

**RULES OF PROCEDURE FOR THE TRIBUNAL CONSTITUTED UNDER
ANNEX VII TO THE UNITED NATIONS CONVENTION ON THE LAW OF
THE SEA PURSUANT TO THE NOTIFICATION OF BARBADOS DATED
16 FEBRUARY 2004**

Whereas Barbados and the Republic of Trinidad & Tobago (the “Parties”) are Parties to the United Nations Convention on the Law of the Sea (“the Convention”);

Whereas Barbados has invoked Article 287 of the Convention and Article 1 of Annex VII to the Convention with regard to a dispute concerning the delimitation of the exclusive economic zone and continental shelf between Barbados and the Republic of Trinidad and Tobago, as set out in Barbados’ “Statement of the Claim and the Grounds on Which it is Based” dated 16 February 2004;

Whereas in accordance with Article 298 of the Convention neither Party has declared any exceptions to Part XV of the Convention governing the settlement of disputes; and neither Party has made a written declaration choosing the means for settlement of disputes under Article 287 (1) of the Convention;

Whereas Article 287 (3) of the Convention provides that “A State Party, which is a party to a dispute not covered by a declaration in force, shall be deemed to have accepted arbitration in accordance with Annex VII”;

Whereas an arbitral tribunal has been accordingly constituted pursuant to Article 3 of Annex VII to the Convention;

Whereas in accordance with Articles 3(b) and 3(c) respectively of Annex VII to the Convention, Barbados has appointed Professor Vaughan Lowe as a member of the Arbitral Tribunal and the Republic of Trinidad and Tobago has appointed Mr Ian Brownlie CBE QC as a member of the Arbitral Tribunal; and, in accordance with Article 3(d) of Annex VII to the Convention, the Parties have agreed to the appointment of Judge Stephen M. Schwebel (President), Professor Francisco Orrego Vicuña, and Sir Arthur Watts KCMG QC, as members of the Arbitral Tribunal;

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

Whereas the Parties have not agreed otherwise, the Tribunal hereby adopts the following rules of procedure in accordance with Article 5 of Annex VII to the Convention.

Section I. Introduction

Scope of Application

Article 1

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

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received by the PCA or by a Party when it has been delivered to the PCA or to the agent of the Party appointed pursuant to Article 4 of these Rules.
2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-work day in the State of the Party, in the United Kingdom, 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 16 February 2004.

Representation and Assistance

Article 4

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

Section II. Composition of the Tribunal

Number and Appointment of Arbitrators

Article 5

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

Replacement of an Arbitrator

Article 6

1. In the event of the death or withdrawal of an arbitrator during the course of the proceedings, a substitute arbitrator shall be appointed:
 - (a) Where the arbitrator being replaced was originally appointed by one of the Parties in accordance with Articles 3 (b) or 3 (c) of Annex VII to the Convention, by the Party making the original appointment if possible within thirty days, or otherwise not later than sixty days, from the date of the death or withdrawal of an arbitrator.
 - (b) Where the arbitrator being replaced was originally appointed by agreement of the Parties in accordance with Article 3(d) of Annex VII to the Convention, by agreement of the Parties or, failing such agreement, by the remaining members of the Arbitral Tribunal if possible within thirty days, or otherwise not later than sixty days, from the date of the death or withdrawal of an arbitrator.
2. In such an event, prior hearings may be repeated at the discretion of the Arbitral Tribunal.

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 and Language of Arbitration

Article 8

1. The place of the arbitration shall be The Hague.
2. Hearings shall be held in London, unless by 1 October 2004 the Parties have agreed on a situs in the Caribbean.

3. Notwithstanding the provisions of paragraphs 1 and 2, above, the Arbitral Tribunal may hold meetings and/or conduct its deliberations at any location indicated by the situation of its members and considerations of economy. In addition, the Arbitral Tribunal may, in consultation with the Parties, decide to hold hearings at any other location.
4. The Award shall be deemed to be made at the place of arbitration.
5. The language of the arbitration is English.

Order and Content of Pleadings

Article 9

1. On or before 30 October 2004, Barbados shall communicate in writing to the Republic of Trinidad and Tobago, to the PCA and to each of the arbitrators a Memorial containing:
 - (a) A statement of any facts on which Barbados relies;
 - (b) Barbados' legal arguments and submissions;
 - (c) A statement of the relief or remedy sought by Barbados.
2. On or before 31 March 2005, the Republic of Trinidad and Tobago shall communicate in writing to Barbados, to the PCA, and to each of the arbitrators a Counter-Memorial containing:
 - (a) An admission or denial of any facts alleged in the Memorial and a statement of facts on which the Republic of Trinidad and Tobago relies;
 - (b) Observations concerning the legal arguments and submissions in the Memorial and the Republic of Trinidad and Tobago's legal arguments and submissions;
 - (c) A statement of the relief or remedy sought by the Republic of Trinidad and Tobago.
3. On or before 9 June 2005, Barbados may submit a Reply.
4. On or before 18 August 2005, the Republic of Trinidad and Tobago 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. With every pleading there shall be submitted any relevant documents and/or other evidence or materials adduced in support of any facts alleged in it. Documents so submitted shall be duly certified.

