICTION OVER WHAT IT TERMS "MAURITIUS' SOVEREIGNTY CLAIM"

The characterisation of the dispute

28. In the first part of its claim, Mauritius asks the Tribunal to rule that the UK is not entitled to declare maritime zones around the Chagos Archipelago because the UK is not "the coastal State" for the purposes of the 1982 United Nations Convention on the Law of the Sea ("the Convention"). In the second part of its claim, Mauritius asks the Tribunal to rule that – whether or not the UK is "the coastal State" – the "MPA" is incompatible with the Convention in a number of respects.
29. Contrary to Mauritius' characterisation of the dispute in its Notification and its Memorial, the UK seeks to re-characterise the "real issue" in the case as the question of Mauritius' sovereignty over the Chagos Archipelago [PO 3.1-3.10]. It goes on to argue that this does not constitute a "dispute concerning the interpretation or application of the Convention" as required by Article 288(1) of the Convention, and that the Tribunal therefore lacks jurisdiction over the claim in its entirety.
30. In order for this objection to be suitable for resolution as a preliminary objection, the UK would have to persuade the Tribunal that:
- (1) It can and should re-characterise Mauritius' pleaded case at a preliminary stage in order to define the "real issue" in the case;
 - (2) It can do so without any recourse to the evidence in the case;
 - (3) The "real issue", identified without recourse to the evidence, is whether Mauritius has sovereignty over the Chagos Archipelago, rather than, as Mauritius has defined its case, (a) whether or not the

UK was entitled to declare the “MPA”, and (b) the compatibility of the “MPA” with the Convention.

31. Mauritius submits that simply to list the steps which the Tribunal would have to take in order to resolve this objection as a preliminary matter is to demonstrate how inextricably linked the UK’s argument is to the merits.
32. The UK argues that this Tribunal does not have jurisdiction because “the real issue” in this case is that of sovereignty over the Chagos Archipelago. [PO 3.6] It is asserted that Mauritius’ claims before this Tribunal are “artificial” and “incidental to the real dispute between the Parties, *i.e.* the dispute concerning sovereignty over [the Chagos Archipelago].” [PO 3.9] However, the two cases relied on by the UK at paragraph 3.1 of the Preliminary Objections do not provide any authority for the proposition that a Tribunal can uphold an objection to jurisdiction on the basis that the “real issue” in a case is different from the claims made by the claimant State in its Statement of Claim or Application.
33. The *Nuclear Tests* and *Fisheries Jurisdiction (Spain v. Canada)* cases merely set out the principle that it is for the Court to identify the subject matter of a dispute before it; this determination is to be based primarily on the claimant State’s Application. The ICJ has repeatedly emphasized that the Application is the primary means of determining the object of a dispute before the Court.¹¹
34. In *Fisheries Jurisdiction (Spain v. Canada)* the ICJ held that “[i]t is for the Court itself, while giving particular attention to the formulation of the dispute chosen by the Applicant, to determine on an objective basis the dispute dividing the parties, by examining the position of both parties”.¹² In *Nuclear Tests* the respondent State, France, did not participate in the proceedings. France did not appoint an agent, did not submit written pleadings, and did not attend the hearing on jurisdiction. Accordingly, it was necessary for the Court to ensure that it accurately identified the subject matter of the dispute, given

¹¹ *Nuclear Tests* para. 24; *Fisheries Jurisdiction (Spain v. Canada)*, para. 33.

¹² *Fisheries Jurisdiction (Spain v. Canada)*, para. 30.

that it had only heard from one of the parties. This is quite different from the present case, and offers no support for the proposition that the Tribunal is entitled to re-characterise the dispute at a preliminary stage, holding that the “real issue” is other than as pleaded by the claimant State.

The UK’s misplaced reliance on Mauritius’ ongoing assertions of its sovereignty over the Chagos Archipelago

35. The UK appears to consider that the “real issue” in the case can and should be defined as Mauritius’ sovereignty over the Chagos Archipelago because “the present proceedings form part of a broader picture in which Mauritius seeks to raise its sovereignty claims in as many fora as possible”. [PO 3.3] In this connection, the UK notes that Mauritius has over the years raised the issue of the unlawful excision of the Chagos Archipelago by various means and in various fora. [PO 2.16]¹³

36. The UK is right to acknowledge the importance to Mauritius of the issue of sovereignty over the Chagos Archipelago. As Mauritius’ Memorial makes clear, this is a matter of fundamental importance to Mauritius. In light of the importance of the matter, Mauritius has pursued it over many years, through diplomatic means and with the support of many States and a number of international institutions, including the United Nations and the African Union [see MM 3.45-3.52; 3.109-3.111].

37. But it simply does not follow that, because Mauritius places great importance on effectively exercising its sovereignty over the Chagos Archipelago, the Tribunal can or should accept the UK’s argument to the effect that the present claim is nothing more than an attempt to bring an inadmissible sovereignty dispute before this Tribunal in the guise of a maritime dispute.

¹³ This paragraph of the UK’s Preliminary Objections is preceded by three paragraphs detailing the litigation brought in the UK and the European Court of Human Rights by former residents of the Chagos Archipelago. This litigation was also summarised at paragraphs 3.75 to 3.84 of Mauritius’ Memorial. Mauritius does not understand the UK’s concern to emphasise that “None of this domestic or European litigation is directly relevant to the dispute that Mauritius has submitted to the present Tribunal.” Mauritius has not sought to suggest otherwise. That litigation was simply summarised in the Memorial as part of the relevant factual and legal background. For example, one of those judicial review claims led directly to the enactment of the immigration ordinance which forms the current purported basis in UK law for the exclusion of the former residents of the Chagos Archipelago.

38. The fact that Mauritius has sought to raise different aspects of the matter through different means contradicts the UK's argument, by demonstrating that Mauritius fully recognises that different aspects of its complaint regarding the Archipelago are suitable for determination by different means. In the present case, it is the UK's purported declaration of an "MPA" to which Mauritius strongly objects, and which it considers to be incompatible with the UK's obligations and Mauritius' rights under the Convention. If international cases were to be declared inadmissible because they involve one legal aspect of a broader inter-State dispute, this would dramatically reduce the number of cases which would ever reach adjudication on the merits.¹⁴

The UK offers the Tribunal no guidance as to how it could determine, without examining the evidence, that Mauritius' sovereignty over the Chagos Archipelago is the "real issue" in the case, rather than incidental to a maritime dispute

39. As noted above, the present submissions are not the appropriate place for an examination of the merits of the UK's legal arguments. Mauritius has set out its case that the question of sovereignty arises incidentally to the maritime issues which the Tribunal must decide, since it is necessary to determine whether the UK is "the coastal State" for the purposes of the Convention. It has set out why it considers that an Annex VII Tribunal has jurisdiction to determine sovereignty where this is a necessary incident to a dispute under the Convention [MM 5.25-5.34]. In its Preliminary Objections, the UK recognises the distinction, in terms of this Tribunal's jurisdiction,

"between cases where (i) an issue of territorial sovereignty arises incidentally to the central issue of maritime delimitation and (ii) the central thrust of the claim is to seek determination of a long-standing dispute over territorial sovereignty, but there is also an issue of maritime delimitation. Jurisdiction might be established in respect of all aspects of (i), but evidently not in respect of the territorial sovereignty issues of (ii)." [PO 3.53]

¹⁴ See for example the decision of the ICJ in *Application of the Interim Accord of 13 September 1995 (Former Yugoslav Republic of Macedonia v Greece)*, 5 December 2011, where the Court ruled on a treaty dispute (arising out of Greece vetoing Macedonia's accession to NATO) which arose out of a broader ongoing dispute as to Macedonia's name, and rejected Greece's jurisdictional objection that ruling on the treaty dispute necessarily involved ruling on the broader name dispute: paras. 31-32, 37.

40. The UK does *not* object to jurisdiction on the basis that the Tribunal has no jurisdiction over a “mixed dispute” as defined at point (i): it appears to accept that whether or not such jurisdiction exists is a matter for argument at the merits stage [PO 3.41-3.53]. It describes the proposition that the Tribunal has jurisdiction over such a dispute as “very controversial” [PO 3.50], but does not seek to have it resolved as a preliminary issue.
41. The crucial point for present purposes is that, immediately following the passage set out above, the UK goes on to state that:
- “If the mixed disputes analogy were somehow applicable in the current case, the obvious answer would be that, as outlined in Section A above, the current dispute falls clearly into the second of those two categories: it has as its principal object the question of territorial sovereignty over [the Chagos Archipelago].” [PO 3.53, emphasis added]
42. Having accepted that the Tribunal’s jurisdiction over mixed disputes is a matter for argument at the merits, the problem for the UK lies in persuading the Tribunal that it can safely conclude, without any consideration of the evidence or merits, that Mauritius’ claim is not a mixed dispute because it “clearly” has territorial sovereignty as its principal object.
43. The UK offers the Tribunal no guidance as to how, or on what basis, it might reach such a determination. The suitability of this objection for resolution independently of the merits is dealt with summarily in just three brief paragraphs [PO 6.9-6.11]. The UK baldly asserts that “[t]he preliminary objection raises no issues of fact.” [PO 6.10(b)], but does not give any indication of how the Tribunal can, for example, determine whether the dispute is incidental to a dispute under the Convention (as Mauritius contends), or amounts to a primary sovereignty dispute (as the UK contends), other than by detailed consideration of the evidence in the case.

**As regards Mauritius' submission that it is a "coastal State", the Tribunal
likewise cannot take a decision on jurisdiction without examining the
supporting facts**

44. In its Memorial, Mauritius states that:

“Mauritius has no doubt of its sovereignty over the Chagos Archipelago, and its status as a “coastal State” in regard to the Archipelago. But if, *quod non*, the Tribunal were minded to give deference to the UK’s physical possession of the Archipelago and its *de facto* exercise of powers, the Tribunal should also decide that in view of the unlawful manner in which the UK took and retained possession of the Archipelago, and the rights and interests which the UK has recognised as still belonging to Mauritius, Mauritius should be entitled to avail itself of the rights of a coastal State under Part V (and the other Parts) of the Convention...

[T]he Convention is sufficiently broad and flexible to comprehend, in appropriate circumstances (which will be infrequent), the existence of more than one “coastal State” in regard to a particular territorial jurisdiction.” [MM 6.51-6.52]

45. This argument is largely ignored by the UK in its Preliminary Objections. But to determine its jurisdiction on the point, the Tribunal will need to examine and make decisions on the facts regarding the undertakings made by the UK to Mauritius over the years – decisions which will also have to be made in examining the merits of the dispute. The jurisdiction of the Tribunal on this argument is inextricably interwoven with the merits.

46. This is clear, for example, in relation to the UK’s reaction to Mauritius’ claim that the UK recognises that Mauritius has certain rights of a “coastal State” within the meaning of Article 76(8) of the Convention and that the UK has not objected to the submission of Preliminary Information by Mauritius to the United Nations Commission on the Limits of the Continental Shelf (“CLCS”) in 2009. [MM 4.29-4.35] In its response, the UK confirms that it expressed no objection to Mauritius’ action, and that it “has not itself made a submission to the CLCS in respect of [the Chagos Archipelago]”. [PO 2.18-2.19]. It is plain – as with other aspects of the dispute between the Parties as to whether Mauritius is a “coastal State” – that the Tribunal cannot resolve the UK’s objection to jurisdiction without assessing the facts and the related law, and

that these are inextricably connected to the merits. The Tribunal would *inter alia* have to assess the circumstances leading to Mauritius' submission of preliminary information to the CLCS and the UK response thereto, as well as all the surrounding facts (including, for example, the circumstances in which the UK has objected to preliminary information submitted by other States, an element that confirms the *sui generis* nature of this dispute: see further below).

