1982 UNITED NATIONS CONVENTION

ON THE LAW OF THE SEA

IN THE DISPUTE CONCERNING

THE 'MARINE PROTECTED AREA' RELATED TO THE CHAGOS ARCHIPELAGO

MAURITIUS v. UNITED KINGDOM

NOTIFICATION UNDER ARTICLE 287

AND ANNEX VII, ARTICLE 1 OF UNCLOS

AND THE STATEMENT OF THE CLAIM

AND GROUNDS ON WHICH IT IS BASED

20 DECEMBER 2010

1982 UNCLOS - ANNEX VII ARBITRATION

NOTIFICATION

AND STATEMENT OF CLAIM

1. By decision dated 1 April 2010 the United Kingdom purported to establish a 'Marine Protected Area' ('MPA') in the so-called 'British Indian Ocean Territory' to cover the entire 200 mile zone that the United Kingdom has purported to declare around the Chagos Archipelago.[1] The 'MPA' covers an area of more than half a million square kilometres, within which all fishing and other activities are prohibited. The United Kingdom purported to bring the 'MPA' into force on 1 November 2010. The purported establishment of the 'MPA' violates the 1982 United Nations Convention on the Law of the Sea ('the 1982 Convention'), to which Mauritius and the United Kingdom are party, and other rules of international law not incompatible with the 1982 Convention. Mauritius makes this Application, which comprises a Notification and Statement of Claim required by Article 1 of Annex VII of the 1982 Convention, in relation to a dispute concerning the legality of the 'MPA' under the 1982 Convention and to obtain an authoritative and legally binding declaration to that effect.

THE 'MPA' DISPUTE

2. The dispute over the 'MPA' arises against the background of longstanding differences between Mauritius and the United Kingdom. The Chagos Archipelago comprises a

[1] Foreign And Commonwealth Office, Press Release, 1 April 2010, http://www.fco.gov.uk/en/news/latest-news/?view=News&id=22014096#; attached as **Annex 1**.

number of islands located in the Indian Ocean, including Diego Garcia. Until 1965, the United Kingdom accepted the Chagos Archipelago as part of the Territory of Mauritius, over which it exercised colonial authority. That year, it dismembered Mauritius by purporting to establish a so-called "British Indian Ocean Territory", a new colonial territory consisting of the Chagos Islands, which it excised from Mauritius, and the separate islands of Aldabra, Farquhar and Desroches, taken from the colonial territory of Seychelles.[2] By 1973, the United Kingdom had forcibly removed the entire indigenous population of the Chagos Archipelago, comprising a community of approximately 2000 persons calling themselves Ilois or Chagossians, whilst recognizing respect for traditional fishing rights in the waters of the Chagos Archipelago.

3. In 1968, Mauritius achieved independence from the United Kingdom. Article 111 of the Constitution of Mauritius states that "Mauritius includes…the Chagos Islands, including Diego Garcia". By its 1977 Maritime Zones Act, Mauritius declared a 12-mile territorial sea, a 200-mile EEZ and a continental shelf to the outer edge of the continental margin around all of its territory, including the Chagos Islands. In 1989, Mauritius concluded an Agreement with the European Economic Community on fishing in Mauritian waters, which recalled that "in accordance with [the 1982] Convention, Mauritius has established an exclusive economic zone extending 200 nautical miles from its shores within which it exercises it sovereign rights for the purpose of exploring, exploiting, conserving and managing the resources of the said zone, in accordance with the principles of international law." By its Maritime Zones Act of 28 February 2005, Mauritius reaffirmed

[2] In 1976, when Seychelles achieved independence, the latter three islands were returned to it.

its 200-mile Exclusive Economic Zone, as well as its 12-mile territorial sea and continental shelf. In 2008, pursuant to Articles 75(2) and 84(2) of the 1982 Convention, Mauritius submitted geographical coordinates to the United Nations Division for Ocean Affairs and the Law of the Sea, including in regard to the maritime zones emanating from the Chagos. In 2009, Mauritius submitted to the United Nations Commission on the Limits of the Continental Shelf a preliminary claim to an extended continental shelf in areas beyond 200 miles from the archipelagic baselines of the Chagos Islands.

4. In 1991, the United Kingdom purported to establish a 200-mile "Fisheries Conservation and Management Zone" around the Chagos Archipelago, and in 2003 it purported to declare a 200-mile "Environment Protection and Preservation Zone". In March 2004 the United Kingdom deposited a list of geographical coordinates of points, pursuant to Article 75(2) of the 1982 Convention. Mauritius has objected to these and other actions, even if they were not intended to preclude fishing by Mauritius in the waters around the Chagos Archipelago, and did not have that effect: until 2010 Mauritian vessels have been able to fish in those waters. However, the United Kingdom has now sought to prevent all such fishery activity (including artisanal activity and fishing by the indigenous population) by purporting to establish an 'MPA' that *inter alia* prohibits all fishing activities. In establishing the 'MPA' the United Kingdom has failed *inter alia* (a) to have due regard to the rights of Mauritius and of those persons forcibly removed from the Chagos Archipelago, and (b) to act in a manner compatible with the provisions of the 1982 Convention, and (c) to seek to reach agreement with Mauritius or appropriate subregional or regional organizations, including the Indian Ocean Commission and the Indian Ocean Tuna Commission, on measures necessary to ensure conservation. It

appears that the true purpose of the 'MPA' is not conservation but to prevent the right of return (see recently reported comments of Mr. Colin Roberts, the Director of Overseas the United Kingdom's Foreign and Commonwealth Office, that "establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents").[3] By these actions, the United Kingdom has violated the 1982 Convention and rules of general international law not incompatible with it. The United Kingdom is not (in regard to the Chagos Archipelago) a "coastal state" within the meaning of the 1982 Convention. With regard to the attempt to prohibit all fishing activity, Mauritius invokes the requirement imposed on the United Kingdom by Article 300 of the 1982 Convention.

5. These facts have given rise to a dispute regarding the legality of the 'MPA' under the 1982 Convention. The dispute includes, but is not limited to, respective rights to declare and delimit an exclusive zone under Part V of the 1982 Convention, under which the 'MPA' has purportedly been established, and the interpretation and application of the term "coastal state" in Part V of the 1982 Convention.

JURISDICTION

6. Mauritius and the UK are parties to the 1982 Convention, having ratified respectively on 4 November 1994 and 25 July 1997. Part XV establishes a regime for the settlement of disputes concerning its interpretation and application. Article 279 requires States Parties to seek a solution by peaceful means in accordance with the UN Charter. Article 283(1)

[3] 'UK Foreign Office does not regret evicting Chagos islanders', US diplomatic cable, 13 May 2009, reproduced in *Le Matinal*, Port Louis, Mauritius, 2 December 2010; attached as **Annex 2**.

further requires that when a dispute arises between States Parties, they should proceed expeditiously to an exchange of views regarding a settlement by negotiation or other peaceful means. The parties have exchanged views on the legality of the 'MPA' and the delimitation of the exclusive zones; given the previous and current stance adopted by the United Kingdom, there is no prospect of a negotiated settlement.

7. Article 286 of the 1982 Convention provides that "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." The parties to the dispute have not agreed on the means for the settlement of the dispute: Mauritius has made no declaration pursuant to Article 287(1), whereas by its declaration of 12 January 1998 the United Kingdom chose the International Court of Justice as the means for settling disputes concerning the meaning or application of the 1982 Convention. In accordance with Article 287(5), it follows that this dispute shall be submitted to arbitration under Annex VII. Moreover, neither party has made a declaration under Article 298(1)(a)(i) excluding from compulsory procedures any disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles.

8. Accordingly, in conformity with Article 286, Mauritius submits this dispute with the United Kingdom to an arbitral tribunal constituted in accordance with Annex VII, which has jurisdiction over the dispute in accordance with Article 288(1).

GROUNDS FOR RELIEF

9. The dispute between Mauritius and the United Kingdom relates to the interpretation and application of numerous provisions of UNCLOS, including but not limited to Parts II, V, VI, XII and XVI. In support of its claims, Mauritius also invokes other rules of international law not incompatible with the 1982 Convention, including but not limited to Chapter XI of the United Nations Charter and the principle of permanent sovereignty over natural resources. In accordance with Article 293, such other rules shall be applied by the Annex VII arbitral tribunal. These grounds will be set out in detail in Mauritius' written pleadings.

10. In accordance with the requirements of Article 3(b) of Annex VII, Mauritius appoints Judge Rüdiger Wolfrum as a member of the arbitral tribunal.

RELIEF SOUGHT

11. Mauritius requests the Annex VII arbitral tribunal to declare, in accordance with the provisions of UNCLOS and the applicable rules of international law not incompatible with the Convention that, in respect of the Chagos Archipelago:

(1) the 'MPA' is not compatible with the 1982 Convention, and is without legal effect; and/or

(2) the United Kingdom is not a 'coastal state' within the meaning of the 1982 Convention and is not competent to establish the 'MPA'; and/or

(3) only Mauritius is entitled to declare an exclusive zone under Part V of the 1982 Convention within which a marine protected area might be declared.

12. Mauritius reserves the right to supplement and/or amend its claim and the relief sought as necessary, and to make such other requests from the arbitral tribunal as may be necessary to preserve its rights under UNCLOS.

_____

Mr Dhiren Dabee, Solicitor-General of Mauritius
Government of the Republic of Mauritius
Agent

20 December 2010

ANNEX 1

FOREIGN & COMMONWEALTH OFFICE FCO

Last updated at 11:55 (UK time) 6 Apr

New protection for marine life

01 April 2010

Foreign Secretary David Miliband instructs the Commissioner of the British Indian Ocean Territory to declare a Marine Protected Area.

Foreign Secretary David Miliband today announced the creation of a Marine Protected Area (MPA) in the British Indian Ocean Territory. This will include a “no-take” marine reserve where commercial fishing will be banned.

The British Indian Ocean Territory (BIOT) consists of 55 tiny islands which sit in a quarter of a million square miles of the world’s cleanest seas.

Announcing the creation of this MPA, David Miliband said:

I am today instructing the Commissioner of the British Indian Ocean Territory to declare a Marine Protected Area. The MPA will cover some quarter of a million square miles and its establishment will double the global coverage of the world's oceans under protection. Its creation is a major step forward for protecting the oceans, not just around BIOT itself, but also throughout the world. This measure is a further demonstration of how the UK takes its international environmental responsibilities seriously.

The territory offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change, which are core research issues for UK science.

I have taken the decision to create this marine reserve following a full consultation, and careful consideration of the many issues and interests involved. The response to the consultation was impressive both in terms of quality and quantity. We intend to continue to work closely with all interested stakeholders, both in the UK and internationally, in implementing the MPA.

