

FOREWORD

This volume contains the Award rendered in 2004 in one of the few international watercourse arbitrations ever conducted, by the arbitral tribunal established to decide the dispute between the Kingdom of the Netherlands and the Republic of France concerning the auditing of accounts in relation to the reduction of chloride discharges into the Rhine River. In 1976, five countries bordering the Rhine (France, the Netherlands, Switzerland, Luxembourg and Germany) signed the Convention on the Protection of the Rhine against Pollution by Chlorides, with the aim of reducing the level of chloride ions in the Rhine. An Additional Protocol, the objective of which was to improve the quality of the Rhine's waters and, in particular, reach a definitive solution to the problems associated with reducing chloride concentration in the Rhine, was added in 1991. The Protocol, *inter alia*, imposed obligations on France to undertake certain measures. The costs of these measures were to be shared between four of the five states parties according to a specific formula.

This dispute between the Netherlands and France concerned the interpretation and implementation of the Protocol's cost-sharing formula and the methodology of calculation to be used in the final auditing of financial contributions paid in advance by the Netherlands to France.

An arbitral tribunal, established in 2000 in accordance with Annex B of the Convention, was comprised of Judge Pieter H. Kooijmans (Netherlands) and Judge Gilbert Guillaume (France), both former judges of the International Court of Justice, with Judge Krzysztof Skubiszewski (Poland), President of the Iran-United States Claims Tribunal, presiding. The International Bureau of the Permanent Court of Arbitration served as Registry for the arbitration.

The substantive part of the Award applies the rules on the interpretation of treaties laid down in Articles 31 and 32 of the Vienna Convention on the Law of Treaties to the provisions of the Protocol dealing with the auditing of the financial contributions paid to France. The Tribunal examined the constituent elements of these interpretatory rules (good faith, object and purpose, subsequent implementation practice, relevant rules of international law, and other supplementary methods of treaty interpretation) in the context of the Protocol. After deciding the method of calculation for the auditing of accounts according to the applicable international law, the Tribunal applied its conclusions to the amounts in dispute, proceeded to calculate the final audit and determined the amounts to

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be reimbursed to the Netherlands by France. Although the Award was rendered unanimously, Judge Guillaume added a declaration to the Award, explaining why, in his view, the Tribunal had been “led . . . to adopt an unreasonable solution”.

The PCA would like to express its gratitude to Laurence Boisson de Chazournes, Professor of International Law and International Organisation at the University of Geneva, for writing a lucid introduction on the contribution of the “Rhine Chlorides” Award to existing jurisprudence. Professor Boisson de Chazournes skillfully analyses this Award, elements of which are highly technical in nature, discussing the aspects of treaty interpretation that came into play and highlighting the importance of the economic aspects of environmental protection and of the management of international watercourses. This leads her to conclude that “this dispute might well serve as a lesson to States to make greater allowance for measures that enable their regimes to be adapted to accommodate nature’s unpredictability”.

The Award was rendered in French but has been translated into English to increase its international access. It should however, for the sake of good order, be pointed out that this translation does not constitute an official English version of the Award. The PCA is grateful to Ms. Frances Meadows for the translation into English of both the Award and the Introduction, and to Ms. Freya Baetens for translating this Foreword into French.

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