47. It is relevant in this connection to point out that, contrary to the assertion of the UK [PO 3.20ff], Mauritius is *not* seeking to expand the jurisdiction of the Tribunal by reference to the Article 293 applicable law provision. The UK devotes some space to its submission that jurisdiction under Part XV is not expanded by Article 293(1) [PO 3.20-3.34], when in fact Mauritius' case is simply that determining the meaning of "coastal State" for the purposes of Article 288 can only be done by reference to international law more generally (Article 293).

The question of whether the dispute is *sui generis*

48. In its submissions on the Tribunal's jurisdiction over "mixed disputes" which raise incidental issues of sovereignty [PO 3.41-3.53], the UK places great emphasis on what it considers to be the negative ramifications of Mauritius' claim that the Tribunal has jurisdiction to resolve the incidental question of sovereignty [PO 3.47-3.48]. It goes so far as to describe Mauritius' case as "misconceived, contrived and dangerous" [PO 3.48]. This argument is based on the proposition that Mauritius is incorrect to characterise the dispute in this case as *sui generis* (since the resolution of a *sui generis* dispute would not have ramifications, positive or negative, for other cases). The UK does not accept that characterisation [PO 3.48].

49. The UK seeks to make the *sui generis* nature of the dispute relevant to the question of jurisdiction. Accordingly, the Tribunal will need to decide whether the present dispute is indeed *sui generis*. Whether resolving the question of jurisdiction in Mauritius' favour will indeed give rise to a plethora of land sovereignty disputes before tribunals under the Convention – or whether, as

Mauritius states, its claim can be distinguished from other disputes that incidentally raise issues of land sovereignty – will require the Tribunal to take decisions as to whether the circumstances of the dismemberment of Mauritius in violation of United Nations General Assembly Resolutions, as well as the United Kingdom’s subsequent actions (including but not limited to its consistent affirmation that Mauritius has a continuing interest and rights in relation to the Chagos Archipelago, such as the right to submit information under Article 76(8) of the Convention), do indeed make this case *sui generis*. That is evidently not a decision which can be taken in isolation from the facts and merits of the case.

The relationship between this objection and what the UK terms the “residual issues”

50. By its “real issue” argument, as analysed above, the UK asks the Tribunal to rule that the claim pleaded by Mauritius is not what it says it is, and summarily to dismiss it, at a preliminary stage where the Tribunal will not be assisted by any analysis of the underlying merits and evidence. It should be noted that the UK is attempting to dispose of the *entire case* on this basis, arguing that resolution of its first preliminary objection “would effectively dispose of the case and thus eliminate the need to proceed to the merits”. [PO 6.10(c)]

51. This argument, while briefly stated, is extremely radical. It involves, in reality, an invitation to the Tribunal to sweep aside Mauritius’ detailed and specific objections to the “MPA” under a range of provisions of the Convention, on the basis that this is all window-dressing for what the UK contends is the “real issue”.

52. As set out in Chapter 4 of Mauritius’ Memorial, and considered further below in the context of the UK’s second objection, Mauritius has for many years raised detailed and specific objections to the UK’s creeping extension of maritime zones over the Chagos Archipelago, culminating in the “MPA”. This includes detailed bilateral communications about, for example, issues of

fishing rights and the continental shelf. Mauritius raised detailed and specific claims that the “MPA” is incompatible with the Convention, including by reason of the fact that its “no-take” regime unilaterally terminates the fishing rights recognised as belonging to Mauritius by the UK in its 1965 undertakings and repeatedly reaffirmed ever since.

53. Far from amounting to a “clear” sovereignty dispute, as the UK claims, Mauritius considers that this is a clear example of a dispute under the Convention. A dispute as to the interference by one State, through the declaration of a maritime zone, with the historic fishing rights of another State in all maritime zones including the territorial sea could hardly be a more fitting subject for jurisdiction under the Convention. However, the UK’s objection would have the Tribunal decide, without reviewing any of this evidence, that this is all a thin disguise for an inadmissible sovereignty dispute.

54. Perhaps recognising as untenable the suggestion that determination of this preliminary objection could, on its own, resolve the entire case, the UK goes on immediately to add that “Even if the Tribunal were minded to decide the residual matters that Mauritius has raised, then – subject always to the second and third objections – determination of this objection in the United Kingdom’s favour would very significantly reduce the scope of [the] claim”, with attendant cost savings [PO 6.10(c)].

55. The UK’s second and third objections are dealt with below. With respect to the present objection, Mauritius submits that it is completely unrealistic for the UK to suggest that determination of its first preliminary objection could resolve the case in its entirety. As noted above, this would involve the Tribunal sweeping away Mauritius’ detailed arguments about the compatibility of the “MPA” with the Convention, arguments which do not depend in any way on the question of sovereignty. These issues cannot meaningfully be characterised as “residual”, as the UK terms them [PO 6.10(c)]. This leaves the argument that removing the sovereignty issue from the case would considerably cut it down and lead to substantial savings. This

is a much weaker position, since it then comes down to a question, not of the savings involved in determining the case in its entirety at a jurisdiction phase (and therefore saving the entire costs of a merits phase), but rather of the savings involved in having a separate jurisdiction phase and then going on to determine many, but not all, of the issues at a merits phase, as opposed to holding one compendious merits phase. It is not apparent that the latter option would in fact result in any significant saving of time or money: it would result in delay, and the time and expense of resolving the case over two substantive hearings rather than one.

56. Again, this presupposes that, because the *legal* basis of the “residual matters” (as to the compatibility of the “MPA” with the Convention) can be stated independently of the question of sovereignty, the evidence in the case can be divided equally neatly. It is apparent from Mauritius’ Memorial that this is not the case. The evidence as to the UK’s creeping extension of maritime zones around the Chagos Archipelago, culminating in the creation of the “MPA” in 2010, is complex and involves diplomatic relations which, naturally, also involve the ongoing sovereignty dispute. A cursory review of the diplomatic correspondence summarised in Chapter 4 of the Memorial reveals the impossibility of excising one category of evidence as relating purely to sovereignty. It is obvious, too, that these issues go to the merits and cannot be addressed at a preliminary phase.

57. In the same vein, the UK also baldly asserts that joinder of this objection to the merits “would require the Tribunal to decide the objection alongside the long list of legal and factual issues raised by Mauritius in its Notification and Statement of Claim”, which it argues “would not be conducive to the fair and efficient conduct of the proceedings”. [PO 6.11]

58. No further analysis is given on this point, which adds nothing to the UK’s other arguments. It is not possible, in this context, to equate “cheaper” with “fairer and more efficient”. Clearly it would always be cheaper and quicker to deal with a jurisdictional objection first if that objection knocked out the entirety of the claim without recourse to any analysis of the evidence at the

merits phase. However, this depends on whether there are, on a proper analysis, preliminary issues which are suitable for summary determination in that way. It is a serious step for a Tribunal to dispose of a claim without examination of the underlying merits, and this step has been rightly reserved for issues of an *exclusively* preliminary character. It is evidently *not* more efficient for a Tribunal to embark on a preliminary jurisdiction phase which involves extensive consideration of the evidence in the case, and/or where the objection, even if well founded, leaves a substantial part of the dispute outstanding for the merits phase.

The importance of the issues at stake does not point in favour of bifurcation

59. The UK argues that this preliminary objection “raises an issue of general importance” and that “[t]he outcome of this aspect of the proceedings will no doubt be closely monitored by those involved in a number of ongoing sovereignty disputes in various parts of the world” [PO 6.10(d)].

60. It is not apparent why the UK considers that these factors point in favour of bifurcation. The fact that a case raises issues of general importance, and will be of interest to the international community, does not point to any specific mode of resolving preliminary objections to jurisdiction. That question depends, not on the importance of the issues concerned – and any inter-State case is likely to raise important issues – but on their relationship to the merits, and the balance on the particular facts of any given case between the two competing objectives set out at para. 18 above.

2. THE UK’S SECOND OBJECTION: NO EXCHANGE OF VIEWS AS REQUIRED BY ARTICLE 283(1)

61. The UK argues that, in respect of Mauritius’ claims about the compatibility of the “MPA” with the Convention, there has been no exchange of views as required by Article 283(1) of the Convention [PO, Part IV]. It is important to note at the outset that the UK does *not* argue that this objection applies to the claim that the UK is not entitled to establish the “MPA” because it is not “the

coastal State” [PO 4.1]. The UK implicitly concedes that there has been the necessary exchange of views in respect of that part of the claim. Accordingly, determination of this preliminary objection is not capable of resolving the entire dispute.

62. It is well-established that, as the UK accepts [PO 4.7], such exchanges need not refer to the specific treaty in question, but need simply “refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter.”¹⁵ The case law makes it clear that the obligation is to exchange views about the *subject matter* of the dispute, not to refer to specific treaty provisions (or even to refer to a specific treaty).

63. The UK claims that this “preliminary objection raises no issues of fact (save as to any issues that may arise as to what was raised in any exchange of views upon which Mauritius may seek to rely).” [PO 6.13(b)] The crucial point is contained in those parentheses. Of course in any case, the question of whether or not there has been a sufficient exchange of views to meet the requirements of Article 283(1) will be resolved on the evidence “as to what was raised in any exchange of views”. This does not assist the Tribunal in deciding on the relationship between an Article 283(1) objection and the merits, and certainly does not demonstrate that this objection “raises no issues of fact”.

64. This is not the place for Mauritius to set out why the UK’s objection is factually unfounded, and to show why the UK’s account of the diplomatic history is highly selective. But a brief review of the facts on this issue demonstrates why this objection cannot be determined without examination of the evidence and merits. In Chapter 4 of its Memorial, Mauritius sets out the history of its objections to the UK’s gradual extension of maritime zones over the Chagos Archipelago, culminating in the “MPA” in 2010. That Chapter, and the annexed documentation, show how Mauritius repeatedly protested against the extension of such zones, including on the basis of Mauritius’

¹⁵ *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) (Preliminary Objections)* Judgment 1 April 2011, para.30.

historic fishing rights. To take only two examples, by Note Verbale of 23 November 2009 Mauritius stated that “an MPA project in the Chagos Archipelago ... should address the issues of ... access to the fisheries resources” [MM Annex 155], and by letter of 19 February 2010 to the UK High Commissioner in Port Louis, Mauritius stated that “any proposal for the protection of the marine environment in the Chagos Archipelago needs to ... address ... access by Mauritians to fisheries resources in that area.” [MM Annex 162]

65. Moreover, Mauritius does not accept the factual record as portrayed by the UK in its discussion of this point. The UK claims that Mauritius “had not even sought to communicate with the United Kingdom about the MPA for over eight months between 2 April 2010 and 20 December 2010 when it submitted its Notification and Statement of Claim” [PO 4.26]. This is a point which will be disputed. See for example:

(1) The reply given by the Prime Minister of Mauritius to a parliamentary question on 27 July 2010, recording a meeting with William Hague, the then new UK Foreign Secretary, on 3 June 2010, at which:

“The hon. Prime Minister expressed concern over the decision of the former UK Government to establish a Marine Protected Area around the Chagos Archipelago despite the undertaking given by the former British Prime Minister that the project would be put on hold and discussed within the framework of the bilateral talks between Mauritius and the UK. He further pointed out that the decision is tainted with illegality.”¹⁶

(2) The reply given by the Prime Minister of Mauritius to a parliamentary question on 9 November 2010, in which he recorded a meeting between the Mauritius Minister of Foreign Affairs, Regional Integration and International Trade and the UK Minister for Africa and Overseas Territories at the Foreign and

¹⁶ Reply to PQ No. 1B/324 on 27 July 2010, Annex 1. See also the letter at MM Annex 157, dated 30 December 2009 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs, which states that “You will no doubt be aware that, in the margins of the last CHOGM [Commonwealth Heads of Government Meeting], our respective Prime Ministers agreed that the Marine Protected Area project be put on hold and that this issue be addressed during the next round of Mauritius-United Kingdom bilateral talks.”