I would like to emphasise that the creation of the MPA will not change the UK's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes and it is, of course, without prejudice to the outcome of the current, pending proceedings before the European Court of Human Rights.

Further information

The Chagos Islands have belonged to Britain since 1814 (The Treaty of Paris) and are constituted as the British Indian Ocean Territory (BIOT). Only Diego Garcia, where there is a military base, is inhabited (by military personnel and employees).

The idea of making the British Indian Ocean Territory an MPA has the support of an impressive range of UK and international environmental organisations coming together under the auspices of the "Chagos Environment Network" to help enhance the environmental protection in BIOT. Also, well over 90% of those who responded to the consultation made clear that they supported greater marine protection

Pollutant levels in Chagos waters and marine life are exceptionally low, mostly below detection levels at 1 part per trillion using the most sensitive instrumentation available, making it an appropriate global reference baseline.

Scientists also advise us that BIOT is likely to be key, both in research and geographical terms, to the repopulation of coral systems along the East Coast of Africa and hence to the recovery in marine food supply in sub-Saharan Africa. BIOT waters will continue to be patrolled by the territory's patrol vessel, which will enforce the MPA conditions.

Download the full report [PDF]

ANNEX 2

Le Matinal, (Port Louis / Mauritius, 2 December 2010)

Wikileaks: UK Foreign Office does not regret evicting Chagos islanders

More than 2,000 islanders were evicted during the Cold War to make way for a huge US military base. The islanders have fought a long battle to be allowed to return. British Foreign Office and American officials discuss plans to establish a marine park on Diego Garcia and the surrounding islands, which they say would effectively end the islanders resettlement claim.

VZCZCXYZ0030
RR RUEHWEB

DE RUEHLO #1156/01 1350700
ZNY CCCCC ZZH
R 150700Z MAY 09
FM AMEMBASSY LONDON
TO RUEHC/SECSTATE WASHDC 2316
INFO RUEHPL/AMEMBASSY PORT LOUIS 0141
RUEKJCS/SECDEF WASHDC
RHHMUNA/HQ USPACOM HONOLULU HI
RHEHNSC/NSC WASHDC
RUEKJCS/JCS WASHDC
RUENAAA/SECNAV WASHDC
RUVNSAO/NAVSUPPFAC DIEGO GARCIA
RHEBAAA/DEPT OF ENERGY WASHINGTON DC
RUEHC/DEPT OF INTERIOR WASHDC

C O N F I D E N T I A L LONDON 001156
NOFORN [no foreigners]
SIPDIS
EO 12958 DECL: 05/13/2029
TAGS MARR, MOPS, SENV, UK, IO, MP, EFIS, EWWT, PGOV, PREL
SUBJECT: **HMG FLOATS PROPOSAL FOR MARINE RESERVE COVERING THE CHAGOS ARCHIPELAGO (BRITISH INDIAN OCEAN TERRITORY)**
REF: 08 LONDON 2667 (NOTAL)

Classified By: *Political Counselor Richard Mills* for reasons 1.4 b and d

¶1. (C/NF) *Summary*. Her Majesty's Government (HMG) would like to establish a "marine park" or "reserve" providing comprehensive environmental protection to the reefs and waters of the British Indian Ocean Territory (BIOT), a senior Foreign and Commonwealth Office (FCO) official informed Polcouns [Political Counselor] on May 12. The official insisted that the establishment of a marine park -- the world's largest -- would in no way impinge on USG use of the BIOT, including Diego Garcia, for military purposes. He agreed that

the UK and U.S. should carefully negotiate the details of the marine reserve to assure that U.S. interests were safeguarded and the strategic value of BIOT was upheld. He said that the BIOT's former inhabitants would find it difficult, if not impossible, to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve. *End Summary*.

Protecting the BIOT's Waters

¶2. (C/NF) Senior HMG officials support the establishment of a "marine park" or "reserve" in the British Indian Ocean Territory (BIOT), which includes Diego Garcia, Colin Roberts, the Foreign and Commonwealth Office's (FCO) Director, Overseas Territories, told the Political Counselor May 12. Noting that the uninhabited islands of the Chagos Archipelago are already protected under British law from development or other environmental harm but that current British law does not provide protected status for either reefs or waters, Roberts affirmed that the bruited proposal would only concern the "exclusive zone" around the islands. The resulting protected area would constitute "the largest marine reserve in the world."

¶3. (C/NF) Roberts iterated strong UK "political support" for a marine park; "Ministers like the idea," he said. He stressed that HMG's "timeline" for establishing the park was before the next general elections, which under British law must occur no later than May 2010. He suggested that the exact terms of the proposals could be defined and presented at the U.S.-UK annual political-military consultations held in late summer/early fall 2009 (exact date TBD). If the USG would like to discuss the issue prior to those talks, HMG would be open for discussion through other channels -- in any case, the FCO would keep Embassy London informed of development of the idea and next steps. The UK would like to "move forward discussion with key international stakeholders" by the end of 2009. He said that HMG had noted the success of U.S. marine sanctuaries in Hawaii and the Marianas Trench. (*Note*: Roberts was referring to the Papahanaumokuakea Marine National Monument and Marianas Trench Marine National Monument. *End Note*.) He asserted that the Pew Charitable Trust, which has proposed a BIOT marine reserve, is funding a public relations campaign in support of the idea. He noted that the trust had backed the Hawaiian reserve and is well-regarded within British governmental circles and the larger British environmental community.

Three Sine Qua Nons: U.S. Assent...

¶4. (C/NF) According to Roberts, three pre-conditions must be met before HMG could establish a park. First, "we need to make sure the U.S. government is comfortable with the idea. We would need to present this proposal very clearly to the American administration...All we do should enhance base security or leave it unchanged." Polcouns expressed appreciation for this a priori commitment, but stressed that the 1966 U.S.-UK Exchange of Notes concerning the BIOT would, in any event, require U.S. assent to any significant change of the BIOT's status that could impact the BIOT's strategic use. Roberts stressed that the proposal "would have no impact on how Diego Garcia is administered as a base." In response to a request for clarification on this point from Polcouns, Roberts asserted that the proposal would have absolutely no impact on the right of U.S. or British military vessels to use the BIOT for passage, anchorage, prepositioning, or other uses. Polcouns rejoined that designating the BIOT as a marine park could, years down the road, create public questioning about the suitability of the BIOT for military purposes. Roberts responded that the terms of reference for the establishment of a marine park would clearly state that the BIOT,

including Diego Garcia, was reserved for military uses.

¶5. (C/NF) Ashley Smith, the Ministry of Defense's (MOD) International Policy and Planning Assistant Head, Asia Pacific, who also participated in the meeting, affirmed that the MOD "shares the same concerns as the U.S. regarding security" and would ensure that security concerns were fully and properly addressed in any proposal for a marine park. Roberts agreed, stating that "the primary purpose of the BIOT is security" but that HMG could also address environmental concerns in its administration of the BIOT. Smith added that the establishment of a marine reserve had the potential to be a "win-win situation in terms of establishing situational awareness" of the BIOT. He stressed that HMG sought "no constraints on military operations" as a result of the establishment of a marine park.

...Mauritian Assent...

¶6. (C/NF) Roberts outlined two other prerequisites for establishment of a marine park. HMG would seek assent from the Government of Mauritius, which disputes sovereignty over the Chagos archipelago, in order to avoid the GOM "raising complaints with the UN." He asserted that the GOM had expressed little interest in protecting the archipelago's sensitive environment and was primarily interested in the archipelago's economic potential as a fishery. Roberts noted that in January 2009 HMG held the first-ever "formal talks" with Mauritius regarding the BIOT. The talks included the Mauritian Prime Minister. Roberts said that he "cast a fly in the talks over how we could improve stewardship of the territory," but the Mauritian participants "were not focused on environmental issues and expressed interest only in fishery control." He said that one Mauritian participant in the talks complained that the Indian Ocean is "the only ocean in the world where the fish die of old age." In HMG's view, the marine park concept aims to "go beyond economic value and consider bio-diversity and intangible values."

...Chagossian Assent

¶7. (C/NF) Roberts acknowledged that "we need to find a way to get through the various Chagossian lobbies." He admitted that HMG is "under pressure" from the Chagossians and their advocates to permit resettlement of the "outer islands" of the BIOT. He noted, without providing details, that "there are proposals (for a marine park) that could provide the Chagossians warden jobs" within the BIOT. However, Roberts stated that, according to the HGM,s current thinking on a reserve, there would be "no human footprints" or "Man Fridays" on the BIOT's uninhabited islands. He asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents. Responding to Polcouns' observation that the advocates of Chagossian resettlement continue to vigorously press their case, Roberts opined that the UK's "environmental lobby is far more powerful than the Chagossians' advocates." (*Note*: One group of Chagossian litigants is appealing to the European Court of Human Rights (ECHR) the decision of Britain's highest court to deny "resettlement rights" to the islands' former inhabitants. See below at paragraph 13 and reftel. *End Note*.)

Je Ne Regrette Rien

¶8. (C/NF) Roberts observed that BIOT has "served its role very well," advancing shared U.S.-UK strategic security objectives for the past several decades. The BIOT "has had a great role in assuring the security of the UK and U.S. -- much more than anyone foresaw" in the 1960s, Roberts emphasized.

"We do not regret the removal of the population," since removal was necessary for the BIOT to fulfill its strategic purpose, he said. Removal of the population is the reason that the BIOT's uninhabited islands and the surrounding waters are in "pristine" condition. Roberts added that Diego Garcia's excellent condition reflects the responsible stewardship of the U.S. and UK forces using it.

Administering a Reserve

¶9. (C/NF) Roberts acknowledged that numerous technical questions needed to be resolved regarding the establishment and administration of a marine park, although he described the governmental "act" of declaring a marine park as a relatively straightforward and rapid process. He noted that the establishment of a marine reserve would require permitting scientists to visit BIOT, but that creating a park would help restrict access for non-scientific purposes. For example, he continued, the rules governing the park could strictly limit access to BIOT by yachts, which Roberts referred to as "sea gypsies."

BIOT: More Than Just Diego Garcia

¶10. (C/NF) Following the meeting with Roberts, Joanne Yeadon, Head of the FCO's Overseas Territories Directorate's BIOT and Pitcairn Section, who also attended the meeting with Polcouns, told Poloff [Political Officer] that the marine park proposal would "not impact the base on Diego Garcia in any way" and would have no impact on the parameters of the U.S.-UK 1966 exchange of notes since the marine park would "have no impact on defense purposes." Yeadon averred that the provision of the UN Convention on the Law of the Sea guaranteed free passage of vessels, including military vessels, and that the presence of a marine park would not diminish that right.

