

## RULES OF PROCEDURE

for the Arbitral Tribunal Constituted under Annex VII to the  
United Nations Convention on the Law of the Sea

Pursuant to the Notification of the People's Republic of Bangladesh  
dated 8 October 2009

Bangladesh v. India

Whereas the People's Republic of Bangladesh and the Republic of India are Parties to the United Nations Convention on the Law of the Sea ("the Convention");

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

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

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

Whereas Bangladesh has invoked article 287 of the Convention and article 1 of Annex VII to the Convention with regard to a Dispute concerning the Maritime Boundary between Bangladesh and India (Bangladesh v. India) ("the Dispute"), as set out in Bangladesh's 'Notification under article

287 of the Convention and Annex VII article 1 of UNCLOS and Statement of Claim and Grounds on which it is based', dated 8 October 2009 ("the Notification and Statement of Claim");

Whereas in accordance with articles 3(b) and 3(c) of Annex VII to the Convention, Bangladesh has appointed Alan Vaughan Lowe as arbitrator in respect of the Dispute and India has appointed Pemmaraju Sreenivasa Rao as arbitrator;

Whereas in accordance with article 3(e) of Annex VII to the Convention, on the 10 February 2010 the President of the International Tribunal for the Law of the Sea has appointed Ivan Shearer, Tullio Treves and Rüdiger Wolfrum as arbitrators and Rüdiger Wolfrum as president of the Arbitral Tribunal;

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

Whereas the Parties have agreed on the following Rules of Procedure (the "Rules") for the arbitration;

## **Section I. Introduction**

### **Scope of Application**

#### *Article 1*

1. The Arbitral Tribunal shall function in accordance with these Rules, the relevant provisions of the Convention and Annex VII to the Convention. These Rules are subject to such modifications or additions as the Parties may agree in writing after consultation with the Arbitral Tribunal.
2. To the extent that any question of procedure is not expressly governed by these Rules or by Annex VII to the Convention or other provisions of the Convention, the question shall be decided by the Arbitral Tribunal after consultation with the Parties.

3. The Permanent Court of Arbitration shall serve as the Registry (“the Registry”) and shall take charge of the archives of the arbitration proceedings. The seat of the Arbitral Tribunal shall be The Hague.

## **Notice, Calculation of Periods of Time**

### *Article 2*

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

## **Commencement of Proceedings**

### *Article 3*

The proceedings are deemed to have commenced on October 8, 2009.

## **Representation and Assistance**

### *Article 4*

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

## **Section II. Composition of the Tribunal**

### **Number and Appointment of Arbitrators**

#### *Article 5*

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

### **Replacement of an Arbitrator**

#### *Article 6*

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

### **Section III. The Proceedings**

#### **General Provisions**

##### *Article 7*

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

#### **Place of Meetings and Hearings and Language of Arbitration**

##### *Article 8*

1. The place of hearings shall be The Hague unless decided otherwise by the President of the Arbitral Tribunal in consultation with the Parties.
2. The Arbitral Tribunal may hold meetings at any place it deems appropriate.
3. The language of the arbitration is English. Any document submitted to the Tribunal that is written in a language other than English shall be accompanied by a certified translation into English.

#### **Order and Content of Pleading**

##### *Article 9*

1. On or before May 31, 2011 Bangladesh shall communicate to India, to the Registry and to each of the arbitrators a Memorial containing:
  - (a) A statement of any facts on which Bangladesh relies;

- (b) Bangladesh's submissions on law;
  - (c) A statement of the decision sought by Bangladesh.
2. On or before May 31, 2012 India shall submit a Counter-Memorial containing:
- (a) An admission or denial of any facts alleged in the Memorial and a statement of any additional facts on which India relies;
  - (b) Observations concerning the submissions on law in the Memorial and India's submissions on law in answer thereto;
  - (c) A statement of the decision sought by India.
3. On or before November 30, 2012 Bangladesh may submit a Reply.
4. On or before May 31, 2013 India may submit a Rejoinder.
5. At the request of either Party, and after having ascertained the views of the other Party, the Arbitral Tribunal may extend the time specified in paragraphs 1, 2, 3 and 4 of this Article for the submission of pleadings.
6. There shall be submitted with every pleading certified copies of any relevant documents relied upon in support of any facts alleged in it.
7. Each Party will deliver 20 paper copies and 20 CD Roms or equivalents of its written pleadings to the Registry, which will transmit 10 paper copies and 10 CD Roms or equivalents to the other Party.
8. During the course of the arbitral proceedings either Party may, if given leave by the Arbitral Tribunal to do so, amend or supplement its claim or defence. Provided that a claim may not be amended or supplemented in such a manner that it falls outside the scope of the Dispute as may be determined by the Arbitral Tribunal.

## **Preliminary Objections**

### *Article 10*

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 not later than three months after the date of submission of the first written pleading containing the claim to which the objection is made.
3. The Arbitral Tribunal, after hearing the Parties, shall rule on objections to jurisdiction or admissibility as a preliminary issue or in its final Award.