Commonwealth Office, on 22 July 2010 in the margins of the African Union Executive Council meeting in Kampala, Uganda. He noted that, at that meeting, the Mauritius Minister of Foreign Affairs

“reiterated the sovereignty of Mauritius over the Chagos Archipelago as well as our objection to the unilateral establishment by the UK of a marine protected area around the Chagos Archipelago.”

The Prime Minister went on to record that “It is now clear that the new British Government does not hold a different view from the previous Government on the issue of the marine protected area or on the sovereignty of the Chagos Archipelago.”¹⁷

66. In the present case, the Tribunal’s task under Article 283(1) is not confined, as it may be in some cases, to looking at a small number of Notes Verbales and assessing whether they indicate the subject matter of the dispute with sufficient clarity. As Mauritius’ Memorial makes clear, the subject matter of the dispute – including historic fishing rights; rights to an EEZ and extended continental shelf; and the right to be consulted – has been raised regularly by Mauritius over several decades, in bilateral and multilateral contexts, intertwined with the continuous assertion of its sovereignty over the Chagos Archipelago. Whether or not Mauritius’ actions in this regard satisfy the requirements of Article 283(1) will have to be resolved by the Tribunal in due course. Mauritius submits that the circumstances of this case and the nature and history of the dispute make this point quite unsuitable for resolution in advance of a full consideration of the merits.

67. In cases where a claim is eventually filed, the parties’ attempts to resolve the matter without recourse to litigation have failed, and bilateral communications on the point have come to an end. Whether the contacts between the parties until that point constitute an “exchange of views” necessarily requires the Tribunal to determine whether the claimant State terminated any exchange of views prematurely, or had reasonably concluded that further exchanges were

¹⁷ Reply to PQ No. 1B/540 on 9 November 2010, Annex 2.

not likely to be productive before resorting to litigation. In this case, the Tribunal will have to consider, not only the evidence about the occasions on which Mauritius raised the subject-matter of the dispute, but the circumstances in which it decided that no further exchange of views would be productive. This is evidently another area of evidence which involves consideration of the diplomatic history of the dispute, and again shows how unrealistic the UK is to assert that this objection “raises no issues of fact”.

3. THE UK’S THIRD OBJECTION: NO JURISDICTION OVER MAURITIUS’ CLAIM THAT THE “MPA” IS INCOMPATIBLE WITH THE CONVENTION

68. In Chapter 7 of its Memorial, Mauritius sets out its case as to the incompatibility of the “MPA” with the Convention.¹⁸ In its final objection to jurisdiction, the UK claims that this part of the case can be dismissed at a preliminary stage without consideration of the facts or merits. The UK thus sets itself the difficult task of persuading the Tribunal that it will be able to decline jurisdiction over detailed and specific Convention objections to a purported maritime zone without looking at any evidence about that zone. For example, the UK would require the Tribunal to decide this issue without looking at:

- (1) The evidence as to the recognition and preservation of Mauritius’ historic fishing and mineral rights in the Chagos Archipelago in the 1965 Lancaster House undertakings, and the exercise by Mauritius of those rights in the subsequent decades – despite the fact that those rights form a central part of Mauritius’ case that the “MPA” violates the Convention;
- (2) The evidence as to the process by which the “MPA” came into being, cutting across bilateral talks on the Chagos Archipelago and a Prime Ministerial assurance that it would not be implemented – despite the fact that Mauritius claims that the UK’s failure properly to consult it violated the Convention;

¹⁸ The UK has raised the question of whether Mauritius maintains a claim relating to non-living resources beyond the territorial sea, as set out at MM para. 5.35(iii) [PO 5.49] Mauritius confirms that such a claim is maintained, to the extent that the “MPA” purports to regulate inter alia “exploring and exploiting, conserving and managing [non-living] natural resources [...] of the waters superjacent to the seabed and of the seabed and its subsoil”, within the meaning of Article 56(1) of the Convention.

- (3) The evidence that, in creating the “MPA”, the UK was motivated by a desire to ensure the continued exclusion of the former residents of the Chagos Archipelago – despite the fact that this goes to Mauritius’ abuse of rights claim;
- (4) Evidence about the “MPA” itself, including:
 - a. Its size and geographical boundaries;
 - b. The applicable legal and regulatory framework, including evidence as to the “no take” fishing regime;
 - c. The exclusion of a zone around Diego Garcia and continuing fishing in that zone;
 - d. Its purported environmental objectives, and whether or not they include protection of the designated area from pollution – despite the fact that the UK places great weight on a supposed distinction between environmental and anti-pollution objectives (the latter of which the UK admits fall under the Convention) in its objection under Article 297(1)(c) [PO 5.6-5.13];
 - e. The practical measures which are being taken to enforce it and the extent to which adequate financial resources have been provided to make it effective.

69. Mauritius submits that it is simply not feasible for the UK’s objections to this part of the case to be divorced from the evidence. Like the other strands of the case, the issue of the compatibility of the “MPA” with the Convention, and associated jurisdictional issues, can only be resolved in light of the evidence as a whole. Looking in more detail at point (1) above, for example, the UK argues that its undertakings to Mauritius concerning fishing and other resource matters, in 1965 and thereafter, were not such as to create rights for Mauritius under international law or to impose obligations on the United Kingdom vis-à-vis Mauritius”. [PO 2.12] This is self-evidently a matter for the merits. Any assessment of this argument would require the Tribunal to determine *inter alia* the meaning and effect of the undertakings given by the UK, which would require an assessment of the facts that arose in 1965 and subsequently, and the legal consequences that are to be drawn from those facts.

70. In this regard, it is equally evident that any legal consequences that do arise from these undertakings must necessarily be taken into account in determining whether the UK has complied with its obligations under the Convention. For example, the undertakings given in relation to Mauritian fishing rights in the territorial sea are obviously relevant for determining whether the UK has complied with its obligations under the Convention, which states expressly that sovereignty over the territorial sea must be “exercised subject to [...] other rules of international law”. The UK recognises that this raises an issue of “fact” [PO 5.48], and it is self-evidently a matter that can only be determined as part of the merits.

71. In this third objection, the UK also argues that Mauritius’ claim is not about “international rules and standards for the protection and preservation of the marine environment” within Article 297(1)(c) of the Convention. [PO 5.6-5.13] The UK seeks to portray this objection as a simple matter of treaty interpretation, which can be divorced from the facts. However, it does not explain how the Tribunal can decide whether the “MPA” falls within the UK’s interpretation of Article 297(1)(c) (if correct) without looking at any evidence about the “MPA”.

72. To take one example on which evidence would be required, Mauritius notes that the UK’s Consultation Document on the establishment of the “MPA”, in discussion of the EPPZ, on which the “MPA” is said to build, refers to “legislation in place to protect [...] natural resources which include strict controls over fishing, pollution (land, air and water), damage to the environment, and the killing, harming or collecting of animals.” [MM Annex 152, p.9, emphasis added] Here “pollution” and “damage to the environment” are immediately juxtaposed. In discussion of the proposed “MPA”, the document refers under the heading “Development benefits” to the fact that the Chagos Archipelago provides an “unpolluted reference site”. [p.11] Annex D of the document sets out UK policy on Marine Protected Areas, which includes the statement that “[t]he MPA network will play a key part in delivering our vision of clean, safe, healthy, productive and biologically

diverse oceans and seas.” [p.17, emphasis added] The use of “clean” in this context clearly refers, again, to the protection of the area from pollution.

73. In this regard, Mauritius also draws attention to the Framework Agreement on Economic, Scientific and Environmental Co-management relating to Tromelin Island and Its Surrounding Maritime Areas¹⁹ and the implementing agreement on the protection of the environment of Tromelin Island²⁰, which were signed by Mauritius and France on 7 June 2010. These agreements will, when implemented, create a jointly managed environmental zone around Tromelin Island, without prejudice to issues of sovereignty, and are expressly concluded within the framework of the Convention (to which reference is made), including its anti-pollution provisions. This exemplifies the point that the UK’s attempt to draw a bright line between environmental and anti-pollution measures (and avoid a consideration of the facts showing that no such dividing line exists) is untenable.

74. To take another example of an argument raised by the UK in support of its third objection but which is not suitable for resolution as a preliminary issue, the UK also seeks to exclude jurisdiction on the basis that Article 297(3)(a) of the Convention provides that “the coastal State” shall not be obliged to accept the submission to compulsory settlement of “any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including [...] the terms and conditions established in its conservation and management laws and regulations.”

75. The starting point for analysing the UK’s argument under Article 297(3)(a) is Chapter 7 of Mauritius’ Memorial. A significant part of Mauritius’ claim about the incompatibility of the “MPA” with the Convention arises under Article 2(3), which provides that the coastal State’s “sovereignty over the territorial sea is exercised subject to this Convention and to other rules of

¹⁹ Accord-cadre entre le Gouvernement de la République de Maurice et le Gouvernement de la République française sur la cogestion économique, scientifique et environnementale relative à l’île de Tromelin et à ses espaces maritimes environnants, Annex 3.

²⁰ Convention d’application entre le Gouvernement de la République de Maurice et le Gouvernement de la République française portant sur la cogestion en matière environnementale de Tromelin et à ses espaces maritimes environnants, Annex 3.

international law.” [MM 7.6-7.27]. Mauritius’ case is that the “MPA” is incompatible with “other rules of international law” within the meaning of Article 2(3), and in particular the obligation under such other rules to respect historic fishing rights and to honour legally binding undertakings in respect of the same.

76. The UK has not advanced any persuasive argument that Mauritius’ claim relating to the territorial sea is not a dispute over the “interpretation or application” of the Convention. Article 2(3) expressly provides that a coastal State’s sovereignty over the territorial sea must be exercised “subject to this Convention and other rules of international law.” There is thus a textual *renvoi* in Article 2(3) which incorporates by reference “other rules of international law”. Those other rules plainly include the obligation to respect historic fishing rights and unilateral undertakings respecting such rights.

77. Indeed, the Article 2(3) claim satisfies what the UK itself says is required for a tribunal to exercise jurisdiction over a claim based on rules found outside the Convention. The UK states that:

“So far as concerns the role of Article 293(1) of UNCLOS, other rules of international law may be relevant to the court or tribunal’s decision as regards a dispute concerning the interpretation or application of UNCLOS where the specific provisions of UNCLOS that form the basis of the complaint themselves expressly require that other non-UNCLOS rules of international law be taken into account or applied.” [PO 3.32, emphasis added]

78. The UK states that “[t]o say that sovereignty in the territorial sea ‘is exercised subject to ... other rules of international law’ is to state an obvious fact, but article 2(3) does not incorporate other treaties, nor *a fortiori* unilateral undertakings, into the Convention.” [PO 5.48] However, the UK offers no support for the assertion that Article 2(3) does not incorporate “other rules of international law”, other than an inapposite citation to the *Pulp Mills* case.