¶11. (C/NF) Yeadon stressed that the exchange of notes governed more than just the atoll of Diego Garcia but expressly provided that all of the BIOT was "set aside for defense purposes." (*Note*: This is correct. *End Note*.) She urged Embassy officers in discussions with advocates for the Chagossians, including with members of the "All Party Parliamentary Group on Chagos Islands (APPG)," to affirm that the USG requires the entire BIOT for defense purposes. Making this point would be the best rejoinder to the Chagossians' assertion that partial settlement of the outer islands of the Chagos Archipelago would have no impact on the use of Diego Garcia. She described that assertion as essentially irrelevant if the entire BIOT needed to be uninhabited for defense purposes.

¶12. (C/NF) Yeadon dismissed the APPG as a "persistent" but relatively non-influential group within parliament or with the wider public. She said the FCO had received only a handful of public inquiries regarding the status of the BIOT. Yeadon described one of the Chagossians' most outspoken advocates, former HMG High Commissioner to Mauritius David Snoxell, as "entirely lacking in influence" within the FCO. She also asserted that the Conservatives, if in power after the next general election, would not support a Chagossian right of return. She averred that many members of the Liberal Democrats (Britain's third largest party after Labour and the Conservatives) supported a "right of return."

¶13. (C/NF) Yeadon told Poloff May 12, and in several prior meetings, that the FCO will vigorously contest the Chagossians' "right of return" lawsuit

before the European Court of Human Rights (ECHR). HMG will argue that the ECHR lacks jurisdiction over the BIOT in the present case. Roberts stressed May 12 (as has Yeadon on previous occasions) that the outer islands are "essentially uninhabitable" and could only be rendered livable by modern, Western standards with a massive infusion of cash.

Comment

¶14. (C/NF) Regardless of the outcome of the ECHR case, however, the Chagossians and their advocates, including the "All Party Parliamentary Group on Chagos Islands (APPG)," will continue to press their case in the court of public opinion. Their strategy is to publicize what they characterize as the plight of the so-called Chagossian diaspora, thereby galvanizing public opinion and, in their best case scenario, causing the government to change course and allow a "right of return." They would point to the government's recent retreat on the issue of Gurkha veterans' right to settle in the UK as a model. Despite FCO assurances that the marine park concept -- still in an early, conceptual phase -- would not impinge on BIOT's value as a strategic resource, we are concerned that, long-term, both the British public and policy makers would come to see the existence of a marine reserve as inherently inconsistent with the military use of Diego Garcia -- and the entire BIOT. In any event, the U.S. and UK would need to carefully negotiate the parameters of such a marine park -- a point on which Roberts unequivocally agreed. In Embassy London's view, these negotiations should occur among U.S. and UK experts separate from the 2009 annual Political-Military consultations, given the specific and technical legal and environmental issues that would be subject to discussion.

¶15. (C/NF) *Comment Continued*. We do not doubt the current government's resolve to prevent the resettlement of the islands' former inhabitants, although as FCO Parliamentary Under-Secretary Gillian Merron noted in an April parliamentary debate, "FCO will continue to organize and fund visits to the territory by the Chagossians." We are not as sanguine as the FCO's Yeadon, however, that the Conservatives would oppose a right of return. Indeed, MP Keith Simpson, the Conservatives' Shadow Minister, Foreign Affairs, stated in the same April parliamentary debate in which Merron spoke that HMG "should take into account what I suspect is the all-party view that the rights of the Chagossian people should be recognized, and that there should at the very least be a timetable for the return of those people at least to the outer islands, if not the inner islands." Establishing a marine reserve might, indeed, as the FCO's Roberts stated, be the most effective long-term way to prevent any of the Chagos Islands' former inhabitants or their descendants from resettling in the BIOT.

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

REASONED DECISION ON CHALLENGE

---

30 November 2011

TABLE OF CONTENTS

I. PROCEDURAL HISTORY

A. Commencement of the Arbitration

1. This challenge arises out of a dispute between the Republic of Mauritius ("Mauritius") and the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom" or the "UK") under the 1982 United Nations Convention on the Law of the Sea (the "Convention"), to which Mauritius and the United Kingdom (together, the "Parties") are party.

2. Mauritius is represented by its Agent, Mr. Dheerendra Kumar Dabee SC, Solicitor-General of Mauritius, and its Counsel, Sir Sydney Kentridge QC, Professor James Crawford SC, Professor Philippe Sands QC, Miss Alison Macdonald, and Mr. Andrew Loewenstein.

3. The United Kingdom is represented by its Agent, Mr. Christopher A. Whomersley, Deputy Legal Adviser at the Foreign and Commonwealth Office (the "FCO"), its Deputy Agent, Ms Susan Dickson, Legal Counsellor at the FCO, and its Counsel, Sir Michael Wood KCMG, Professor Alan Boyle, and Mr. Samuel Wordsworth.

4. By Notification and Statement of Claim dated 20 December 2010, Mauritius commenced arbitration proceedings against the United Kingdom pursuant to Article 287 of the Convention and in accordance with Article 1 of Annex VII of the Convention.

B. Constitution of the Tribunal

5. The Members of the Tribunal were appointed in accordance with Article 3 of Annex VII of the Convention. By its Notification and Statement of Claim, Mauritius appointed Judge Rüdiger Wolfrum, a German national.

6. On 19 January 2011, in accordance with Article 3(c) of Annex VII of the Convention, the United Kingdom appointed Judge Sir Christopher Greenwood CMG QC, a British national.

7. On 21 February 2011, Mauritius requested that the President of the International Tribunal for the Law of the Sea ("ITLOS") appoint the three remaining arbitrators pursuant to Article 3(e) of Annex VII of the Convention.

8. On 25 March 2011, the President of ITLOS appointed Judge James Kateka, a Tanzanian national, and Judge Albert Hoffmann, a South African national, as arbitrators, and Professor Ivan Shearer, an Australian national, as arbitrator and President of the Tribunal.

C. Commencement of the Challenge to Judge Greenwood

9. On 2 May 2011, the Permanent Court of Arbitration (the "PCA"), acting as Registry in this case, transmitted to the Parties the Declarations of Acceptance and the Statements of Impartiality and Independence of the five arbitrators as well as a Disclosure Statement dated 27 April 2011 submitted by Judge Greenwood.

10. On 19 May 2011, Mauritius requested additional disclosure from Judge Greenwood (the "Request for Additional Disclosure"). Mauritius expressed concern at the "long-standing" and "close working" character of the relationship between Judge Greenwood and the Government of the United Kingdom and also at the fact that Judge Greenwood had advised the United Kingdom "on many of the most sensitive issues of international law and foreign policy". Considering the "strategic importance for the United Kingdom" of the issues raised in the case brought before the Tribunal, Mauritius requested further disclosure from Judge Greenwood on:

(i) his involvement with the United Kingdom on legal matters touching directly or indirectly on the island of Diego Garcia;

(ii) his involvement with the United Kingdom on the application of the European Convention on Human Rights (the "ECHR") to the Chagos Archipelago or to the British overseas territories;

(iii) his intention to seek reelection to the International Court of Justice (the "ICJ"); and

(iv) his service on the Appointments Board for the new Legal Adviser to the FCO (the "Board").

11. On 20 May 2011, Judge Greenwood submitted a Further Disclosure Statement in response to the Request for Additional Disclosure. After restating his independence and asserting that he would "approach the issues in this arbitration with complete impartiality", Judge Greenwood answered the questions raised by Mauritius as follows:

(i) he had never performed any legal work for the United Kingdom relating to the Chagos Islands including Diego Garcia;

(ii) he had never advised the United Kingdom on the application of the ECHR to the Chagos Archipelago or to the British overseas territories;

(iii) he had not yet formed any intention regarding reelection to the ICJ; and

(iv) the Board was chaired by a Civil Service Commissioner who was an independent office-holder, not in the full-time employment of the Crown. There were two other members of the Board, respectively from the FCO and the Government Legal Service. Judge Greenwood noted that he was asked to take part because he was "also independent of the Government". Moreover, he accepted his appointment as member of the Board, in December 2010, before he was approached regarding the present dispute. Finally, the Board made its decision on the selection of the new legal adviser on 14 March 2011, after his appointment.

As a concluding remark, Judge Greenwood stated that "at no stage in the process of appointment" was he "party to, or aware of, any discussion either with the candidates or amongst the members of the board of anything relating to the present arbitration, the Chagos Islands more generally or the law of the sea".

12. On 23 May 2011, Mauritius stated its intention to challenge the appointment of Judge Greenwood (the "Challenge") on the basis that Judge Greenwood had acted for the United Kingdom within the past three years and that this relationship continued, as evidenced by his participation in the selection of the new legal adviser to the FCO after his appointment to the Tribunal. Mauritius thus considered his appointment to be incompatible with the principles of independence and impartiality. Mauritius indicated that it would submit detailed grounds at a later date.

D. Challenge Procedure

13. By letter to the Parties dated 30 May 2011, the PCA conveyed the Tribunal's proposal regarding the procedure for deciding the Challenge. The Tribunal proposed (i) a schedule for submissions by the Parties and Judge Greenwood; (ii) that the decision on the Challenge would be made by a majority vote of the four other Members of the Tribunal; with the President of the Tribunal having a casting vote in the absence of a majority; and (iii) that, should there be no

agreement on the need for a hearing, the Tribunal would decide whether it wished to hold a hearing following receipt of the United Kingdom's Rejoinder.

14. By e-mail of 3 June 2011 and by letter of 8 June 2011, the United Kingdom and Mauritius respectively confirmed their agreement to the Tribunal's proposed procedure for deciding the Challenge. The exchange of written submissions then proceeded in accordance with the schedule thus agreed.

15. On 15 June 2011, Mauritius submitted its grounds for the Challenge (the "Memorial on Challenge").

16. On 13 July 2011, the United Kingdom submitted its Response.

17. On 20 July 2011, Judge Greenwood submitted his comments on the Parties' submissions ("Judge Greenwood's Comments").

18. By letter of 25 July 2011, the PCA, on behalf of the Tribunal, informed the Parties that, with respect to the Challenge, the Parties' written pleadings, the comments of Judge Greenwood, and any documentary material or evidence would remain confidential. Furthermore, should there be a hearing, the hearing would not be open to the public and any transcript would remain confidential.

19. On 1 August 2011, Mauritius submitted its Reply.

20. On 11 August 2011, the United Kingdom submitted its Rejoinder.

21. By letter of 19 August 2011, the PCA conveyed to the Parties the Tribunal's decision to hold a hearing on the Challenge in accordance with the schedule circulated to the Parties on a provisional basis by the PCA on 8 August 2011.

