

**ARBITRAL TRIBUNAL CONSTITUTED PURSUANT TO ARTICLE 287, AND IN ACCORDANCE
WITH ANNEX VII OF
THE UNITED NATIONS CONVENTION ON THE LAW OF SEA**

In the Matter of an Arbitration Between

GUYANA and SURINAME

ORDER N^o. 4

Whereas Guyana, in its letter dated 20 July 2005 requested that Suriname disclose certain “relevant files” pursuant to paragraph 3 of the Tribunal’s Order No. 1 of 18 July 2005, which files Guyana identified as those requested in its letter to the Tribunal of 14 February 2005;

Whereas Guyana, also in its letter dated 20 July 2005, additionally requested that, “in conformity with paragraph 2 of the Tribunal’s Order No. 1, Suriname provide immediate access to the entire file from which any document already introduced into evidence by Suriname, including any document incorporated in or annexed to Suriname’s 23 May 2005 written statement on Preliminary Objections was taken”;

Whereas Suriname, in its letter dated 25 July 2005, stated, inter alia, that, with respect to Guyana’s request that Suriname disclose files pursuant to paragraph 3 of Tribunal Order No. 1, “Guyana’s request for wholesale access to the Netherlands Ministry of Foreign Affairs archives was not accepted by the Tribunal” in its Order No. 1 and should thus be treated by the Tribunal as a request for reconsideration and denied, and that Suriname, with respect to Guyana’s request pursuant to paragraph 2 of Order No. 1, “will comply with its obligations under that paragraph...”;

Whereas Suriname, in its letter dated 29 July 2005, set out the manner in which it intended to implement paragraph 2 of Order No. 1, and agreed to give Guyana access to File 169A and File 161 in The Netherlands Ministry of Foreign Affairs archives, but noted that documents in File 169A dealing “exclusively with the maritime boundary between Suriname and French Guyana must be excluded from the file before access is given to Guyana”, and documents in File 161 that “deal exclusively with the land boundary dispute” should be excluded from the file as well before Guyana is given access;

Whereas Suriname, also in its letter dated 29 July 2005, stated further its view that while the Netherlands Ministry of Foreign Affairs could determine which documents needed to be removed from File 169A, such an approach would not be appropriate for File 161, and Suriname therefore proposed that the independent expert to be appointed pursuant to the Tribunal’s Order No. 1 “be asked to review the file and to confirm that Suriname’s selection of documents to which Guyana should be permitted access is appropriate”;

Whereas Guyana, in its letter dated 2 August 2005, renewed its request for disclosure, pursuant to paragraph 3 of Order No. 1, of the files identified in its letter to the Tribunal of 20 July 2005;

Whereas Guyana, also in its letter dated 2 August 2005, stated further that Suriname’s proposal for the handling of File 169A would violate paragraph 2 of Order No. 1 as “it is not Suriname’s place to unilaterally decide that certain documents should be removed” from the file, and requested the Tribunal to instruct Suriname “to disclose to Guyana the full contents

of file 169A, or, in the alternative, that it instruct Suriname: (a) to refrain from requesting that the Netherlands Foreign Ministry remove any documents from this file; and (b) to present any objection that it might have concerning the disclosure of any documents in file 169A to the independent expert...”;

Whereas Suriname, in its letter dated 8 August 2005, stated that Suriname interprets paragraph 3 of Order No. 1 to mean that “if Suriname chooses not to present any documents from the Netherlands files, the paragraph 2 procedure does not apply and Guyana will have no right of access to those files unless it can make a showing of specific need for specific documents, beyond a general claim of ‘relevance’”, and asked the Tribunal to confirm that Suriname’s reading “is correct”;

Whereas Suriname, also in its letter dated 8 August 2005, stated that the documents concerning the boundary between French Guyana and Suriname “have nothing to do with the case before the Tribunal”, and that if the independent expert is expected to make determinations of relevance on his own, it would be appropriate for the Parties to ask the Tribunal to review those determinations, but that it would nonetheless arrange that all the documents in Files 161 and 169A be submitted to the independent expert;

Whereas Guyana, in its letter dated 12 August 2005, set out its view that the role of the independent expert was “to review any proposal by a Party to remove or redact a file or document, and to resolve in a timely manner any dispute between the Parties over the failure or refusal of a Party to produce, in whole or in part, any such file or document”, and stated that Guyana was “ready and willing” to disclose documents to Suriname in accordance with paragraph 3 of Order No. 1;

Whereas Suriname, in its letter dated 30 August 2005, reiterated its request for interpretation of Order No. 1, and noted its assumption that “the Tribunal did not intend to preclude Suriname from using any documents from a file if the Expert concluded that the remainder need not be shown to Guyana”, and further stated that “[i]t is for the Tribunal to decide, with the help of the Independent Expert, whether the files are prima facie relevant and have been identified with reasonable specificity”;

Whereas Guyana, in its letter dated 31 August 2005 noted its concern that the expert act expeditiously regarding Guyana’s request for access to documents;

Whereas the Arbitral Tribunal reaffirms its Order No. 1,

Whereas the Arbitral Tribunal welcomes Guyana’s statement in its letter dated 12 August 2005 that it was ready and willing to disclose documents to Suriname in accordance with paragraph 3 of Order No. 1;

Whereas the Arbitral Tribunal, having considered the positions of the Parties with regard to access to documents, is of the view that both Parties should co-operate in granting access to relevant documents in order to facilitate the work of the Tribunal;

THE ARBITRAL TRIBUNAL UNANIMOUSLY ORDERS:

1. (a) Suriname shall cooperate fully with the independent expert appointed pursuant to The Tribunal's Order No. 3, and facilitate his immediate access to the entire File 169A and entire File 161 in the Netherlands' Foreign Ministry archives ensuring that such access is granted within two weeks from the date of this Order, indicating which documents, and on what basis, it wishes to remove or redact from those files before they are to be given to Guyana; and

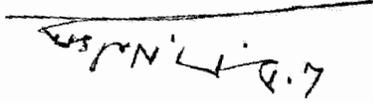
(b) the independent expert shall, in accordance with paragraph 5 of Order No. 1 and the Terms of Reference, review Suriname's proposal(s) for removal or redaction of documents mentioned above.

2. (a) The independent expert shall review Guyana's request in its letter dated 20 July 2005 for access to documents pursuant to paragraph 3 of Order No. 1, in order to determine whether those files have been identified with reasonable specificity and appear relevant; and

(b) Suriname shall facilitate the independent expert's timely access to the files identified in Guyana's letter dated 20 July 2005, to the extent the expert may deem such access necessary to determine reasonable specificity and relevance in accordance with paragraph 3 of Order No.1.

3. The independent expert shall endeavour to report on his findings as soon as possible.

(On behalf of the Tribunal)
L. Dolliver M. Nelson



President
12 October 2005