79. The strength of Mauritius’ claim to jurisdiction over the Article 2(3) claim is relevant to the issue of bifurcation. The Article 297(3)(a) exclusion of disputes regarding sovereign rights with respect to living resources in the EEZ does not

apply to the territorial sea. The UK does not attempt to argue otherwise. This means that, even if the UK's argument under Article 297(3)(a) were well-founded (which Mauritius does not accept), this could only result in an exclusion of the part of Mauritius' claim as regards the area covered by the EEZ, not the territorial sea. The same legal claims would still have to be examined at the merits stage, but in respect of a smaller geographical area. Mauritius considers that this is another factor pointing strongly away from bifurcation.

80. Further, this UK objection raises a number of factual questions which can only be determined on the basis of a full review of the evidence, including:

- (1) What the "MPA" covers and what it does: whether the "MPA" falls within the terms of the exclusion is in part a question of fact.
- (2) The evolution of the relevant maritime zones and their respective regulatory frameworks.
- (3) Whether the UK has "sovereign rights" with respect to the living resources in the relevant area: again, the rights which the UK may or may not have cannot be determined in the absence of evidence, including as to its past undertakings to Mauritius.

ABUSE OF RIGHTS

81. The UK argues that the evidential threshold for claims under Article 300 of the Convention is set by the passage it cites from the *Southern Bluefin Tuna* case [PO 5.51]. Mauritius' legal position as to the meaning of Article 300 is set out at paras. 7.81-7.99 of its Memorial. It considers that Article 300 encompasses circumstances where a State exercises a right "intentionally for an end which is different from that for which the right has been created." [MM 7.91]

82. Even if the UK's characterisation of the evidential threshold required by Article 300 were correct, this leads inevitably to the question of whether the UK's conduct reaches that threshold. The UK makes three factual assertions about the "MPA" [PO 5.52]:

- (1) That it “protects the environment and living resources”.
- (2) That it “self-evidently is not irreversible”.
- (3) That it “has in fact had a very limited impact, if any, on Mauritian fishery vessels.”

83. No evidence is cited for any of these propositions. It appears that the UK is inviting the Tribunal summarily to dismiss Mauritius’ abuse of rights claim on the basis, *inter alia*, of findings of fact about its impact on Mauritian fishery vessels without reviewing any evidence on the point. The UK does not offer any basis on which the Tribunal could do this. It addresses the suitability of these issues for determination as a preliminary issue in a single paragraph [PO 6.15], which refers back to an earlier submission [PO 6.13] that this objection “raises no issues of fact”. That is evidently not the case. Nor does the UK address the evidence as to the UK/US meeting on 12 May 2009 [MM 4.45-4.49]. Mauritius’ case is that this evidence points to an egregious abuse of the UK’s purported rights over the Chagos Archipelago, apparently in order to “put paid to resettlement claims of the archipelago’s former residents.” [MM 4.46(iii)] Mauritius does not understand how the Tribunal could conclude that the Article 300 claim is “simply a re-packaging of Mauritius’ other allegations of breaches of UNCLOS” [PO 5.54] and falls outside its jurisdiction, when the evidence on which the UK bases that argument is evidently in dispute, and where the UK ignores important evidence as to the improper purposes for which the “MPA” was established.

CONCLUSION

84. For the reasons set out above, Mauritius considers that none of the UK's objections to jurisdiction are suitable for determination as a preliminary issue. They are not of an exclusively preliminary character, and cannot properly be resolved without considering the merits and evidence. A preliminary jurisdiction phase would not promote the timely and efficient resolution of the dispute, but would simply create delay and expense. Accordingly, Mauritius invites the Tribunal to order that the UK's preliminary objections be joined to the merits.



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List of Annexes

- Annex 1** National Assembly of Mauritius, 27 July 2010, Reply to PQ No. 1B/324
- Annex 2** National Assembly of Mauritius, 9 November 2010, Reply to PQ No. 1B/540
- Annex 3** Framework Agreement between the Government of the Republic of Mauritius and the Government of the French Republic on Economic, Scientific and Environmental Co-management relating to Tromelin Island and Its Surrounding Maritime Areas (together with three implementing agreements), signed on 7 June 2010 in Port Louis

ANNEX 1

National Assembly of Mauritius, 27 July 2010, Reply to PQ
No. 1B/324

EXTRACT

No. 9 of 2010



REPUBLIC OF MAURITIUS

FIFTH NATIONAL ASSEMBLY

PARLIAMENTARY

DEBATES

(HANSARD)

FIRST SESSION

TUESDAY 27 JULY 2010

In accordance with the provisions of the Public Procurement Act, the unsuccessful bidders were given seven days from the date of the notification to challenge the award. On 16 July 2010, one of the unsuccessful bidders challenged the award. On 21 July 2010, the unsuccessful bidder was informed that the bid of that company did not comply with the bidding requirements, and was therefore considered non-responsive.

I am informed that once the challenge is resolved, the Commissioner of Prisons will issue the letter of award to the successful bidder.

In regard to part (b) of the question, I am informed that, initially, decision was taken to construct three prisons for some 250 detainees each. In that regard, two plots of land situated at Rose Belle were vested in the then parent Ministry in 2001 and 2004 with a view to accommodating the first of these prisons. However, in September 2004, the site at Rose Belle was found to be unsuitable. A new site was subsequently identified at Melrose in 2005 and in 2006, it was decided that only one prison would be constructed to accommodate about 750 detainees. A plot of land of 37 arpents was vested in the Prime Minister's Office in September 2007 to that effect.

I am informed that, in the absence of detailed design and drawings of the new prisons, an estimated project value of Rs400m appeared in the Capital Budget for the construction of those prisons for budgetary purposes from Financial Year 1999-2000 to Financial Year 2008/09. The cost estimate of the New High Security Prison at Melrose was worked out only after completion of the detailed design of the buildings and facilities in February 2009. Accordingly, in the Programme-Based Budget for the period July to December 2009, the estimated project value for the construction of the prison at Melrose stands at Rs1,350m.

I am informed that there has been no increase in the project value for the construction of the new prison at Melrose.

CHAGOS ARCHIPELAGO - MARINE PROTECTED AREA - SETTING UP

(No. 1B/324) Mrs J. Radegonde (Fourth Member for Savanne & Black River) asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to the project by the British Government for the setting up of a marine park at the Chagos Archipelago, he will state where matters stand.

Reply: In reply to PQ B/1247 on 01 December last, I informed the House that the British Government launched on 10 November 2009 a public consultation on the proposal for the creation of a Marine Protected Area around the Chagos Archipelago unilaterally and in total disregard of the discussions at the second round of bilateral talks between Mauritius and the UK on the Chagos Archipelago held on 21 July 2009.

On several occasions, the Government of Mauritius conveyed its opposition to the UK proposal for the establishment of a Marine Protected Area around the Chagos Archipelago. It also requested the British Government to stop the public consultation it had launched on the proposed Marine Protected Area and to withdraw the Consultation Document of the UK Foreign and Commonwealth Office which was unilateral and prejudicial to the interests of Mauritius. The British Government did not halt the public consultation but instead extended its deadline.

On 01 April 2010, the British Government again, unilaterally decided to create a Marine Protected Area around the Chagos Archipelago. The Marine Protected Area would include a “no-take” marine reserve where commercial fishing will be banned, but exclude Diego Garcia from its coverage.

On 02 April 2010, the Government of Mauritius informed the British Government, by way of a note of protest, of its strong objection to the unilateral creation by the UK of a Marine Protected Area around the Chagos Archipelago and of our decision not to recognize the existence of the Marine Protected Area.

On 13 April 2010, the British High Commission responded to the note of protest by way of a Note Verbale. While taking note of the objection of the Government of Mauritius to the creation of a Marine Protected Area around the Chagos Archipelago, the UK emphasized that the establishment of a Marine Protected Area does not change its commitment to cede the territory to Mauritius when it is no longer needed for defence purposes. It also pointed out that this decision is without prejudice to the outcome of the case brought by Mr Bancoult before the European Court of Human Rights. The UK added that it intends to continue working closely with all

interested stakeholders, both in the UK and internationally, towards implementing the Marine Protected Area.

The creation of a Marine Protected Area around the Chagos Archipelago in disregard of the sovereignty of Mauritius over the territory is totally unacceptable to the Government of Mauritius as it impedes the use by Mauritius of the fisheries and other marine resources of the ocean around the Chagos Archipelago in the exercise of its sovereignty rights. It also prevents the eventual resettlement of the Chagossians who were forcibly evicted from the Chagos Archipelago to pave the way for the establishment of a military base in Diego Garcia.

Following the change in Government in the UK on 06 May last, the hon. Prime Minister had a meeting in London with the Rt. Hon. William Hague, UK Foreign Secretary, on 03 June 2010.

The hon. Prime Minister expressed concern over the decision of the former UK Government to establish a Marine Protected Area around the Chagos Archipelago despite the undertaking given by the former British Prime Minister that the project would be put on hold and discussed within the framework of the bilateral talks between Mauritius and the UK. He further pointed out that the decision is tainted with illegality.

The UK Foreign Secretary informed the Hon. Prime Minister that he would revert to him as he was not fully conversant with all issues regarding the Chagos Archipelago.

It was also proposed that a meeting be held between Mr Henry Bellingham, Minister for Africa and Overseas Territories at the UK Foreign and Commonwealth Office, and the Hon. Minister of Foreign Affairs, Regional Integration and International Trade to discuss the way forward on the Chagos issue.

In the course of a debate in the House of Lords on 29 June last, on the establishment of a Marine Protected Area around the Chagos Archipelago, it was revealed that the new British Government may not necessarily hold a different view from the previous Government on this issue.

In the circumstances, the Government of Mauritius is already discussing with our new legal adviser on the Chagos question, Mr Philippe Sands, Q.C., on the way forward.

The hon. Prime Minister on his recent trip to the UK, has had two meetings with Mr Philippe Sands to discuss this issue.

ANNEX 2

National Assembly of Mauritius, 9 November 2010,
Reply to PQ No. 1B/540

EXTRACT

No. 13 of 2010



REPUBLIC OF MAURITIUS

FIFTH NATIONAL ASSEMBLY

**PARLIAMENTARY
DEBATES
(HANSARD)**

**FIRST SESSION
TUESDAY 09 November 2010**

Both the Police and the Independent Broadcasting Authority are enquiring into the matter.

SERGEANT – PROMOTION TO INSPECTOR

(No. 1B/539) **Mr A. Ganoo (First Member for Savanne & Black River)** asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to the promotion exercise of Police Officers in the grade of Sergeant to that of Inspector, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to if it has now been completed and if not, why not.

Reply: I am informed by the Commissioner of Police that the administrative procedure to enable the implementation of the promotion exercise has not been completed. Promotion from the rank of Sergeant to Inspector will follow shortly.

CHAGOS ARCHIPELAGO – MARINE PROTECTED AREA

(No. 1B/540) **Mrs A. Navarre-Marie (First Member for GRNW & Port Louis West)** asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to the Marine Protected Area in the Chagos Archipelago, he will state when the Mauritian Government last raised the issue with the Government of the United Kingdom, indicating the outcome thereof.

Reply: Since the launching by the British Government on 10 November 2009 of a public consultation on the proposal for the creation of a marine protected area around the Chagos Archipelago, the Government of Mauritius has conveyed on several occasions its opposition to the project. It had also requested the British Government to stop the public consultation it had launched and to withdraw the Consultation Document of the UK Foreign and Commonwealth Office which was unilateral and prejudicial to the interests of Mauritius. The British Government did not halt the public consultation but instead extended its deadline despite the assurances given to me by the Former British Prime Minister at the last Commonwealth Heads of Government Meeting that the creation of the marine protected area would be put on hold and discussed within the framework of the bilateral talks between Mauritius and UK.