22. By letter dated 19 September 2011, Mauritius submitted a letter dated 16 September 2011 from Judge Thomas Mensah together with a "Statement of Explanation" attached thereto, and requested that the letter dated 16 September 2011 and attachment be introduced into the proceedings.

23. By letter of 22 September 2011, the PCA informed the Parties of the decision by the President of the Tribunal that Mauritius withhold its request and submit it at the hearing scheduled for 4 October 2011, where the United Kingdom would be given an opportunity to comment.

24. By e-mail sent on 22 September 2011, the United Kingdom requested that Mauritius obtain and disclose a copy of a document that appeared to be quoted by Judge Mensah in his Opinion attached as Annex 1 to the Reply of Mauritius dated 1 August 2011.

25. On 30 September 2011, in response to the United Kingdom's e-mail of 22 September 2011, Mauritius circulated a letter from Judge Mensah dated 30 September 2011 to which was attached a document headed "Tribunal Incompatible Activities, Discussions 28 to 31 October 1996". The letter explained that this document was a contemporaneous note made by Judge Mensah in 1996 of certain internal discussions that took place within ITLOS in 1996.

E. Hearing

26. A hearing was held on 4 October 2011 at the Peace Palace in The Hague. Present at the hearing were:

Tribunal:	Professor Ivan Shearer
	Judge Albert Hoffmann
	Judge James Kateka
	Judge Rüdiger Wolfrum
Claimant:	Mr. Dheerendra Kumar Dabee SC
	Sir Sydney Kentridge QC
	Professor James Crawford SC
	Professor Philippe Sands QC
	Mr. Andrew Loewenstein
	Miss Alison Macdonald
	Mr. Suresh Chundre Seeballuck
	His Excellency Dr Jaya Nyamrajsingh Meetarbhan
	Ms. Shiu Ching Young Kim Fat
	Mr. Remi Reichhold
Respondent:	Mr. Christopher A. Whomersley
	Ms. Susan Dickson
	Professor Alan Boyle
	Sir Michael Wood KCMG
	Mr. Samuel Wordsworth
Registrar:	Mr. Brooks W. Daly

27. At the hearing, Mauritius sought confirmation whether there was any objection to the introduction into the record of the letters from Judge Mensah dated 16 and 30 September 2011 and their attachments. The United Kingdom confirmed that it had no objection to the introduction of those documents.

28. Each Party then presented arguments on the Challenge and answered questions from the four Members of the Tribunal.

29. At the conclusion of the hearing, the Tribunal proposed that it first deliver its decision on the Challenge without reasons, and that a reasoned decision be issued in due course thereafter. The Parties agreed to the Tribunal's proposal.

30. A *verbatim* transcript of the hearing was prepared and was made available during the hearing to the Parties and the four Members of the Tribunal by real-time electronic display. Electronic

copies of the transcript were distributed to the Parties and the four Members of the Tribunal after the hearing. On 14 October 2011, amended copies of the transcript, reflecting editorial amendments made by request of the Parties, were distributed to the Parties and to the four Members of the Tribunal by e-mail.

II. FACTUAL BACKGROUND

A. The Dispute between the Parties

31. The Chagos Archipelago, also known as the Chagos Islands, is a group of atolls in the Indian Ocean, the largest of which is Diego Garcia. The islands forming the Chagos Archipelago are administered by the United Kingdom as the British Indian Ocean Territory (the "BIOT").

32. On 1 April 2010, the United Kingdom issued a decision by which it established a Marine Protected Area (the "MPA") around the Chagos Archipelago, in which fishing and other activities are prohibited. The MPA extends to a distance of 200 nautical miles from the Chagos Archipelago and thus covers an area of more than half a million square kilometres. Mauritius contends that the establishment of the MPA violates the Convention and other rules of international law not incompatible with the Convention and seeks to obtain an authoritative and legally binding declaration regarding the legality of the MPA.

B. Judge Sir Christopher Greenwood CMG QC

33. Judge Sir Christopher Greenwood CMG QC was elected to the ICJ in February 2009. Prior to his appointment to the Court, Judge Greenwood had taught and lectured in international law at the University of Cambridge from 1976 to 1996 and as Professor of International Law at the London School of Economics and Political Science from 1996 to 2009.

34. From 1978, Judge Greenwood also practised as a barrister at the Bar of England and Wales (the "English Bar"), where he specialized in the field of public international law, appearing as counsel or expert witness before numerous international courts and tribunals and as counsel before the English courts. In the course of his practice at the English Bar, Judge Greenwood acted as counsel both on behalf of and against the United Kingdom, and advised or represented approximately twenty States other than the United Kingdom.

C. Selection of the Legal Adviser to the FCO

35. On 11 February 2011, the Government of the United Kingdom advertised the post of Legal Adviser to the FCO. The Board[1] was formed for the assessment of the candidates and was chaired by Miss Elizabeth Watkins, a Civil Service Commissioner. Judge Greenwood was appointed to the Board in December 2010. The other members of the Board were Mr. Simon Fraser, the Permanent Undersecretary at the FCO, and Mr. Paul Jenkins, the Treasury Solicitor and head of the Government Legal Service.

36. The Board met to consider applications on 7 March 2011 and again to interview candidates for the post on 14 March 2011. After the interviews, on the same day, it assessed the candidates and placed them in order of merit by unanimous decision. After that point, Judge Greenwood's involvement with the Board ceased.

37. The recommendation of the Board was formally communicated by letter from the Chair of the Board to the Permanent Undersecretary of the FCO. Thereafter, the appointment of the Legal

[1] See paras. 10-11 above.

Adviser was made by the FCO, on the decision of the Permanent Secretary. In accordance with usual practice for appointment to this post, the Permanent Secretary followed the recommendation of the Board. The person thus appointed was Mr. Iain Macleod.

38. As the principal legal adviser to the FCO, the Legal Adviser has overall responsibility for all the work of the FCO legal advisers including their work on the conduct of this dispute, but is not involved with the arbitration on a day-to-day basis. Overall responsibility for the conduct of the present arbitration by the United Kingdom rests with the UK Attorney General.

III. POSITIONS OF THE PARTIES

A. Standard to be Applied

1. Mauritius's Position

39. Mauritius submits that Judge Greenwood's long, close and continuing relationship with the Government of the United Kingdom is "incompatible with the necessary objective of appearance of independence".[2] In order to ascertain what the obligation of independence and impartiality entails, Mauritius relies on Article 293(1) of the Convention which provides that the Tribunal must apply other rules of international law not incompatible with the Convention.[3]

40. Mauritius contends that the requirement of independence and impartiality of arbitrators in international arbitration is reflected in international arbitration rules and statutes, such as Article 10 of the PCA's Optional Rules for Arbitrating Disputes Between Two States, Article 12(1) of the United Nations Commission on International Trade Law Arbitration Rules 2010 (the "UNCITRAL Rules"), Article 57 of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "ICSID Convention"),[4] as well as Article 12 of the UNCITRAL Model Law of 1985.[5] Mauritius further argues that, under the Burgh House Principles on the Independence of the International Judiciary, and the 2011 Resolution of the *Institut de Droit International* on the Position of the International Judge, this requirement is a principle of international law of general application applying to, *inter alia*, international arbitration proceedings[6] including arbitrations under Annex VII of the Convention.[7]

41. Mauritius emphasizes that the practice of tribunals is to assess the obligation of arbitral impartiality and independence by reference to an objective standard.[8] That standard is whether circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence from the perspective of a reasonable and informed person (the "Appearance of Bias Standard").[9] In this respect, Mauritius relies on the Statements of Professor George Bermann,[10] and Professor Abimbola A. Olowofoyeku,[11] and on the following decisions on challenge: *Vito G.*

[2] Memorial on Challenge, para. 5.
[3] Transcript, pp. 33-34.
[4] Memorial on Challenge, para. 25.
[5] Transcript, pp. 38-39.
[6] Memorial on Challenge, paras. 26, 27; Transcript, pp. 43-44.
[7] Memorial on Challenge, para. 27.
[8] Memorial on Challenge, para. 28.
[9] Memorial on Challenge, para. 41.
[10] Memorial on Challenge, para. 28, citing the Statement of Professor George Bermann, Annex 2, para. 12.
[11] Memorial on Challenge, para. 29, citing the Statement of Professor Abimbola A. Olowofoyeku, Annex 3, para. 76.

Gallo v. Government of Canada[12] under the UNCITRAL Rules; *National Grid P.L.C. v. Argentine Republic* under the Challenge Division of the London Court of International Arbitration;[13] *Suez and Others v. Argentine Republic* under the Arbitration Rules of ICSID and the UNCITRAL Rules;[14] and the ICSID cases of *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic*[15] and *Perenco Ecuador Ltd. v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador.*[16]

42. Mauritius argues that the practice of courts is also to assess the obligation of impartiality and independence by reference to the Appearance of Bias Standard. Mauritius refers to cases from various jurisdictions in support of its claim: *Porter v. Magill*,[17] *De Cubber v. Belgium*,[18] *Webb and Hay v. The Queen*,[19] *Johnson v. Johnson*,[20] *BTR Industries South Africa (Pty) Ltd. and Others v. Metal and Allied Workers' Union and Another*,[21] *Liljeberg v. Health Services Acquisition Corp.*,[22] and *Prosecutor v. Furundžija*.[23]

43. Mauritius contends that "the proper inquiry is not whether actual bias or dependence upon a party exists, but instead, whether there is an appearance of bias or lack of independence [or impartiality]".[24] According to Mauritius, "it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done"[25] and "bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interests to affect his mind, although nevertheless he may have allowed it unconsciously to do so".[26] Mauritius comments that "the objective standard of judicial impartiality is not there simply for the purpose of the particular case, it is concerned with the integrity of the international judicial process […]".[27]

---

[12] *Vito G. Gallo v. Government of Canada*, Decision on the Challenge to Mr. J. Christopher Thomas, QC, NAFTA/UNCITRAL (14 Oct. 2009), para. 19.
[13] *National Grid P.L.C. v. Argentine Republic*, Decision on the Challenge to Mr. Judd L. Kessler, Division of the LCIA Court, Case No. UN 7949 (3 Dec. 2007), para. 80.
[14] *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales de Agua S.A. v. Argentine Republic* ICSID Case No. ARB/03/17, *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A.* ICSID Case No. ARB/03/19, *AWG Group Limited v. Argentine Republic*, UNCITRAL Arbitration, Decision on a Second Proposal for the Disqualification of a Member of the Arbitral Tribunal, (12 May 2008), para. 22.
[15] *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic*, ICSID Case No. ARB/07/26, Decision on Claimants' Proposal to Disqualify Professor Campbell McLachlan, Arbitrator (12 Aug. 2010), para. 43.
[16] *Perenco Ecuador Ltd. v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador ("PetroEcuador")*, Decision on Challenge to Arbitrator (8 Dec. 2009), paras. 54-58.
[17] *Porter* v. *Magill* [2002] 2 A.C. 357, para. 103.
[18] *De Cubber v. Belgium* (1985) 7 EHRR 236, para. 26.
[19] *Webb and Hay v. The Queen* (1994) 181 CLR 41, 47.
[20] *Johnson v. Johnson* (2000) 201 CLR 488, 492, para. 11.
[21] *BTR Industries South Africa (Pty) Ltd. and Others v. Metal and Allied Workers' Union and Another* [1992] ZASCA 85, 49.
[22] *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 858-862 (1988). All cases cited in the Transcript, pp. 12-17.
[23] *Prosecutor v. Furundžija*, ICTY Case No. IT-95-17/1-A, Appeals Chamber Judgment (21 July 2000), para. 189.
[24] Memorial on Challenge, para. 32.
[25] Transcript, p. 19.
[26] Transcript, p. 20.
[27] Transcript, p. 37.