7. During the course of the arbitral proceedings either Party may, if given leave by the Arbitral Tribunal to do so, amend or supplement its claim or defence, provided that a claim may not (without the consent of the other Party) be amended or supplemented in such a manner that it falls outside the scope of the dispute.

Preliminary Objections

Article 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. Any jurisdictional objection or claim of inadmissibility shall be raised within sixty days of the filing of the pleading to which it relates.
3. 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.

Evidence and Hearings

Article 11

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, and no evidence or material may be relied upon that has not been submitted as part of the written pleadings other than oral evidence. The Arbitral Tribunal shall decide upon the admissibility of any evidence or material that may be submitted after the closure of the written proceedings.
2. The Tribunal may at any time call upon the parties to produce such evidence or to give such explanations as the Tribunal considers necessary for the elucidation of any aspect of the matters in issue, or may itself seek other information for this purpose, in which case it shall notify the Parties.
3. The Arbitral Tribunal may request the Parties jointly or separately to provide a non-technical document summarising and explaining the background to any scientific, technical, or other specialized information which the Tribunal considers necessary to understand fully the matters in dispute.
4. After having obtained the views of the Parties, the Arbitral Tribunal may upon notice to the Parties appoint one or more experts, including a hydrographer, 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 may wish to appoint pursuant to paragraph 4 of this Article.

Article 12

1. There shall be oral hearings of a duration and dates to be agreed upon with the Parties. The PCA shall arrange for a verbatim transcript of oral proceedings to be made.
2. If witnesses, including expert witnesses, are to be heard, each Party shall communicate to the PCA and to the other Party the names and addresses of the witnesses it intends to present, and the subject upon and the languages in which such witnesses will give their testimony. Each Party shall circulate an initial communication on witnesses at least thirty days before the hearing, and a final communication on witnesses at least twenty 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 PCA, at the expense of the Party concerned.
3. No expert witness or witness of fact may be heard unless he or she has provided a written expert report or affidavit, which shall form part of the pleadings as set out in Article 9 above.
4. The Arbitral Tribunal shall be entitled to disregard any written expert report or affidavit of fact where the person who has made it is not made available to testify and be examined at the oral hearing.
5. Taking account of the views of the Parties, the Arbitral Tribunal shall determine the manner in which witnesses are examined. The Arbitral Tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. Expert witnesses should not normally be excluded.

Confidentiality

Article 13

1. All written and oral pleadings, documents, and evidence submitted in the arbitration, verbatim transcripts of meetings and hearings, and the deliberations of the Arbitral Tribunal, shall remain confidential unless otherwise agreed by the Parties.
2. The hearings shall not be open to the public, unless otherwise agreed by the Parties.

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 Award of the Arbitral Tribunal shall be made public, unless the Parties otherwise agree.

Form and Effect of the Award

Article 16

1. The Award of the Tribunal shall be rendered in accordance with Articles 10 and 11 of Annex VII to the Convention. The Arbitral Tribunal shall describe the course of the delimitation in a technically precise manner, with the assistance, as appropriate, of a hydrographer.
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 thirty 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 forty-five days after receipt of the request. The interpretation shall form part of the Award and the provisions of Article 16 above shall apply.

Correction of the Award

Article 18

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

Expenses and Costs

Article 19

1. Unless the Arbitral Tribunal determines otherwise because of the particular circumstances of the case, the expenses of the Arbitral Tribunal, including the remuneration of its members, shall be borne by the Parties in equal shares.

2. The expenses of the Arbitral Tribunal shall be reasonable in amount, taking into account the situs of the hearings, the complexity of the subject matter, the time spent by the arbitrators, and any other relevant circumstances of the case.
3. The PCA shall keep a record of all expenses of the Arbitral Tribunal, and shall furnish a final statement thereof to the Parties.

Article 20

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

Deposit for Expenses

Article 21

1. The PCA may request each Party to deposit an equal amount as an advance for the expenses referred to in Article 19 above. All amounts deposited by the Parties pursuant to this Article shall be directed to the PCA, and disbursed by it for such expenses, including, *inter alia*, fees to the arbitrators, and the PCA.
2. The Arbitral Tribunal may review the adequacy of the deposit from time to time and request such further equal amounts as required.
3. If the requested amounts are not paid in full within thirty days after the receipt of the request, the Arbitral Tribunal shall so inform the Parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the proceedings.
4. After the Award has been made, the PCA shall render an accounting to the Parties of the amounts received and return any unexpended balance to the Parties.