On 01 April 2010, the British Government unilaterally decided to create a marine protected area around the Chagos Archipelago allegedly to protect the marine environment. The marine protected area includes a “no-take” marine reserve where commercial fishing is banned, but excludes Diego Garcia from its coverage.

On 02 April 2010, the Government of Mauritius informed the British Government, by way of a note of protest, of its strong objection to the unilateral creation by the UK of a marine protected area around the Chagos Archipelago and its decision not to recognise the existence of the marine protected area.

On 13 April 2010, the British High Commission responded to the note of protest by way of a Note Verbale. While taking note of the objection of the Government of Mauritius to the creation of a marine protected area around the Chagos Archipelago, the UK emphasized that the establishment of a marine protected area does not change its commitment to cede the territory to Mauritius when it is no longer needed for defence purposes. It also pointed out that this decision is without prejudice to the outcome of the case brought by Mr BANCOULT before the European Court of Human Rights. The UK added that it intends to continue working closely with all interested stakeholders, both in the UK and internationally, towards implementing the marine protected area.

The creation of a marine protected area around the Chagos Archipelago in disregard of the sovereignty of Mauritius over the territory is totally unacceptable to the Government of Mauritius as it prevents the use by Mauritius of the fisheries and other marine resources of the ocean around the Chagos Archipelago in the exercise of its sovereignty rights. It also constitutes a serious impediment to the eventual resettlement of the Mauritians of Chagossian origin who were forcibly evicted from the Chagos Archipelago to pave the way for the establishment of a military base in Diego Garcia.

Following the change in Government in the UK last May, I had a meeting in London with the Rt. hon. William Hague, the UK Foreign Secretary on 03 June 2010. I expressed concern about the decision of the former UK Government to establish a marine protected area around the Chagos Archipelago and added that the decision of the former UK Government is tainted with illegality.

The UK Foreign Secretary informed me that he would revert to me as he was not fully conversant with all issues regarding the Chagos Archipelago.

It was also proposed that a meeting be held between hon. Henry Bellingham, Minister for Africa and Overseas Territories at the UK Foreign and Commonwealth Office, and the Hon. Minister of Foreign Affairs, Regional Integration and International Trade to discuss the way forward on the Chagos Archipelago issue.

The hon. Minister of Foreign Affairs, Regional Integration and International Trade had a meeting with hon. Bellingham on 22 July 2010 in Kampala, Uganda in the margins of the AU Executive Council meeting. During the meeting, Minister Boolell reiterated the sovereignty of Mauritius over the Chagos Archipelago as well as our objection to the unilateral establishment by the UK of a marine protected area around the Chagos Archipelago. In response, Minister Bellingham indicated that the new British Government would have handled the issue of the marine protected area differently.

It is now clear that the new British Government does not hold a different view from the previous Government on the issue of the marine protected area or on the sovereignty of the Chagos Archipelago.

In the circumstances, the Government of Mauritius is now considering other options to counter the unilateral establishment by the UK Government of a marine protected area around the Chagos Archipelago and for Mauritius to exercise its sovereignty over the Chagos Archipelago.

MINORS – SEXUAL ASSAULT – REPORTED CASES

(No. 1B/541) Mrs L. Ribot (Third Member for Stanley and Rose Hill) asked the Prime Minister, Minister of Defence, Home Affairs and External Communications whether, in regard to sexual assault on minors, he will, for the benefit of the House, obtain from the Commissioner of Police, information as to the -

- (a) number of reported cases thereof, since July 2006 to-date, and
- (b) actions taken to address same and the additional ones, if any, that are being envisaged.

ANNEX 3

Framework Agreement between the Government of the Republic of Mauritius
and the Government of the French Republic on Economic, Scientific and
Environmental Co-management relating to Tromelin Island and Its Surrounding
Maritime Areas (together with three implementing agreements),
signed on 7 June 2010 in Port Louis

ACCORD - CADRE
entre le Gouvernement de la République française
et le Gouvernement de la République de Maurice
sur la cogestion économique, scientifique et environnementale
relative à l'île de Tromelin et à ses espaces maritimes environnants

Le Gouvernement de la République française et le Gouvernement de la République de Maurice, ci-après dénommés « les parties »,

Considérant la volonté partagée de la République française et de la République de Maurice de renforcer davantage encore leurs relations d'amitié et de voisinage,

Considérant la détermination des deux Etats à mettre en place, comme l'a préconisé le 2^e Sommet des chefs d'Etat et de Gouvernement de la Commission de l'océan Indien du 2 décembre 1999, un partenariat actif et mutuellement bénéfique, sans renonciation à leurs droits de souveraineté ou à leurs revendications territoriales,

Rappelant les discussions précédentes entre les deux parties sur leurs droits de souveraineté et leurs revendications territoriales au sujet de l'île de Tromelin,

Vu la convention des Nations Unies sur le droit de la mer signée à Montego Bay le 10 décembre 1982 et notamment ses dispositions sur la conservation des ressources biologiques (article 61), sur l'exploitation des ressources biologiques (article 62) et sur la mise en application des lois et règlements de l'Etat côtier (article 73) ainsi que sa partie XII relative à la protection et préservation du milieu marin,

Vu l'accord des Nations Unies relatif à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà des zones économiques exclusives (stocks chevauchants) et des stocks de poissons migrateurs (UNFSA, 1995),

Vu les objectifs adoptés en 2002 au Sommet mondial sur le développement durable de Johannesburg en matière de conservation, de gestion et d'exploitation des ressources halieutiques et des écosystèmes marins,

Considérant que l'île de Tromelin est un sanctuaire océanique de la nature, dispose d'un patrimoine biologique terrestre et marin remarquable et constitue une référence d'écosystèmes en milieu tropical,

Considérant l'intérêt d'une meilleure connaissance de la ressource halieutique de la zone en vue d'une gestion durable exemplaire,

Considérant la richesse patrimoniale de l'île de Tromelin et de ses abords, notamment les artefacts liés aux différents naufrages qui s'y sont déroulés et particulièrement celui de l'Utile,

Considérant l'importance de la situation géographique de l'île de Tromelin quant à l'observation des phénomènes naturels,

Considérant l'accord des deux parties pour maintenir l'interdiction de toute pêche dans la mer territoriale de l'île de Tromelin, dans l'attente des conclusions d'une étude sur l'état de la ressource halieutique,

Réitérant la détermination des deux parties à combattre toute forme de pêche illégale et à protéger les stocks de poissons,

Dans le respect des droits et obligations prévus par leurs législations et leurs engagements internationaux,

Sont convenus de ce qui suit :

Article 1^{er}

Le présent accord a pour objet d'établir un régime de cogestion économique, scientifique et environnementale relatif à l'île de Tromelin ainsi qu'à sa mer territoriale et à sa zone économique exclusive (ci-après désignées « espaces maritimes environnants »), telles que définies dans l'annexe ci-jointe, qui ne peut être interprété comme :

Article 2

Les parties conviennent de ce qui suit :

(a) rien dans le présent accord ni aucun acte en résultant ne peut être interprété comme :

(i) un changement de la position de la République de Maurice en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(ii) un changement de la position de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(iii) la reconnaissance ou le soutien de la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

(b) aucun acte ou activité de la République de Maurice ou de la République française ou de toute tierce partie résultant du présent accord et de sa mise en œuvre ne constituera une base pour affirmer, soutenir ou rejeter la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

Article 3

Les parties conviennent que le régime de cogestion concerne les domaines suivants :

(a) la protection de l'environnement marin, la conservation et la promotion de la biodiversité terrestre et marine,

(b) la ressource halieutique,

(c) l'observation des phénomènes naturels dans la région,

(d) la recherche archéologique.

D'autres sujets pourront ultérieurement être ajoutés à cette liste par le biais de conventions spécifiques conclues d'un commun accord.

Le régime de cogestion est sans préjudice d'un renforcement de la coopération entre les parties, notamment en matière de recherche et de secours, ainsi que de sécurité aérienne ou maritime.

Article 4

Les parties conviennent de déterminer conjointement un schéma directeur définissant les mesures de gestion des écosystèmes des espaces maritimes environnants. Ce schéma est compatible avec les dispositions de la partie XII de la convention des Nations Unies sur le droit de la mer.

Les modalités du soutien technique et financier destiné à faciliter la mise en œuvre du présent accord sont définies par les parties d'un commun accord.

Article 5

Les parties reconnaissent l'importance des ressources halieutiques pour leur développement économique durable et conviennent de renforcer la coopération en matière de contrôle et de surveillance dans le domaine de la pêche.

Dans cette perspective, les parties conviennent de prendre des mesures conjointes afin d'obtenir des évaluations scientifiques des stocks halieutiques dans les espaces maritimes environnants.

Article 6

Sur la base des évaluations de stocks prévues à l'article 5 et en vue d'établir un régime de développement durable, le régime de cogestion, tel que défini dans le présent accord, s'applique aux ressources halieutiques dans les espaces maritimes environnants.

Les parties conviennent d'appliquer le régime de cogestion conformément aux principes de partage et d'accès équitable aux ressources.

Article 7

Les études que mèneront conjointement les parties en application de l'accord-cadre dans les domaines couverts par le régime de cogestion et mentionnés à l'article 3 sont la propriété conjointe des parties.

Les questions relatives aux droits de propriété intellectuelle qui seraient susceptibles de découler de l'application de l'accord-cadre, tels que ceux se rattachant à l'exploitation des ressources couvertes par le champ d'application du présent accord se trouvant sur l'île de Tromelin et dans ses espaces maritimes environnants, seront examinées dès que possible par le comité de cogestion mis en place par l'article 8 en vue de parvenir à une position commune des parties, dans le respect du droit applicable de chaque partie.

Article 8

Les parties conviennent de mettre en place un comité de cogestion chargé de mettre en œuvre les objectifs du présent accord.

Le comité de cogestion est composé de délégations qui seront désignées par les autorités françaises et mauriciennes et comprendront un nombre égal de membres. Il est coprésidé par les deux parties. A l'initiative de l'une d'elles, il se réunit au moins une fois par an alternativement en France et à l'île Maurice. Il se prononce par consensus.

Les attributions du comité de cogestion sont définies et exercées d'un commun accord.

Les attributions du comité seront, entre autres :

(i) de délibérer sur les activités relatives aux domaines mentionnés à l'article 3,

(ii) de définir conjointement les modalités de la cogestion des ressources marines vivantes et de l'octroi des licences de pêche dans les espaces maritimes environnants de l'île de Tromelin,

(iii) d'arrêter la liste des navires qui seront autorisés à exercer la pêche dans les espaces maritimes environnants de l'île de Tromelin,

(iv) de déterminer une répartition équitable du produit de l'exploitation de la pêche.

Article 9

Les parties s'engagent à renforcer leur coopération en matière de surveillance, de contrôle et de lutte contre la pêche illicite afin d'accroître l'efficacité du régime de cogestion défini dans le présent accord.

Article 10

Les parties prennent les mesures d'application nécessaires à la mise en œuvre prompte et effective du présent accord conformément à leur droit interne.

Article 11

Aucune disposition du présent accord ne porte atteinte aux engagements internationaux en vigueur entre les deux parties ou entre l'une d'elles et un ou plusieurs Etats tiers.

Article 12

Chaque partie notifie à l'autre l'accomplissement des procédures internes requises, en ce qui la concerne, pour l'entrée en vigueur du présent accord qui prend effet le premier jour du deuxième mois suivant la date de la dernière de ces notifications.

Article 13

Le présent accord est conclu pour une durée de cinq ans, tacitement renouvelable pour une nouvelle période de cinq ans, à moins que l'une des parties ne notifie, par voie diplomatique, sa volonté de mettre fin audit accord, six mois avant son échéance.

