

IN THE MATTER OF AN ARBITRATION

- before -

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

- between -

THE REPUBLIC OF MAURITIUS

- and -

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

PROCEDURAL ORDER N° 2

(APPLICATION TO BIFURCATE PROCEEDINGS)

ARBITRAL TRIBUNAL:

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

REGISTRY:

The Permanent Court of Arbitration

15 January 2013

Whereas on 29 March 2012, the Tribunal adopted the Rules of Procedure for this arbitration;

Whereas, with respect to Preliminary Objections to the Tribunal's Jurisdiction, Article 11 of the Rules of Procedure provides as follows:

Article 11

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

Whereas on 1 August 2012, Mauritius submitted its Memorial;

Whereas on 31 October 2012, the United Kingdom submitted its Preliminary Objections to Jurisdiction (the “Preliminary Objections”);

Whereas in its Preliminary Objections, the United Kingdom made the following submissions:

For the reasons set out in these Preliminary Objections, the United Kingdom of Great Britain and Northern Ireland requests the Arbitral Tribunal to adjudge and declare that it is without jurisdiction in respect of the dispute submitted to the Tribunal by the Republic of Mauritius.

In accordance with Article 11, paragraph 2(a), of the Rules of Procedure, the United Kingdom requests that its Preliminary Objections be dealt with as a preliminary matter.

In accordance with Article 11, paragraph 4 of the Rules of Procedure, and unless the preceding request is accepted by Mauritius, the United Kingdom hereby seeks a separate hearing on the issue of the procedure to be followed in dealing with its Preliminary Objections.

Whereas on 5 November 2012, the Permanent Court of Arbitration wrote to the Parties on behalf of the Tribunal, confirming that the schedule for submissions on bifurcation set out in Article 11(4) of the Rules of Procedure would apply and noting the Tribunal’s decision that a one-day hearing would take place on 11 January 2013 in Dubai, United Arab Emirates;

Whereas on 21 November 2012, Mauritius filed Written Observations on the Question of Bifurcation;

Whereas on 13 December 2012, after receiving the views of the Parties, the Tribunal issued Procedural Order No. 1, concerning the format and content of submissions on the question of bifurcation;

Whereas on 21 December 2012, the United Kingdom submitted a Written Reply to the Written Observations of Mauritius;

Whereas on 11 January 2013, a hearing on the procedure to be followed in respect of the United Kingdom’s Preliminary Objections was held in Dubai, United Arab Emirates;

Whereas the Tribunal, in accordance with Articles 8(1) and 11(3) of its Rules of Procedure, has given due consideration to the Parties’ submissions, and to the Parties’ presentations at the aforementioned hearing;

THE ARBITRAL TRIBUNAL DECIDES AND ORDERS AS FOLLOWS:

1. The United Kingdom's request that its Preliminary Objections be dealt with in a separate jurisdictional phase as a preliminary matter is rejected.
2. The United Kingdom's Preliminary Objections to the jurisdiction of this Tribunal will be considered with the proceedings on the merits.

Date: 15 January 2013



PROFESSOR IVAN SHEARER

President

On Behalf of the Tribunal