44. Mauritius asserts that the reputation of the arbitrator is immaterial, as found by the Secretary-General of the PCA in *Perenco Ecuador v. Ecuador*,[28] and his or her professed intention to be independent and impartial is not a relevant consideration either, as held in *ICS Inspection and Control Services Ltd. v. Argentine Republic*.[29]

45. Mauritius claims that the Appearance of Bias Standard has been codified in the International Bar Association (the "IBA") Guidelines on Conflicts of Interest in International Arbitration (the "IBA Guidelines") at General Standard 2. These Guidelines "are intended to apply to all forms of international arbitration,"[30] since in the words of the Chair of the IBA Working Group, Mr. de Witt Wijnen, these Guidelines "enjoyed the full support of all 19 members [of the Group], as reflecting best international practice in international arbitration".[31]

46. Mauritius argues that the Appearance of Bias Standard reflected in the IBA Guidelines is a universal standard that is also reflected in the UNCITRAL Arbitration Rules, the PCA's Optional Rules for Arbitrating Disputes Between Two States, and in the respective rules of the Court of Arbitration of the International Chamber of Commerce, the London Court of International Arbitration, the International Centre for Dispute Resolution of the American Arbitration Association and the Arbitration Institute of the Stockholm Chamber of Commerce. It is "applicable to all arbitrations" and "there is no justification in law or policy for a different or lower standard of arbitral ethics in inter-State arbitrations, especially where the tribunal must resolve disputes that involve issues of national importance and great public interest".[32]

2. The United Kingdom's Position

47. The United Kingdom argues that Article 2(1) of Annex VII of the Convention establishes a standard for the purposes of any given challenge to an arbitral nominee, a standard which has "a key component of fairness, or '*impartialité*' in the French text, and also comprises competence and integrity".[33] The United Kingdom further argues there is no textual basis for this standard to comprise a justifiable doubts test.[34]

48. The United Kingdom also submits that Article 3(e) of Annex VII of the Convention, the default provision which applies both where the respondent State has failed to nominate an arbitrator and where the two States have been unable to agree on the identity of the three remaining arbitrators, establishes a standard of independence of the arbitral nominee by providing that the members so appointed may not be in the service of any of the parties to the dispute.[35]

49. The United Kingdom further submits that, since "[n]either the Parties nor the Tribunal have adopted any provisions [to be applied to the determination of the Challenge], […] the Tribunal should have regard primarily to the rules and practice applied by other courts and tribunals dealing with inter-State cases".[36]

---

[28] Memorial on Challenge, para. 31, referring to *Perenco Ecuador Ltd. v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador ("PetroEcuador")*, Decision on Challenge to Arbitrator (8 Dec. 2009), para. 62.
[29] Reply of Mauritius, para. 64, referring to *ICS Inspection and Control Services Ltd. v. Argentine Republic*, Decision on Challenge to Arbitrator (17 Dec. 2009), para. 5.
[30] Memorial on Challenge, para. 36.
[31] Memorial on Challenge, para. 35, citing the Statement of Mr. O.L.O. de Witt Wijnen, Annex 1, para. 10.
[32] Reply of Mauritius, para. 8.
[33] Transcript, p. 94.
[34] Transcript, p. 95.
[35] Transcript, pp. 95-96.
[36] Response of the United Kingdom, paras. 45-46.

50. The United Kingdom argues that, in addition to "the inter-state context, […] Annex VII arbitration is one of the options (the default option) for compulsory dispute settlement under Part XV of [the Convention]", alongside the ICJ and ITLOS. The United Kingdom adds that "[t]he disputes concerned are identical in nature".[37] The United Kingdom asserts that "[i]t cannot have been intended, and it would make no sense, if the applicable law and practice concerning matters such as conflict should vary between the three forums when dealing with identical cases".[38] In this respect, arbitration should not be different and apply a higher standard than judicial settlement.[39]

51. The United Kingdom argues that the rules and practice of the ICJ and ITLOS, as well as inter-State arbitrations, in particular those under Annex VII of the Convention, are of most relevance.[40]

52. The United Kingdom contends that under the law and practice of these forums, "close past relationship" has never been a ground for challenging an arbitrator.[41] In fact, according to the United Kingdom, "the law and practice applicable in inter-State arbitrations fully supports the election of judges with a close professional relationship to their own State, as shown by the record of most serving and previous ICJ and ITLOS judges, and the limited basis on which they are disqualified from sitting in particular cases".[42]

53. The United Kingdom argues that, under the aforementioned law and practice related to inter-State disputes, "the principal test of conflict of interest is prior involvement in the subject-matter of the case".[43] In other words, "the arbitrator must not have had any involvement with the actual dispute that is before the arbitral tribunal"[44] (the "Specific Prior Involvement Standard"). In this respect, besides Judge Guillaume's Statement on ICJ practice, the United Kingdom relies on Articles 16, 17 and 24 of the ICJ Statute, Article 34 of the Rules of the Court of the ICJ, Article 8 of the Statute of ITLOS, and the practice of these two international courts and of inter-State arbitral tribunals under Annex VII of the Convention.

54. With respect to ICJ practice, the United Kingdom refers to ICJ cases where Members of the Court sat even though they had close connections with their States. In particular, the United Kingdom refers to the disposal of the Israeli challenge to Judge Elaraby in the case concerning legal consequences of the construction of a wall in the occupied Palestinian territory whereby in its Order of 30 January 2004, the Court (by 13 votes to 1) dismissed the challenge on the basis that "Judge Elaraby could not be regarded as having 'previously taken part' in the case in any capacity".[45]

55. Moreover, with respect to what would be the practice of the ICJ in regard to Judge Greenwood's sitting on the Board for the selection of the new FCO Legal Adviser, the United Kingdom refers to a conclusion reached by judges of the Permanent Court of International Justice (the "PCIJ") on the application of Article 16 of the PCIJ Statute, the wording of which remained unchanged under the ICJ Statute:

---

[37] Response of the United Kingdom, para. 48.
[38] Rejoinder of the United Kingdom, para. 14.
[39] Transcript, pp. 141-142, 157.
[40] Response of the United Kingdom, para. 46.
[41] Response of the United Kingdom, para. 61.
[42] Response of the United Kingdom, para. 70.
[43] Response of the United Kingdom, para. 2(iii).
[44] Response of the United Kingdom, para. 66.
[45] Response of the United Kingdom, paras. 54-58, citing the Order of 30 January 2004, ICJ Reports 2004, p.3, para. 7.

> *There was no incompatibility between the functions of a judge and the functions of a member of a government commission for testing candidates for the diplomatic service.*[46]

56. With respect to ITLOS practice, the United Kingdom submits that no judge of ITLOS has yet been challenged. However, it submits that many Members of ITLOS, similarly to the ICJ, have a closer connection with the government which nominated them than Judge Greenwood, as former government employee for example, and have continued to sit, without challenge, in cases involving the State by which they had been employed. An example given by the United Kingdom of such a case before ITLOS is that of Judge Anderson in the proceedings on provisional measures in the *MOX Plant Case (Ireland v. United Kingdom)*.[47]

57. With respect to the practice of inter-State arbitral tribunals under Annex VII of the Convention, the United Kingdom submits that "arbitrators often have a similarly close relationship to the State which appoints them and that in practice this has not been a bar to their sitting in cases in which their own government is a party".[48] An example given by the United Kingdom in this respect is the case of Sir Arthur Watts, formerly FCO Legal Adviser, who served without challenge as a UK-appointed arbitrator in the *MOX Plant* arbitration under Annex VII of the Convention.[49]

3. Comments of Mauritius on the United Kingdom's Position

58. Mauritius maintains that the Appearance of Bias Standard is a general principle of law and Annex VII of the Convention should not be considered as a *lex specialis* in this respect as argued by the United Kingdom.[50] Mauritius states: "[…] if Annex VII was a *lex specialis* in relation to the questions of independence, it would be hard to understand why all Annex VII tribunals that have adopted rules have adopted rules allowing for challenge to arbitrators".[51]

59. Also, according to Mauritius, the application of the standard of a "reasonable state", by opposition to a "reasonable person", advanced by the United Kingdom to inter-State arbitrations, is entirely novel, lacks any supporting authority, and should not be accepted.[52]

60. In response to the United Kingdom's submission that, based on the practice of the ICJ and of ITLOS, the applicable standard should be one of previous involvement in the subject-matter of the case, Mauritius argues that the practice of the ICJ and of ITLOS is very different from that claimed by the United Kingdom: both require recusal of a Judge where there is a special reason that gives rise to an appearance of bias,[53] pursuant to Article 24 of the ICJ Statute and Article 8(2) – (4) of the ITLOS Statute.[54] Mauritius contends that having advised a government on the subject-matter of a dispute is not the only ground for recusal.[55] Mauritius seeks support for its view in Judge Mensah's and Professor Shany's Statements. According to the former, the

[46] Transcript, p. 133 referring to PCIJ publication series D number 2 at page 12.
[47] Response of the United Kingdom, para. 62, referring to the *MOX Plant Case (Ireland v. United Kingdom)*, Provisional Measures Order, ITLOS (3 Dec. 2001).
[48] Response of the United Kingdom, para. 64.
[49] Response of the United Kingdom, para. 64, referring to the *MOX Plant Case (Ireland v. United Kingdom)* (PCA). See *MOX Plant Case (Ireland v. United Kingdom)*, Press Release of 2 June 2003, released by the PCA on behalf of the Annex VII Tribunal.
[50] Transcript, p. 161.
[51] Transcript, p. 164.
[52] Reply of Mauritius, para. 77.
[53] Reply of Mauritius, para. 43.
[54] Reply of Mauritius, paras. 35, 39.
[55] Reply of Mauritius, para. 35.