La dénonciation ne remet pas en cause les droits et obligations des parties résultant de la mise en œuvre du présent accord sauf si les parties en décident autrement d'un commun accord.

Les parties se réuniront avant l'expiration du délai de dix ans afin de dresser le bilan du présent accord et d'en examiner le devenir.

Article 14

L'une des deux parties peut proposer, par la voie diplomatique, des amendements par écrit au présent accord.

Tout amendement au présent accord sera adopté par consentement mutuel des deux parties.

Article 15

Tout différend portant sur l'interprétation ou l'application du présent accord qui n'aurait pas été réglé par voie de consultations dans les meilleurs délais sera résolu par des moyens pacifiques convenus d'un commun accord conformément au droit international.

En foi de quoi les représentants des parties, dûment autorisés à cet effet, ont signé le présent accord, établi en double exemplaire.

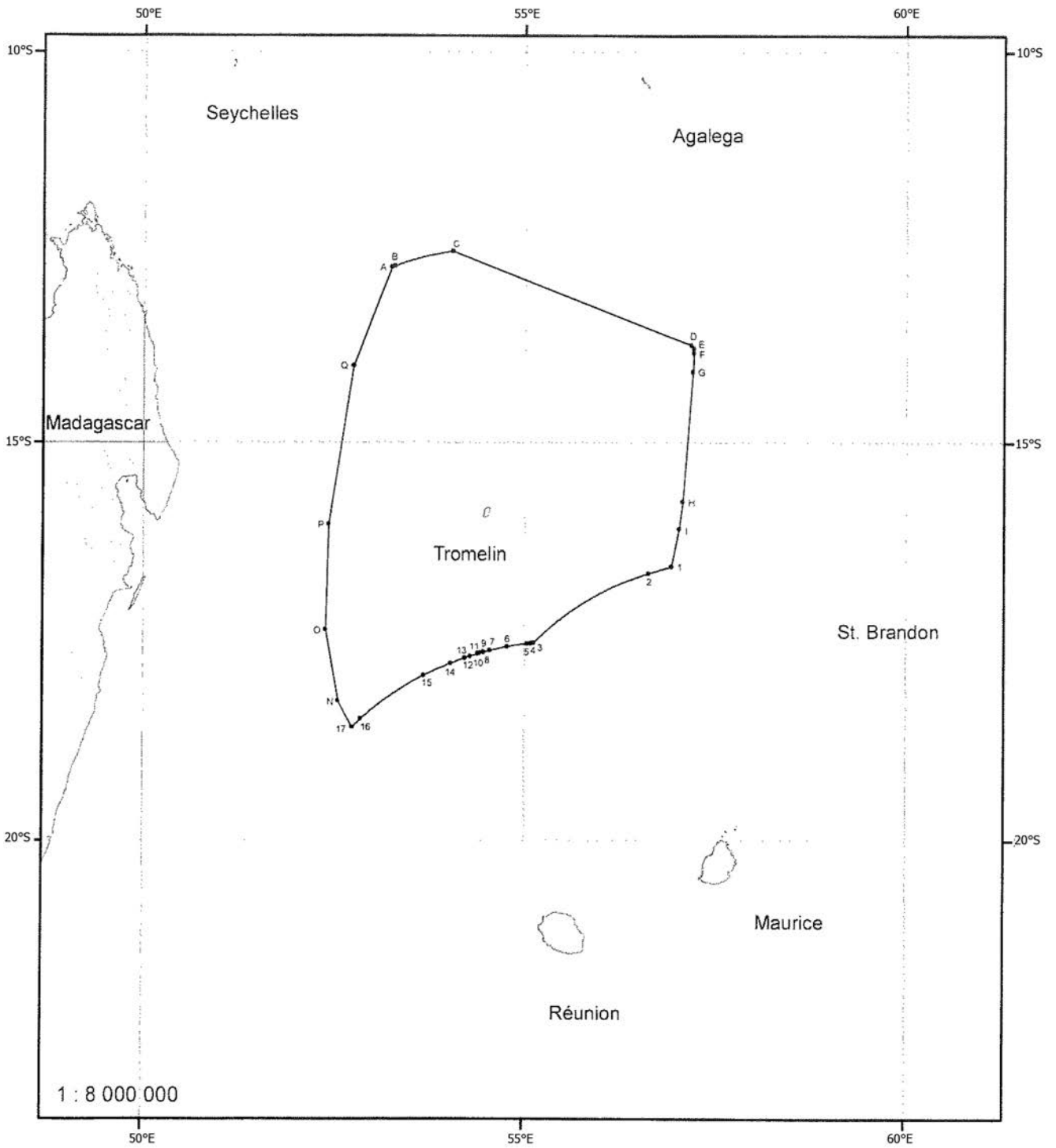
Fait à Port-Louis, le 7 juin 2010.

Pour le Gouvernement
de la République française
A. JOYANDET
*Secrétaire d'Etat
à la coopération
et à la francophonie*

Pour le Gouvernement
de la République de Maurice
A. BOOLELL
Ministre des affaires étrangères

TROMELIN : LES ESPACES MARITIMES ENVIRONNANTS

CARTE



TROMELIN : LES ESPACES MARITIMES ENVIRONNANTS
LIGNES DEFINISSANT LA LIMITE EXTERIEURE

Toutes les coordonnées sont exprimées dans le système géodésique WGS84.

Les arcs de rayon 200 milles dont les extrémités et les centres sont décrits dans le tableau ci-après :

Point	Extrémité						Centre					
	Latitude ° " S			Longitude ° " E			Latitude ° " S			Longitude ° " E		
A	12	46	23.07	53	14	52.61						
							15	53	3.00	54	30	57.73
B	12	45	29.38	53	17	13.77						
							15	53	2.28	54	30	59.66
C	12	34	5.18	54	2	38.42						

La ligne géodésique reliant les points C et D

Point	Extrémité					
	Latitude ° " S			Longitude ° " E		
C	12	34	5.18	54	2	38.42
D	13	46	4.75	57	11	23.36

Les arcs de rayon 200 milles dont les extrémités et les centres sont décrits dans le tableau ci-après :

Point	Extrémité						Centre					
	Latitude ° " S			Longitude ° " E			Latitude ° " S			Longitude ° " E		
D	13	46	4.75	57	11	23.36						
							15	53	26.94	54	31	43.62
E	13	48	26.13	57	13	21.58						

Les lignes géodésiques reliant les points E à 1

Point	Extrémité					
	Latitude ° " S			Longitude ° " E		
E	13	48	26.13	57	13	21.58
F	13	51	32.09	57	13	23.67
G	14	6	17.96	57	12	26
H	15	45	6.18	57	4	59.88
I	16	6	10.06	57	2	4.69
1	16	34	24.85	56	56	13.55

Les arcs de rayon 200 milles dont les extrémités et les centres sont décrits dans le tableau ci-après :

Point	Extrémité						Centre					
	Latitude °' " S			Longitude °' " E			Latitude °' " S			Longitude °' " E		
1	16	34	24.85	56	56	13.55						
							19	48	57.1	57	48	15.1
2	16	39	37.08	56	38	16.7						
							19	51	43.20	57	39	26.1
3	17	32	22.28	55	7	43.95						
							20	52	18.33	55	26	58.45
4	17	32	34.5	55	5	30.56						
							20	52	27.33	55	25	21.94
5	17	32	51.49	55	2	34.29						
							20	52	27.55	55	25	19.85
6	17	35	1.89	54	46	55.77						
							20	52	27.9	55	25	17.76
7	17	37	55.36	54	33	3.37						
							20	52	28.3	55	25	16.1
8	17	39	8.75	54	28	14.2						
							20	52	33.1	55	24	58
9	17	39	11.81	54	28	2.65						
							20	52	33.6	55	24	56.2
10	17	40	0.46	54	25	4.21						
							20	52	34.1	55	24	54.4
11	17	40	27.87	54	23	27.67						
							20	52	47.5	55	24	7.67
12	17	42	15.04	54	17	29.8						
							20	52	50.2	55	23	59
13	17	43	40.48	54	13	7.42						
							20	52	55.6	55	23	43.1
14	17	47	48.75	54	1	50.02						
							20	55	22.1	55	17	18.3
15	17	56	36.46	53	40	57.96						
							20	55	22.3	55	17	18

16	18	29	32.14	52	51	36.01						
							20	55	22.48	55	17	17.77
17	18	35	46.46	52	44	53.44						

Les lignes géodésiques reliant les points 17 à A

Point	Latitude °' " S			Longitude °' " E		
17	18	35	46.46	52	44	53.44
N	18	15	59.56	52	34	5.35
O	17	22	19.03	52	23	59.03
P	16	02	33.29	52	26	24.55
Q	14	01	34.40	52	45	11.34
A	12	46	23.07	53	14	52.61

CONVENTION D'APPLICATION
entre le Gouvernement de la République française
et le Gouvernement de la République de Maurice
portant sur la cogestion de la recherche archéologique
sur l'île de Tromelin et dans ses espaces maritimes environnants

Le Gouvernement de la République française et le Gouvernement de la République de Maurice, ci-après désignés « les parties »,

Considérant l'accord-cadre entre la République française et la République de Maurice sur la cogestion économique, scientifique et environnementale relative à l'île de Tromelin et à ses espaces maritimes environnants,

Considérant que le champ d'application géographique de la présente convention porte sur l'île de Tromelin, le platier et la mer territoriale,

Considérant qu'un projet de recherche archéologique « 1761, l'Utile, esclaves oubliés » porté par le Groupe de recherche en archéologie navale (Gran) avec le concours de l'Institut national de recherche archéologique préventive (Inrap) s'est inscrit dans le cadre des manifestations de 2004, déclarée par l'UNESCO année de commémoration de la lutte contre l'esclavage,

Considérant que ce projet parrainé par l'UNESCO puis, en 2008, par le Comité français pour la mémoire et l'histoire de l'esclavage, vise à élucider les conditions de survie des esclaves abandonnés sur l'île de Tromelin et, plus largement, à mieux faire connaître la traite des esclaves dans l'océan Indien,

Considérant qu'une coopération scientifique franco-mauricienne a démarré avec la venue, sur l'île de Tromelin, d'un expert mauricien lors de la deuxième mission en 2008,

Sont convenus de ce qui suit :

Article 1^{er}

Suite aux résultats des deux campagnes de recherches effectuées en 2006 et en 2008, les parties s'engagent à mettre en place les actions suivantes :

a) La constitution d'une équipe scientifique franco-mauricienne dans le cadre de la troisième campagne de fouilles qui aura lieu en 2010, une fois que les moyens financiers nécessaires auront été réunis.

b) La contribution à une publication scientifique prenant en compte tous les aspects de l'histoire du site de Tromelin.

c) L'inventaire et l'analyse de l'état du mobilier archéologique mis à jour et la définition des traitements de conservation préventive nécessaires pour les objets susceptibles d'être exposés dans des musées ou dans des expositions. A cet effet, un groupe de travail réunissant des experts de laboratoires français et mauriciens pourra être constitué.

d) Une exposition itinérante à Maurice, à La Réunion et en France métropolitaine.

e) La réalisation en commun d'une étude pour l'édification sur place d'un élément marquant le lieu de mémoire que constitue le site de Tromelin.

f) La mise en place d'une tournée de conférences, dans le prolongement de celle déjà entamée en France métropolitaine, à La Réunion et à Maurice.