## **Provisional Measures**

### *Article 11*

1. A Party may submit a request for the prescription of provisional measures under article 290, paragraph 1, of the Convention at any time during the course of the proceedings. The request shall be in writing and specify the measures requested, the reasons therefor and the possible consequences, if it is not granted, for the preservation of the respective rights of the Parties.
2. The Arbitral Tribunal, or the President if the Arbitral Tribunal is not sitting, shall fix the earliest possible date for a hearing.
3. The Arbitral Tribunal may prescribe measures different in whole or in part from those requested and indicate the Parties which are to take or to comply with each measure.
4. A party may request in writing the modification or revocation of provisional measures. Before taking any decision on the request, the Arbitral Tribunal shall afford the Parties an opportunity of presenting their observations on the subject.

## **Evidence and Hearings**

### *Article 12*

1. Each Party shall have the burden of proving the facts relied on to support its claim or defence. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence adduced.
2. Each document submitted to the Tribunal shall be given a number (for Bangladesh's documents, B-1, B-2 etc; for India's documents, IN-1, IN-2 etc); and each page of each document shall be numbered. In so far as is possible, all documentary evidence shall be submitted in the first round of written pleadings.
3. The Arbitral Tribunal may take all appropriate measures in order to establish the facts.
4. After having obtained the views of the Parties, the Arbitral Tribunal may upon notice to the Parties appoint one or more experts to report to it, in writing, on specific issues to be determined by the Tribunal. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the Parties.
5. The Parties shall cooperate in pursuance of article 6 of Annex VII to the Convention with any expert(s) the Tribunal has appointed pursuant to paragraph 4 of this Article of the Rules. Any Report prepared by the expert shall be communicated to the Parties.

### *Article 13*

1. There shall be hearings at which the Parties may make their oral submissions. The hearings shall be held no later than three months after the Rejoinder has been submitted.
2. The Arbitral Tribunal shall give the Parties adequate advance notice of the date, time and place of any oral hearing.
3. If witnesses, including expert witnesses, are to be heard, each Party shall communicate to the



Registry, to the members of the Arbitral Tribunal and to the other Party the names and addresses of the witnesses it intends to present, the subject upon which and the languages in which such witnesses will give their testimony. Each Party shall communicate an initial communication on witnesses at least forty-five (45) days before the hearing, and a final communication on witnesses at least thirty (30) days before the hearing. Where a language other than English is to be used by a witness, the necessary arrangements for interpretation into English shall be made by the Registry, at the expense of the Party concerned.

4. No expert witness may be heard unless he or she has provided a written expert report, which shall form part of the pleadings as set out in article 9 and shall stand as his or her evidence in chief. In respect of any other witness or witnesses to be heard who have not provided a witness statement or affidavit which has been included in the pleadings, the Party shall communicate to the Registry, to the members of the Arbitral Tribunal and to the other Party the subject matter of the testimony, a list of the topics to be addressed and a summary of conclusions. This communication shall be made at the time that the witnesses are identified in the initial or final communications specified in article 13(3).
5. The Arbitral Tribunal may require the retirement or presence of any witness or witnesses, including expert witnesses, during the testimony of other witnesses. Taking account of the views of the Parties, the Arbitral Tribunal shall determine the manner in which witnesses are examined.
6. The written and oral pleadings of the Parties and any documentary material or evidence submitted by them shall remain confidential until the final Award.
7. The Registry shall make arrangements for a verbatim record of each hearing to be produced.
8. The hearings shall not be open to the public, unless the Parties agree otherwise.
9. Following the hearing the Tribunal shall decide on the closure of the proceedings.

## **Decisions on Administration and Routine Procedure**

### *Article 14*

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

## **Section IV. The Award**

### **Publication of the Award**

#### *Article 15*

The Arbitral Tribunal shall endeavour to render its Award within six months of the close of the proceedings. After it has been made available to the Parties the Award shall be made public.

### **Form and Effect of the Award**

#### *Article 16*

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

### **Interpretation of the Award**

#### *Article 17*

1. Any request for interpretation of the Award, in accordance with Article 12 of Annex VII to the Convention, shall be made within 30 days after the receipt of the Award, by giving notice to the

Tribunal and the other Party.

2. The interpretation shall be given in writing within 45 days after receipt of the request. The interpretation shall form part of the Award and the provisions of article 16 of these Rules shall apply.

### **Correction of the Award**

#### *Article 18*

1. Within 30 days after the receipt of the Award, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct in the Award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within 30 days after the communication of the Award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of article 16 of these Rules shall apply.

### **Expenses and Costs**

#### *Article 19*

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

#### *Article 20*

Unless decided otherwise by the Tribunal each Party shall bear its own costs. The Arbitral Tribunal may make an Award in respect of the costs incurred by the Parties in presenting their cases, as

appropriate.

## **Deposit for Expenses**

### *Article 21*

1. The Registry may request each Party to deposit an equal amount as an advance for the expenses referred to in article 19. All amounts deposited by the Parties pursuant to this article shall be directed to the Registry, and disbursed by it for such expenses, including, inter alia, fees to the arbitrators, and the Registry.
2. During the course of the proceedings, the Registry or the Arbitral Tribunal may request supplementary amounts from the Parties in respect of the expenses referred to in article 19.
3. If the requested amounts are not paid in full within sixty days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made in full within a further 30 days, the Arbitral Tribunal may order the suspension or termination of the proceedings or take such other steps as it considers appropriate.
4. After the Award has been made, the Registry shall render an accounting to the Parties of the amounts received and return any unexpended balance to the Parties, as directed by the Tribunal.