standard of "'appearance of bias' […] which would govern matters before ITLOS should also be applied in an Annex VII arbitration".[56]

61. Mauritius further argues that even if the United Kingdom's assertions regarding the practice of the ICJ and ITLOS were correct, there is no basis for transposing that purported practice to inter-State arbitration.[57] Mauritius contends that the system of adjudication by a permanent court or tribunal, such as the ICJ or ITLOS, is fundamentally different from inter-State arbitration, including arbitral proceedings conducted pursuant to Annex VII, since in the former (i) the weight of the views of any particular judge is much more diluted given the higher number of judges, (ii) judges are elected, by contrast to an arbitrator unilaterally selected by a State as its party-appointed arbitrator, and (iii) most cases will not involve adjudication of a judge's home or nominating State.[58] By contrast, the present Tribunal is an "*ad hoc* arbitration Tribunal appointed to hear a specific case involving specific parties and known in advance to be a case of acute sensitivity. Any dispensation that may be associated with the International Court membership is of no relevance […]".[59]

62. With respect to the structural argument concerning the Convention made by the United Kingdom, to the effect that it could not have been intended that the applicable law and practice concerning matters such as conflict should vary between the three forums under the Convention dealing with identical cases, Mauritius argues that "the solution adopted in Part XV [of the Convention] involves all three judicial bodies, but it doesn't meld them or merge them in their procedures. There is no common set of procedural rules for bodies exercising jurisdiction under Part XV. […] To take an example, there is no provision for intervention before Annex VII Tribunals. There are different provisions for intervention before the court and before ITLOS."[60]

4. Comments of the United Kingdom on Mauritius's Position

63. The United Kingdom submits that "Mauritius asks [the Tribunal] to be guided by, in effect to apply, the IBA guidelines or the PCA or UNCITRAL Arbitration Rules, or a broad series of municipal sources, although there is no agreement between the Parties as to the application of such sources. […] As to that consent, it is evident that [the] Tribunal must function in accordance with Annex VII and the Convention, as Article 4 of Annex VII expressly requires, and as is consistent also with Article 293 of [the Convention]".[61]

64. The United Kingdom argues that, whilst the test of bias as to the independence and impartiality of members of international courts and tribunals "may be objective", "it cannot simply be formulated as what a well-informed and reasonable person would be justified in thinking".[62] Rather, according to the United Kingdom, "if, arguendo, one were to apply an objective test, the relevant point of view or perception in inter-state cases would be that of a 'reasonable State'".[63]

65. Concerning the applicable standard to the Challenge, the United Kingdom argues that Mauritius "misleadingly and wrongly focuses on the law and practice applied in international commercial and investment protection arbitrations".[64] In its view, the issues that arise concerning the

[56] Reply of Mauritius, para. 15, citing the Statement of Judge Thomas A. Mensah, former President and Judge of ITLOS, Annex 1, at 5.
[57] Reply of Mauritius, para. 44.
[58] Reply of Mauritius, para. 45.
[59] Transcript, p. 54.
[60] Transcript, p. 56.
[61] Transcript, pp. 92-93.
[62] Response of the United Kingdom, para. 49.
[63] Response of the United Kingdom, para. 50.
[64] Response of the United Kingdom, para. 2(v).

appointment of arbitrators in commercial and investment treaty cases do not arise in the same way in inter-State arbitrations. The latter do not involve "repeat arbitral appointments, whether by the same party or by the same law firm; potential for influence where arbitrators may be perceived as worrying about where their next appointment will come; [and] cross-overs, where individuals repeatedly switch between the roles of counsel and arbitrator […]".[65]

66. The United Kingdom adds that the law and practice applied in international commercial and investment arbitrations Mauritius invokes in fact establish different tests: the UNCITRAL Rules applies a justifiable doubts test as interpreted in the case of *AWG Group Ltd. v. Argentine Republic*,[66] and the ICSID Convention places a heavy burden of proof on the party making the challenge so that certainly more than justifiable doubts are required, as interpreted in the case of *Suez and Others v. Argentine Republic*.[67]

67. The United Kingdom argues that the IBA Guidelines "are intended for cases involving private parties, not inter-state arbitration," since "[n]o specific reference is made in the Guidelines to cases between two States".[68] The United Kingdom adds that "[n]o government representatives participated in the drafting of the Guidelines, and there is no suggestion that Governments were consulted".[69]

68. The United Kingdom further asserts that "[e]ven if (which is denied) the Guidelines were relevant to an inter-state arbitration, […] [they] are neither binding nor universally accepted;"[70] "they are 'guidelines' not rules".[71]

69. The United Kingdom further argues that the lists of the IBA Guidelines cited by Mauritius "provide guidance as to the situations that should be disclosed but do not dictate the impact of such disclosure for challenges".[72]

70. Finally, the United Kingdom contends that Mauritius "insists on applying the Guidelines in an unduly formalistic manner," making reference to the commentary of the Working Group which drafted the Guidelines, and "without due regard for the particular facts of this case".[73]

---

[65] Transcript, pp. 103-104.
[66] *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales de Agua S.A. v. Argentine Republic* ICSID Case No. ARB/03/17, *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A.* ICSID Case No. ARB/03/19, *AWG Group Limited v. Argentine Republic*, UNCITRAL Arbitration, Decision on a Second Proposal for the Disqualification of a Member of the Arbitral Tribunal, (12 May 2008), para. 22.
[67] *Suez, Sociedad General de Aguas de Barcelona S.A., and InterAguas Servicios Integrales de Agua S.A. v. Argentine Republic* ICSID Case No. ARB/03/17, *Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A.* ICSID Case No. ARB/03/19, *AWG Group Limited v. Argentine Republic*, UNCITRAL Arbitration, Decision on a Second Proposal for the Disqualification of a Member of the Arbitral Tribunal, (12 May 2008), para. 29.
[68] Response of the United Kingdom, para. 80.
[69] Rejoinder of the United Kingdom, para. 19.
[70] Response of the United Kingdom, para. 81.
[71] Rejoinder of the United Kingdom, para. 9.
[72] Response of the United Kingdom, para. 83.
[73] Response of the United Kingdom, paras. 83, 84.

B. Application of the Standard to be Applied to the Present Challenge

1. Mauritius's Position

i. General Remarks

71. Mauritius highlights that according to the Appearance of Bias Standard, a finding that Judge Greenwood is actually biased is not necessary in order for the Challenge to be sustained.[74]

72. Mauritius submits that there is an extremely close and longstanding relationship between Judge Greenwood and the United Kingdom. That relationship has included numerous formal engagements to serve as counsel to the United Kingdom and several of its organs. Mauritius submits that such involvement, together with the continuing relationship between Judge Greenwood and the United Kingdom, as evidenced by his role in the selection of the new Legal Adviser at the FCO, after his appointment as arbitrator in the present case, are sufficient to create an appearance of bias.[75]

73. Mauritius supports its position by reference to the Statements of Mr. de Witt Wijnen,[76] Professor George Bermann,[77] Professor Abimbola A. Olowofoyeku,[78] and Professor Kate Malleson.[79] These individuals expressed views that "provide an important gauge as to how a reasonably informed person might react" although "they may not be public international lawyers".[80] Mauritius also annexed to its Reply Statements by two public international lawyers: Professor Yuval Shany,[81] and Judge Mensah.[82]

ii. Application of the IBA Guidelines

74. Mauritius also relies on the Red and Orange Lists of the IBA Guidelines and argues that Judge Greenwood's relationship with the United Kingdom entails factual situations contemplated in these lists that either necessarily give rise to justifiable doubts, or may, in the eyes of the parties, give rise to justifiable doubts regarding the arbitrator's impartiality and independence.[83]

75. In particular, Mauritius argues that Judge Greenwood should be disqualified because (i) he provided advice to a party during the arbitration by taking part, as an external member, in an appointments board as part of the selection process of a new Legal Adviser to the FCO, in breach of Section 2.3.1 of the Waivable Red List,[84] and (ii) has regularly advised the United Kingdom for nearly 20 years, in breach of Section 2.3.7 of the Waivable Red List.[85] Also,

---

[74] Reply of Mauritius, para. 61.
[75] Memorial on Challenge, paras. 44, 49.
[76] Memorial on Challenge, para. 50, citing the Statement of Mr. O.L.O. de Witt Wijnen, Annex 1, para. 35.
[77] Memorial on Challenge, para. 51, citing the Statement of Professor George Bermann, Annex 2, para. 19.
[78] Memorial on Challenge, para. 52, citing the Statement of Professor Abimbola A. Olowofoyeku, Annex 3, para. 81.
[79] Memorial on Challenge, para. 52, citing the Statement of Professor Kate Malleson, Annex 4, para. 4.
[80] Transcript, pp. 74-75.
[81] Reply of Mauritius, Annex 2.
[82] Reply of Mauritius, Annex 1; see also Judge Mensah's letters of 16 September and 30 September 2011 submitted by Mauritius at the hearing with the consent of the United Kingdom.
[83] Memorial on Challenge, paras. 54, 55 and 61.
[84] Section 2.3.1 of the Waivable Red List describes the situation where the arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.
[85] Reply of Mauritius, para. 59. Section 2.3.7 of the Waivable Red List describes the situation where the arbitrator regularly advises the appointing party or an affiliate of the appointing party, but neither arbitrator nor his or her firm derives a significant financial income therefrom.

according to Mauritius, "Judge Greenwood's recusal is further warranted under section 3.1.1[86] and section 3.2.3[87] of the Orange List because he served as counsel to the United Kingdom within three years of his appointment, and because he has regularly advised the United Kingdom".[88]

76. With respect to Section 2.3.1 of the Waivable Red List, Mauritius argues that the relationship between Judge Greenwood and the United Kingdom continued after his appointment as arbitrator since he contributed to the selection of the United Kingdom's new Legal Adviser at the FCO, one of the principal legal advisers in these proceedings, on 7 and 14 March 2011.[89]

77. Mauritius further relies on Judge Mensah's Statement in which he expresses the view that:

> *[a] member of the ITLOS would have to refrain (or be required to refrain) from participating in a case involving a Government if the member has been involved in providing advice to the Government in the choice of a Legal Adviser to the Government or any of its component Ministries. This would be particularly so if the advice has been given during the course of the proceedings before the Tribunal or not long prior to the institution of the proceedings.*[90]