Article 2

Les parties conviennent de ce qui suit :

(a) rien dans la présente convention ni aucun acte en résultant ne peut être interprété comme :

(i) un changement de la position de la République de Maurice en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(ii) un changement de la position de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(iii) la reconnaissance ou le soutien de la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

(b) aucun acte ou activité de la République de Maurice ou de la République française ou de toute tierce partie résultant de la présente convention et de sa mise en œuvre ne constituera une base pour affirmer, soutenir ou rejeter la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

Article 3

Un groupe d'experts est constitué afin de mettre en œuvre les actions prévues à l'article 1^{er}.

Le groupe d'experts est composé de délégations qui seront désignées par chaque partie en fonction de l'ordre du jour et comprendront un nombre égal de membres. Il est coprésidé par les deux parties.

Lorsqu'il est constitué, le groupe d'experts se réunit au minimum une fois par an. Il peut se réunir par visioconférence.

Le groupe d'experts rend compte annuellement au comité de cogestion de l'avancement de ses travaux.

Article 4

Chaque partie désigne un correspondant qui prépare et participe aux réunions du groupe d'experts et assure la transmission de l'information aux institutions et organismes nationaux concernés. Il est également chargé de mettre en relation son homologue avec les différents services ou opérateurs concernés.

Article 5

Les deux parties s'engagent à valoriser conjointement les recherches à l'UNESCO et dans d'autres organisations internationales.

Article 6

Les parties prennent les mesures d'application nécessaires à la mise en œuvre prompte et effective de la présente convention conformément à leur droit interne.

Article 7

Aucune disposition de la présente convention ne porte atteinte aux engagements internationaux en vigueur entre les deux parties ou entre l'une d'elles et un ou plusieurs Etats tiers.

Article 8

Chaque partie notifie à l'autre l'accomplissement des procédures internes requises, en ce qui la concerne, pour l'entrée en vigueur de la présente convention qui prend effet le premier jour du deuxième mois suivant la date de la dernière de ces notifications.

Article 9

La présente convention est conclue pour une durée de cinq ans, tacitement renouvelable pour une nouvelle période de cinq ans, à moins que l'une des parties ne notifie, par voie diplomatique, sa volonté de mettre fin à ladite convention six mois avant son échéance.

La dénonciation ne remet pas en cause les droits et obligations des parties résultant de la mise en œuvre de la présente convention sauf si les parties en décident autrement d'un commun accord.

Les parties se réuniront avant l'expiration du délai de 10 ans afin de dresser le bilan de la présente convention et d'en examiner le devenir.

Article 10

L'une des deux parties peut proposer, par la voie diplomatique, des amendements par écrit à la présente convention. Tout amendement à la présente convention sera adopté par consentement mutuel des deux parties.

Article 11

Tout différend portant sur l'interprétation ou l'application de la présente convention qui n'aurait pas été réglé par voie de consultations dans les meilleurs délais sera résolu par des moyens pacifiques convenus d'un commun accord conformément au droit international.

En foi de quoi les représentants des parties, dûment autorisés à cet effet, ont signé la présente convention, établie en double exemplaire.

Fait à Port-Louis, le 7 juin 2010.

Pour le Gouvernement
de la République française :

A. JOYANDET

*Secrétaire d'Etat
à la coopération
et à la francophonie*

Pour le Gouvernement
de la République de Maurice

A. BOOLELL

Ministre des affaires étrangères

CONVENTION D'APPLICATION
entre le Gouvernement de la République française
et le Gouvernement de la République de Maurice
portant sur la cogestion en matière environnementale
relative à île de Tromelin et à ses espaces maritimes environnants

Le Gouvernement de la République française et le Gouvernement de la République de Maurice, ci-après désignés « les parties »,

CONSIDÉRANT l'accord-cadre entre la République française et la République de Maurice sur la cogestion économique, scientifique et environnementale relative à l'île de Tromelin et à ses espaces maritimes environnants ;

CONSIDÉRANT que cet accord porte notamment sur la cogestion environnementale relative à l'île de Tromelin et à ses espaces maritimes environnants et que la présente convention doit en fixer le cadre ;

CONSIDÉRANT les enjeux de protection de l'environnement marin identifiés notamment lors du sommet sur le développement durable de Johannesburg en 2002 et de la conférence des parties à la convention sur la diversité biologique à Kuala Lumpur en 2004 ;

CONSIDÉRANT que l'île de Tromelin est un sanctuaire océanique de la nature primitive et dispose d'un patrimoine biologique terrestre et marin remarquable, que son importance est majeure comme référence d'écosystèmes en milieu tropical qu'elle doit par conséquent faire l'objet d'une attention particulière ;

SONT CONVENUS DES DISPOSITIONS SUIVANTES :

Article 1^{er}

Par la présente convention, les parties s'engagent à déterminer conjointement le cadre d'une gestion responsable de l'environnement de l'île, du platier et de ses espaces maritimes environnants tenant compte des écosystèmes. Cet objectif sera conduit en deux phases :

- définition du périmètre de protection et réalisation de l'état des lieux environnemental de l'île de Tromelin et de ses espaces maritimes environnants ;
- élaboration, sur la base des éléments apportés par l'état des lieux environnemental, d'un schéma directeur de gestion de l'environnement de l'île de Tromelin et de ses espaces maritimes environnants.

Article 2

Les parties conviennent de ce qui suit :

(a) rien dans la présente convention ni aucun acte en résultant ne peut être interprété comme :

(i) un changement de la position de la République de Maurice en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(ii) un changement de la position de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(iii) la reconnaissance ou le soutien de la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

(b) aucun acte ou activité de la République de Maurice ou de la République française ou de toute tierce partie résultant de la présente convention et de sa mise en œuvre ne constituera une base pour affirmer, soutenir ou rejeter la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

Article 3

L'état des lieux environnemental a pour but de réaliser une analyse des enjeux en termes de patrimoine naturel, d'écosystèmes et d'usages de l'île de Tromelin et des espaces maritimes environnants.

Le schéma directeur de l'environnement vise la protection et la valorisation du patrimoine naturel ainsi que la gestion durable des écosystèmes en s'appuyant sur l'état des lieux environnemental et, si nécessaire, sur des programmes d'acquisition de connaissances complémentaires.

Article 4

Un groupe d'experts est constitué afin de préparer l'état des lieux environnemental, le schéma directeur de l'environnement et les recommandations qui seront proposés, dans le domaine de la protection de l'environnement, au comité de cogestion.

Le groupe d'experts est composé de délégations qui seront désignées par chaque partie en fonction de l'ordre du jour et comprendront un nombre égal de membres. Il est coprésidé par les deux parties.

Lorsqu'il est constitué, le groupe d'experts se réunit au minimum une fois par an. Il peut se réunir par visioconférence.

A l'issue des travaux d'inventaire, le groupe d'experts rédige un schéma directeur de l'environnement. Il le soumet au comité de cogestion.

Le groupe d'experts rend compte annuellement au comité de cogestion de l'avancement de ses travaux.

Article 5

Chaque partie désigne un « correspondant environnement » qui prépare et participe aux réunions du groupe d'experts et assure la transmission de l'information aux institutions et organismes nationaux concernés. Il est également chargé de mettre en relation son homologue avec les différents services ou opérateurs concernés.

Article 6

Le comité de cogestion met en œuvre les objectifs de la présente convention.

Il confie la rédaction des orientations de gestion (objectifs, calendrier, financement) et de recueil de connaissances au groupe d'experts. Ce dernier lui propose également les indicateurs d'évaluation des mesures de gestion proposées.

Article 7

Les objectifs de la présente convention se dérouleront selon les étapes suivantes :

1. La première étape consiste à réaliser un état des lieux environnemental ce qui implique :

a) La collecte des informations existantes ou susceptibles d'être recueillies ;

b) Une discussion sur les données disponibles, leur validité et leurs représentations ;

c) L'élaboration d'un programme de connaissance.

2. La deuxième étape consiste à élaborer un schéma directeur de l'environnement.

3. La dernière étape consiste à déterminer la pertinence de la création, le cas échéant, d'aires marines protégées.

Article 8

Les deux parties conviennent d'élaborer conjointement un plan de lutte contre les déversements d'hydrocarbures et, plus généralement, contre toute atteinte à l'environnement.

Article 9

Chaque partie participe matériellement, financièrement ou par mise à disposition de personnel aux projets décidés par le groupe d'experts dans le cadre des objectifs de la présente convention.

Article 10

Les deux parties s'engagent à présenter conjointement les données et autres publications sur la gestion de l'environnement de l'île de Tromelin, du platier et de ses espaces maritimes environnants à la Commission de l'océan Indien, à la Conférence des Parties à la Convention sur la diversité biologique, au Programme des Nations Unies pour l'environnement et dans d'autres organisations internationales.

Article 11

Les parties prennent les mesures d'application nécessaires à la mise en œuvre prompte et effective de la présente convention conformément à leur droit interne.

Article 12

Aucune disposition de la présente convention ne porte atteinte aux engagements internationaux en vigueur entre les deux parties ou entre l'une d'entre elles et un ou plusieurs Etats tiers.

Article 13

Chaque partie notifie à l'autre l'accomplissement des procédures internes requises, en ce qui la concerne, pour l'entrée en vigueur de la présente convention qui prend effet le premier jour du deuxième mois suivant la date de la dernière de ces notifications.

Article 14

La présente convention est conclue pour une durée de cinq ans, tacitement renouvelable pour une nouvelle période de cinq ans, à moins que l'une des parties ne notifie, par voie diplomatique, sa volonté de mettre fin à ladite convention six mois avant son échéance.

La dénonciation ne remet pas en cause les droits et obligations des parties résultant de la mise en œuvre de la présente convention sauf si les parties en décident autrement d'un commun accord.

Les parties se réuniront avant l'expiration du délai de dix ans afin de dresser le bilan de la présente convention et d'en examiner le devenir.

Article 15

L'une des deux parties peut proposer, par la voie diplomatique, des amendements par écrit à la présente convention.

Tout amendement à la présente convention sera adopté par consentement mutuel des deux parties.

Article 16

Tout différend portant sur l'interprétation ou l'application de la présente convention qui n'aurait pas été réglé par voie de consultations dans les meilleurs délais sera résolu par des moyens pacifiques convenus d'un commun accord conformément au droit international.

En foi de quoi les représentants des parties, dûment autorisés à cet effet, ont signé la présente convention, établie en double exemplaire.

Fait à Port-Louis, le 7 juin 2010.