78. With respect to Section 3.1.1 of the Orange List, also reflected in the Burgh House Principles of the International Law Association (the "ILA") at Principle 10,[91] Mauritius points to the fact that Judge Greenwood served as leading counsel for the United Kingdom not only in the *Entico* case,[92] litigation that was ongoing less than three years prior to Judge Greenwood's appointment to the Tribunal, but also in the *Kadi* case.[93] In addition, referring to the commentary of the IBA Working Group, Mauritius contends that "the three-year period described in Section 3.1.1 is a flexible standard, and depending on the circumstances, should be extended to include representation or advice given by an arbitrator to his or her appointing party longer ago".[94] Mauritius argues that "given the strong public interest in this arbitration, the numerous occasions in which Judge Greenwood represented the United Kingdom, the sensitive nature of those engagements, and the fact that many of them occurred within a short period of time prior to three years ago," the circumstances justify consideration of a longer period.[95]

79. Mauritius points to the fact that Judge Greenwood represented the United Kingdom in litigation in at least four other cases within five years of his appointment to the arbitral tribunal, all of

---

[86] Section 3.1.1 of the Orange List describes the situation where the arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or affiliate of the party have no ongoing relationship.
[87] Section 3.2.3 of the Orange List describes the situation where the arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute.
[88] Reply of Mauritius, para. 59.
[89] Memorial on Challenge, para. 4.
[90] Reply of Mauritius, para. 70, citing the Statement of Judge Thomas A. Mensah, former President and Judge of ITLOS, Annex 1; see also Judge Mensah's letters of 16 September and 30 September 2011 submitted by Mauritius at the hearing with the consent of the United Kingdom.
[91] Transcript, p. 68.
[92] Memorial on Challenge, para. 62, referring to *Entico Corp. v. United Nations Educational, Scientific and Cultural Association and Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 531 (Comm.).
[93] Memorial on Challenge, para. 62, referring to *Case T-315/01, Kadi v. Council of the European Union, Commission of the European Communities, and United Kingdom of Great Britain and Northern Ireland*, 2005 ECR II–3649.
[94] Memorial on Challenge, para. 63.
[95] Memorial on Challenge, para. 64.

which concerned important issues of national security.[96] Mauritius asserts that in the five-year period from 2006 to 2011, Judge Greenwood has advised the United Kingdom on at least seven occasions, including his participation on the Board.[97] According to Mauritius, these representations disqualify Judge Greenwood from service in the present case pursuant to Section 3.1.1 of the Orange List.[98]

80. With respect to Sections 2.3.7 of the Waivable Red List and 3.2.3 of the Orange List, according to Mauritius, the fact that Judge Greenwood has advised States other than the United Kingdom and has served on other arbitral tribunals is without relevance, since it does not dissipate the concern generated by Judge Greenwood's frequent and regular representation of the United Kingdom, and other services performed for the United Kingdom.[99]

81. Mauritius further argues that the fact that Judge Greenwood has occasionally acted against the United Kingdom "provides no justification for ignoring the fact that he has on many more occasions represented the United Kingdom in matters of the highest national importance".[100]

82. In addition, Mauritius argues that the fact that Judge Greenwood's longstanding advocacy on behalf of the United Kingdom was performed in the capacity of independent practitioner is without effect. Mauritius adopts the view of Professor Olowofoyeku whereby "the concept of an 'independent bar' does not prevent the disqualification of a judge where the judge's relationship with a litigant 'gives rise to a reasonable apprehension that the judge might not bring an impartial mind to the resolution of the issues in the case', for example, where there is a 'long, recent and varied connection'".[101] According to Mauritius, "Judge Greenwood enjoyed a unique role as a member of the Bar" and "was involved" in what the UK Attorney General referred to as "the formation of UK government policy".[102]

83. Mauritius concludes that the application of the IBA Guidelines (which reflect international standards regarding arbitral conflicts of interest) requires Judge Greenwood's disqualification from service on the present arbitral tribunal because a reasonable third party having knowledge of the relevant facts would conclude that there are justifiable doubts as to his impartiality and independence.[103]

2. The United Kingdom's Position

i. General Remarks

84. The United Kingdom submits that Judge Greenwood has had no prior involvement in the subject-matter of the case and thus the Challenge should fail.[104]

---

[96] Memorial on Challenge, para. 65, citing *inter alia R (Al-Jedda) v. Secretary of State for Defence* [2007] UKHL 58; *R (Al-Skeini) v. Secretary of State for Defence* [2008] 1 A.C. 153 (HL); and *Jones v. Saudi Arabia* [2006] UKHL 26.
[97] Memorial on Challenge, para. 66.
[98] Memorial on Challenge, para. 66.
[99] Reply of Mauritius, paras. 72-73, citing the Supplemental Statement of Professor George A. Bermann, Annex 4, para. 22.
[100] Reply of Mauritius, para. 74.
[101] Reply of Mauritius, para. 75, citing the Statement of Professor Abimbola A. Olowofoyeku, Annex 3 of Mauritius's Memorial on Challenge, para. 74.
[102] Transcript, pp. 65-66.
[103] Memorial on Challenge, para. 69.
[104] Response of the United Kingdom, para. 2(iv).

85. The United Kingdom argues that "there is no suggestion in this Challenge of any subject-matter conflict of interest that might call into question Judge Greenwood's impartiality as far as concerns the specific issues in the current case",[105] therefore fulfilling the standard of impartiality found at Article 2(1) of Annex VII of the Convention. Moreover, Judge Greenwood acted as a barrister, *i.e.,* as an "independent practitioner" "required at all times to be independent" rather than as a government employee.[106] According to the United Kingdom, Judge Greenwood therefore fulfils the standard of independence found at Article 3(e) of Annex VII of the Convention as he is not in the service of the United Kingdom.[107]

86. The United Kingdom argues that the Challenge "does not, nor could it, allege actual bias against Judge Greenwood" and that it "is based solely on the fact that Judge Greenwood has previously represented and advised the United Kingdom in wholly unrelated matters".[108] According to the United Kingdom, Mauritius emphasizes the number and sensitivity of the cases in which Judge Greenwood has acted for the UK "as if he had been a government employee".[109]

ii. Application of the IBA Guidelines

87. Even if the IBA Guidelines were applicable, the United Kingdom submits that they could not justify the removal of Judge Greenwood since, when he acted for or gave advice to the United Kingdom, it was "as an independent member of the English Bar" or "in an independent capacity" on the Board.[110] According to the United Kingdom, Judge Greenwood has represented "many other States", has been appointed as arbitrator by States other than the United Kingdom, has acted against the United Kingdom, and does not currently act for or advise the United Kingdom; thus the situation does not correspond to that evoked under Section 2.3.7 of the Waivable Red List nor Section 3.2.3 of the Orange List.[111]

88. The United Kingdom emphasizes that Judge Greenwood "does not currently represent or advise the United Kingdom in respect of any matter".[112] According to the United Kingdom, even if Section 2.3.1 of the Waivable Red List of the IBA Guidelines, which covers a situation where 'the arbitrator currently represents or advises one of the parties or an affiliate of one of the parties,'[113] "were to be interpreted in such a way that membership of a selection panel amounts to 'advising' a party, which seems inherently improbable given the normal meaning of advice in the context of this provision, it would not be applicable to the present case".[114]

89. The United Kingdom points to the fact that Judge Greenwood "received no remuneration for his service on the [Board]" and was nominated "prior to the commencement of the present proceedings and his appointment to the Tribunal, performed that role independent from the United Kingdom Government and no longer plays any role in respect of the Board".[115]

---

[105] Transcript, p. 98.
[106] Response of the United Kingdom, para. 27.
[107] Transcript, p. 98.
[108] Response of the United Kingdom, paras. 44(i), 69.
[109] Response of the United Kingdom, para. 69.
[110] Response of the United Kingdom, para. 87(i)-(ii).
[111] Response of the United Kingdom, para. 86.
[112] Response of the United Kingdom, para. 44(vi).
[113] IBA Guidelines on Conflicts of Interest in International Arbitration, May 22, 2004, "Waivable Red List" at Section 2.3.1.
[114] Response of the United Kingdom, para. 75.
[115] Response of the United Kingdom, paras. 76, 44(vii).

90. The United Kingdom asserts that "[t]his one-off and strictly time-limited activity cannot by any stretch be thought to establish either the fact or the appearance of a 'continuing close relationship'".[116]

91. In this regard, the United Kingdom refers to the Statement by Judge Dame Rosalyn Higgins in which she states:

> *It never entered my head that sitting for a couple of days on an Appointment Board could be seen as being overly close to Her Majesty's Government, nor that there was any conceivable issue with the relevant Articles of the Statute. This was not a "doubtful case" which I needed to refer to the President of the Court for decision.*[117]

92. Furthermore, with respect to Section 3.1.1 of the IBA Orange List, the United Kingdom argues that Mauritius "only cite[s] two cases [the *Entico* and *Kadi* cases] in support of its proposition that Judge Greenwood has served as counsel for the United Kingdom in the past three years". Out of those two cases, only the *Entico* case falls within this time frame and is unrelated to the subject-matter of the dispute. The United Kingdom adds that Mauritius "then elects to disregard the three-year time frame […] in order to justify citing a handful of cases dating back to 2006 and in matters entirely unrelated to the subject-matter of the current dispute".[118]

iii. Arbitral Practice

93. The United Kingdom further argues that "[m]any examples from arbitral practice demonstrate that the mere fact that an arbitrator has provided legal services in the past to one of the parties in matters unrelated to the subject-matter of the current dispute does not suffice for disqualification".[119]

94. The United Kingdom relies, *inter alia*, on the *Grand River Enterprises Six Nations, Ltd., et al. v. United States*, where "it was the simultaneous provision of services that created the conflict," and similarly in the case of *Vito G. Gallo v. Government of Canada*.[120] The United Kingdom stresses that Judge Greenwood is not presently providing legal services to the United Kingdom.