Pour le Gouvernement
de la République française
A. JOYANDET
*Secrétaire d'Etat
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CONVENTION D'APPLICATION
entre le Gouvernement de la République française
et le Gouvernement de la République de Maurice
portant sur la cogestion des ressources halieutiques
dans ses espaces maritimes environnants de l'île de Tromelin

Le Gouvernement de la République française et le Gouvernement de la République de Maurice, ci-après désignés « les parties »,

CONSIDÉRANT l'accord-cadre entre la République française et la République de Maurice sur la cogestion économique, scientifique et environnementale relative à l'île de Tromelin et à ses espaces maritimes environnants ;

CONSIDÉRANT que cet accord porte notamment sur la gestion de la pêche dans les espaces maritimes environnants de l'île de Tromelin et que la présente convention doit en fixer le cadre ;

CONSIDÉRANT l'accord des deux parties pour maintenir l'interdiction de toute pêche dans la mer territoriale de l'île de Tromelin, dans l'attente des conclusions d'une étude sur l'état de la ressource halieutique ;

RAPPELANT la Convention des Nations Unies sur le droit de la mer du 10 décembre 1982, à laquelle la République française et la République de Maurice sont parties, et notamment ses dispositions sur la conservation des ressources biologiques (article 61), sur l'exploitation des ressources biologiques (article 62) et sur la mise en application des lois et règlements de l'Etat côtier (article 73) ;

RAPPELANT l'Accord des Nations Unies relatif à la conservation et à la gestion des stocks de poissons dont les déplacements s'effectuent tant à l'intérieur qu'au-delà de zones économiques exclusives (stocks chevauchants) et des stocks de poissons grands migrateurs (UNFSA, 1995) ;

RAPPELANT les objectifs adoptés en 2002 au Sommet mondial sur le développement durable de Johannesburg en matière de conservation, de gestion et d'exploitation des ressources halieutiques et des écosystèmes marins, notamment :

- le rétablissement, d'ici à 2015, des stocks halieutiques à un niveau permettant d'obtenir une prise maximum équilibrée,
- la diminution significative des altérations de la biodiversité et l'application de l'approche écosystémique pour l'exploitation durable des océans d'ici à 2010 ;

RECONNAISSANT les progrès accomplis pour la conservation et la gestion de la pêche par la Commission thonière de l'océan Indien, la Commission des pêches du Sud-ouest de l'océan Indien, l'Accord sur les pêches dans le sud de l'océan Indien ;

PRENANT acte des actions engagées par la Commission de l'océan Indien pour la conservation et la gestion durable de la ressource halieutique au niveau régional, et notamment des orientations stratégiques adoptées par le Conseil des Ministres des Etats Membres de cette organisation le 16 janvier 2005 ;

CONSCIENTS enfin des enjeux spécifiques de la pêche dans les espaces maritimes environnants de l'île de Tromelin, notamment :

- le manque de connaissance sur l'état des stocks dans la zone ;
- la nécessité de lutter contre la pêche illégale ;

- la nécessité de gérer l'effort de pêche de manière durable et responsable à l'intérieur de la zone ;

SE FÉLICITANT, suite à la proposition de la partie française, de l'accord des deux parties lors de la réunion franco-mauricienne des 17 et 18 décembre 2008 sur les principes de partage et d'accès équitables aux ressources de Tromelin ;

SONT CONVENU DES DISPOSITIONS SUIVANTES :

Article 1^{er}

1. Les parties s'engagent à mettre en œuvre rapidement une politique commune de la pêche, en vue d'assurer la conservation et la gestion durable de la ressource halieutique dans les espaces maritimes environnants de l'île de Tromelin tels que définis à l'article 1^{er} de l'accord-cadre.

2. Cette politique commune traite notamment des sujets suivants :

- l'évaluation des stocks ;
- l'élaboration de mesures de gestion de la pêche ;
- les modalités de délivrance de licences de pêche.

3. Les parties s'engagent à ne prendre aucune mesure de gestion qui n'ait été préalablement discutée par le comité de cogestion.

Article 2

Les parties conviennent de ce qui suit :

(a) rien dans la présente convention ni aucun acte en résultant ne peut être interprété comme :

(i) un changement de la position de la République de Maurice en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(ii) un changement de la position de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants ;

(iii) la reconnaissance ou le soutien de la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

(b) aucun acte ou activité de la République de Maurice ou de la République française ou de toute tierce partie résultant de la présente convention et de sa mise en œuvre ne constituera une base pour affirmer, soutenir ou rejeter la position de la République de Maurice ou de la République française en ce qui concerne la question de la souveraineté ou des compétences territoriales et maritimes sur l'île de Tromelin et les espaces maritimes environnants.

Article 3

Le comité de cogestion :

- définit les mesures de gestion et de conservation des ressources halieutiques ;
- adopte le plan de gestion ;
- arrête la liste des navires autorisés ;
- détermine si nécessaire et sur proposition du groupe d'experts les totaux admissibles de captures et en fixe les règles de répartition par navire ;
- fixe le montant des redevances et les modalités de leur recouvrement ;
- établit le budget prévisionnel des dépenses liées à l'évaluation, à la mise en œuvre du plan de gestion et à la surveillance ;
- décide de l'affectation de la totalité des recettes sur la base d'une répartition équitable.

Article 4

Un groupe d'experts est constitué afin de préparer le plan de gestion et les recommandations qui seront proposées, dans le domaine de la pêche, au comité de cogestion.

Le groupe d'experts est composé de délégations qui seront désignées par chaque partie en fonction de l'ordre du jour et comprendront un nombre égal de membres. Il est coprésidé par les deux parties.

Lorsqu'il est constitué, le groupe d'experts se réunit au minimum une fois par an. Il peut se réunir par visioconférence.

Le groupe d'experts rend compte annuellement au comité de cogestion de l'avancement de ses travaux.

Article 5

Chaque partie désigne un « correspondant pêche », qui prépare et participe aux réunions du groupe d'experts, et assure la transmission de l'information aux institutions et organismes nationaux concernés. Il est également chargé de mettre en relation son homologue avec les différents services ou opérateurs concernés.

Article 6

Les parties préparent conjointement au sein du groupe d'experts un plan de gestion durable et responsable de la pêche dans les espaces maritimes environnants de l'île de Tromelin. Le plan est discuté en comité de cogestion et approuvé conjointement par les deux parties.

Le plan de gestion :

- organise l'évaluation des stocks et l'amélioration de la connaissance scientifique, notamment par la mise en place d'un système d'information halieutique (SIH) partagé et d'observateurs embarqués ;
- prévoit les mesures de gestion (quotas, effort de pêche, engins, périodes et zones de pêche, système de suivi des navires par satellite (1), déclarations d'entrée et de sortie de zone) et les conditions d'attribution des licences de pêche ;
- développe une politique de surveillance adéquate, en liaison le cas échéant avec la Commission de l'océan Indien.

Dans l'élaboration du plan, chaque partie :

- adopte l'approche de précaution (2) qui implique une vision prudente et l'adoption de mesures préventives lorsque les avis scientifiques sur l'état de la ressource ne permettent pas de prendre une décision de gestion précise ;
- applique l'approche écosystémique pour réduire les interactions entre l'écosystème et la pratique de la pêche ;
- veille à la concertation avec la filière pêche dans le processus de planification et de gestion.

(1) Système de suivi des navires de pêche par satellite (SSN).

(2) Le concept d'approche de précaution a été consacré dans le Principe 15 de la Déclaration de Rio de la Conférence des Nations Unies sur l'environnement et le développement et les directives techniques de la FAO pour une pêche responsable.

Article 7

Les licences de pêche sont accordées en priorité aux navires de pêche battant pavillon français ou mauricien ayant un lien économique réel avec une des Parties.

Sous réserve des dispositions de l'alinéa suivant, en fonction de la ressource disponible et sur proposition du groupe d'experts, le comité de cogestion peut décider d'établir une liste complémentaire de navires ne battant pas pavillon français ou mauricien, le cas échéant dans les limites du tonnage annuel des captures. Ces navires sont alors inscrits sur la liste des navires autorisés, selon les modalités prévues à l'article 8.

La délivrance d'une licence à un navire tiers donne lieu au versement d'une contrepartie financière par l'armement demandeur, selon des modalités fixées par le comité de cogestion.

Article 8

Le groupe d'experts propose au moins une fois par an une liste des navires de pêche autorisés à pêcher dans les espaces maritimes environnants de Tromelin, dans le cadre du plan de gestion adopté conformément à l'article 3.

Cette liste est examinée et approuvée par le comité de cogestion. Elle peut être amendée d'un commun accord par les deux parties.

Conformément aux décisions du comité de cogestion et sans préjudice des dispositions de l'article 2 :

- les autorisations de pêche sont délivrées par la partie mauricienne aux navires battant pavillon mauricien inscrits sur la liste ;
- les autorisations de pêche sont délivrées par la partie française aux navires battant pavillon français inscrits sur la liste ;
- les autorisations de pêche sont délivrées par chacune des deux parties aux navires battant pavillon étranger inscrits sur la liste. Ces derniers ne pourront pêcher que s'ils sont munis des deux autorisations délivrées par chacune des parties.

La partie française prend dans les meilleurs délais les actes administratifs nécessaires pour rendre applicables en droit interne les décisions du comité de cogestion et les notifie aussitôt aux autorités mauriciennes.

Article 9

Les deux parties s'engagent à partager les données relatives notamment à l'évaluation scientifique des stocks, aux déclarations de captures et données de positionnement des navires par satellite.

Les deux parties s'engagent dans le cadre du traitement de telles données à maintenir leur caractère confidentiel aux fins de protection des intérêts économiques des armements concernés.

Article 10

Les parties s'engagent à respecter le calendrier suivant :

(a) La première étape consiste à procéder à l'évaluation des stocks et à l'amélioration de la connaissance scientifique, ce qui implique :

- (i) La collecte des données existantes ;
- (ii) Une discussion sur leur validité et leur pertinence ;
- (iii) Une synthèse et l'élaboration d'un programme d'acquisition de connaissance ;
- (iv) La réalisation du programme d'acquisition de connaissance.

(b) Dans une seconde étape, les parties proposent des mesures de gestion et les modalités de délivrance des licences de pêche.

(c) La dernière étape consiste à établir une liste conjointe des navires susceptibles d'être autorisés à pêcher dans les espaces maritimes environnants de Tromelin.

Article 11

Chaque partie participe matériellement, financièrement ou par mise à disposition de personnel aux projets décidés par le groupe d'experts dans le cadre des objectifs de la présente convention.

Article 12

Les deux parties s'engagent à présenter conjointement les données et autres publications sur les ressources halieutiques

couvrant les espaces maritimes environnants de l'île de Tromelin à l'Organisation des Nations Unies pour l'alimentation et l'agriculture, à la Commission thonière de l'océan Indien, à la Commission de l'océan Indien et dans d'autres organisations internationales.

Article 13

Les parties prennent les mesures d'application nécessaires, y compris, le cas échéant, d'ordre législatif, à la mise en œuvre prompte et effective de la présente convention, conformément à leur droit interne.

La procédure d'attribution des autorisations de pêche prévue à l'article 8 entre en vigueur dès que chaque partie a notifié à l'autre partie l'accomplissement des adaptations internes éventuellement requises.

Article 14

Aucune disposition de la présente convention ne porte atteinte aux engagements internationaux en vigueur entre les deux parties ou entre l'une d'entre elles et un ou plusieurs Etats tiers.

Article 15

Chaque partie notifie à l'autre l'accomplissement des procédures internes requises, en ce qui la concerne, pour l'entrée en vigueur de la présente convention qui prend effet le premier jour du deuxième mois suivant la date de la dernière de ces notifications.

Article 16

La présente convention est conclue pour une durée de cinq ans, tacitement renouvelable pour une nouvelle période de cinq ans, à moins que l'une des parties ne notifie, par voie diplomatique, sa volonté de mettre fin à ladite convention six mois avant son échéance.

La dénonciation ne remet pas en cause les droits et obligations des parties résultant de la mise en œuvre de la présente convention sauf si les parties en décident autrement d'un commun accord.

Les parties se réuniront avant l'expiration du délai de dix ans afin de dresser le bilan de la présente convention et d'en examiner le devenir.

Article 17

L'une des deux parties peut proposer, par la voie diplomatique, des amendements par écrit à la présente convention.

Tout amendement à la présente convention sera adopté par consentement mutuel des deux parties.

Article 18

Tout différend portant sur l'interprétation ou l'application de la présente convention qui n'aurait pas été réglé par voie de consultations dans les meilleurs délais sera résolu par des moyens pacifiques convenus d'un commun accord conformément au droit international.

En foi de quoi les représentants des parties, dûment autorisés à cet effet, ont signé la présente convention, établie en double exemplaire,

Fait à Port-Louis, le 7 juin 2010.

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