95. The United Kingdom also points to an UNCITRAL case, *Country X v. Company Q*, where the issue was whether prior work of an arbitrator bore on an issue in dispute.[121] In this respect, the United Kingdom asserts that Judge Greenwood has not conducted work bearing "on the issues currently before the Tribunal, as he has certified in his signed statement dated 20 May 2011".[122]

96. Finally, the United Kingdom refers to *Universal Compression International Holdings v. Venezuela* where two challenges, respectively on the basis of repeated appointment as arbitrator

---

[116] Response of the United Kingdom, para. 76.
[117] Response of the United Kingdom, para. 77 referring to the Statement of Judge Higgins, Annex 7 to the Response.
[118] Response of the United Kingdom, para. 87(iii).
[119] Response of the United Kingdom, para. 88.
[120] Response of the United Kingdom, para. 89, referring to *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America* Award, NAFTA/UNCITRAL (12 Jan. 2011), para. 31 and *Vito G. Gallo v. Government of Canada*, Decision on the Challenge to Arbitrator, NAFTA/UNCITRAL (14 Oct. 2009), para. 30.
[121] *Country X v. Company Q*, United Nations Commission on International Trade Law, 11 January 1995, XXII YB Comm. Arb. 227 (1997).
[122] Response of the United Kingdom, paras. 89, 90.

by a party and on the basis of a former role as co-counsel with members of a party's legal team on other cases, were rejected.[123]

iv. Further Observations

97. Even if the Appearance of Bias Standard would be applicable, the United Kingdom submits that a reasonable and informed party would be strongly influenced by the following six factors, to which Mauritius and its experts have accorded little weight, but which point to the impartiality and independence of Judge Greenwood.[124]

98. Firstly, as a starting point, there are no doubts as to Judge Greenwood's actual impartiality and independence as he is regarded as an international judge of great distinction and of impeccable reputation.[125]

99. Secondly, Judge Greenwood was elected to the ICJ by the unanimous vote of the Security Council and with 157 votes of the General Assembly and his representation of the United Kingdom as counsel was known to the members of these organs.[126]

100. Thirdly, the United Kingdom argues that, as a Member of the ICJ, Judge Greenwood "has made a solemn declaration that he will exercise his powers impartially and conscientiously," which "is relevant to any assessment of his impartiality and independence in the present case".[127]

101. Fourthly, the United Kingdom argues that "Professor Greenwood's election to the ICJ in 2009 follows a long British tradition whereby its PCA National Group nominates university professors of international law for this post rather than former officials".[128] Hence, in contrast to "[m]any current ICJ judges" who "have had relationships with their own governments that are far closer than Judge Greenwood's, many having been career civil servants, […] Judge Greenwood was a professor and lawyer in independent practice".[129]

102. Fifthly, the United Kingdom contends that "[Judge Greenwood] has represented, advised, and been appointed arbitrator by many States other than the United Kingdom," and also that "[h]e acted against the United Kingdom on several occasions".[130]

103. Finally, Judge Greenwood acted on behalf of the United Kingdom as an independent member of the English Bar.[131]

3. Comments by Mauritius on the United Kingdom's Position

104. In response to the Statement of Dame Rosalyn Higgins, former judge and president of the ICJ, in which she stated that she regarded her sitting on the Board as a small favour for Her Majesty's government, Mauritius points out that while Judge Higgins acted on the Board, "she was not simultaneously sitting in judgement on the United Kingdom in a case run by the

[123] *Universal Compression International Holdings, S.L.U. v. Bolivarian Republic of Venezuela*, Decision on the Proposal to Disqualify Prof. Brigitte Stern and Prof. Guido Santiago Tawil, Arbitrators (20 May 2011).
[124] Transcript, pp. 105, 111.
[125] Transcript, p. 105.
[126] Transcript, p. 106.
[127] Response of the United Kingdom, para. 41; Transcript, pp. 107-108.
[128] Response of the United Kingdom, para. 73; Transcript, p. 109.
[129] Response of the United Kingdom, para. 74, Transcript, p. 111.
[130] Response of the United Kingdom, paras. 72 and 44(iv)(v).
[131] Transcript, p. 111.

department in which the appointment was being made, nor was she accepting an appointment as an arbitrator while she was doing that favour".[132]

105. Mauritius also contends that the fact that Judge Greenwood's position on the Board was an unremunerated one is not relevant, relying on the decision on challenge in *Vito G. Gallo v. Government of Canada* where the Deputy Secretary-General of ICSID found that "[w]here arbitral functions are concerned, any paid or gratis service provided to a third party with a right to intervene can create a perception of a lack of impartiality. The amount of work done makes no difference. What matters is the mere fact that work is being performed."[133] Moreover, Mauritius adopts the view of Mr. de Witt Wijnen whereby the IBA Guidelines make "no distinction between a remunerated or a non-remunerated advisor or an advisor in public service or not".[134]

106. Mauritius contends that the arbitral cases cited by the United Kingdom do not support the United Kingdom's arguments in support of the proposition that the mere fact that an arbitrator has provided legal services in the past to one of the parties, in matters unrelated to the subject-matter of the current dispute, does not suffice for disqualification. On the contrary, those arbitral cases provide further evidence that the applicable Appearance of Bias Standard mandates Judge Greenwood's disqualification.[135]

107. Mauritius observes that the ruling in *Vito G. Gallo v. Government of Canada* that "an arbitrator may not provide 'a small amount' of advice to a non-party but potential intervenor in an arbitration" could hardly do anything other than support Judge Greenwood's disqualification, "since he provided advice to a party with respect to the selection of that party's Legal Advisor after his appointment to the Tribunal".[136]

108. Nor, according to Mauritius, does the *Grand River v. United States* ruling support the United Kingdom's position, since the Secretary-General of ICSID found "that an arbitrator's representation of a non-party in an unrelated matter which is adverse to a party to the arbitration is incompatible with his obligation of independence and impartiality".[137] Further, accepting for the sake of the argument that even the "key point" of this case was "the simultaneous provision of services that created the conflict," Mauritius argues that Judge Greenwood advised the British Government simultaneously with his appointment to the Tribunal by participating in the selection of the new FCO Legal Adviser and should therefore be disqualified.[138]

109. With respect to *Universal Compression International Holding v. Venezuela*, Mauritius notes that "Judge Greenwood's appointment is challenged, not because he has been appointed to multiple tribunals by the United Kingdom, but instead because: (i) he has acted as counsel for the United Kingdom on a consistent basis for many years and in many cases involving national security and defence, including fewer than three years prior to his appointment to the Tribunal;

---

[132] Transcript, p. 30.
[133] Reply of Mauritius, para. 67, citing *Vito G. Gallo v. Government of Canada*, Decision on the Challenge to Arbitrator, NAFTA/UNCITRAL (14 Oct. 2009), para. 32.
[134] Reply of Mauritius, para. 67, citing the Supplemental Statement of Mr. O.L.O. de Witt Wijnen, Annex 3, para. 10.
[135] Reply of Mauritius, para. 80.
[136] Reply of Mauritius, para. 81, referring to *Vito G. Gallo v. Government of Canada*, Decision on the Challenge to Arbitrator, NAFTA/UNCITRAL (14 Oct. 2009).
[137] Reply of Mauritius, para. 82, referring to *Grand River Enterprises Six Nations, Ltd., et al. v. United States of America*, Decision on the Challenge to Arbitrator, NAFTA/UNCITRAL (28 Nov. 2007).
[138] Reply of Mauritius, para. 82.

and (ii) during the arbitration he assisted the British Government in selecting the new Legal Advisor for the FCO".[139]

110. Finally, Mauritius argues that in the case of *Country X v. Company Q*, "[t]he challenge was denied because it was determined that the arbitrator's representation of an unrelated party was too attenuated to give rise to justifiable doubts regarding his impartiality".[140] Hence, given the relationship between Judge Greenwood and the United Kingdom, Mauritius asserts that the situation in the case of *Country X v. Company Q* was very different to the present proceeding.[141]

111. In response to the six factors[142] which the United Kingdom argued would lead a reasonable and informed person to reach the conclusion of apparent independence and impartiality with respect to Judge Greenwood, Mauritius responds as follows: (i) many judges of great distinction have been required to recuse themselves;[143] (ii) being a judge at the ICJ does not mean that a reasonable person would not view that person's past as raising issues, and Mauritius's six experts concluded that Judge Greenwood, a serving judge of the ICJ, should not sit on this matter;[144] (iii) the fact that Judge Greenwood made a solemn declaration when he became an ICJ Judge is true of every judge who has ever been recused;[145] (iv) Judge Greenwood's high level of approval for election to the ICJ as reflected by the votes he received is merely a reflection that he is an appropriate person for high judicial office;[146] (v) it is the record of long and consistent service on a particular type of issue that leads to the density of a particular relationship with a particular government, and the fact that Judge Greenwood has been involved in cases against the United Kingdom is irrelevant;[147] and (vi) Judge Greenwood's status as a member of the English Bar does not preclude him from being dismissed from a tribunal should he be perceived to lack independence or impartiality.[148]

C. The Risk of Annulment

1. Mauritius's Position

112. Mauritius submits that "[i]n light of the appearance of Judge Greenwood's lack of impartiality and independence from the United Kingdom, an arbitration that proceeds with him as a member of the tribunal would be at serious risk of being annulled by a court in the Netherlands".[149]

113. According to Mauritius, there is nothing in any of the sources cited by the United Kingdom, namely the European Convention on State Immunity[150] and the United Nations Convention on

[139] Reply of Mauritius, para. 83, referring to *Universal Compression International Holdings, S.L.U. v. Bolivarian Republic of Venezuela*, Decision on the Proposal to Disqualify Prof. Brigitte Stern and Prof. Guido Santiago Tawil, Arbitrators (20 May 2011).
[140] Reply of Mauritius, para. 85, referring to *Country X v. Company Q,* United Nations Commission on International Trade Law, 11 January 1995, XXII YB Comm. Arb. 227 (1997).
[141] Reply of Mauritius, para. 85.
[142] See paras. 97-103 above.
[143] Transcript, p. 169.
[144] Transcript, p. 169.
[145] Transcript, p. 185.
[146] Transcript, pp. 171-172.
[147] Transcript, p. 171.
[148] Transcript, p. 172.
[149] Memorial on Challenge, para. 70.
[150] European Convention on State Immunity, *opened for signature* May 16, 1972, C.E.T.S. No. 074.

the Jurisdictional Immunities of States and Their Property,[151] that could constrain a Dutch court from exercising such a power of annulment.[152]

114. Moreover, Mauritius points to the fact that the District Court in The Hague can intervene in ongoing proceedings, and has done so in a PCA-administered arbitration involving a State where the arbitration was proceeding with an arbitrator tainted by appearance of bias, namely in *Telecom Malaysia v. Ghana*.[153]

115. According to Mauritius, adopting the view of Mr. de Witt Wijnen, "if a Dutch Court were to intervene, it would likely 'come to the same conclusion as in the case of *[Telecom Malaysia] v. Ghana,*' where it took action to prevent an arbitrator from serving because of an appearance of bias".[154]

2. The United Kingdom's Position

116. With respect to the risk of annulment raised by Mauritius, the United Kingdom advances that Mauritius, notwithstanding its obligation under the Convention to accept the award of an Annex VII tribunal as "final and without appeal", is in effect threatening, at the very outset of these proceedings, that it will seek to override any eventual award of the Tribunal.[155]

117. The United Kingdom argues that a Dutch court would have no basis to intervene and that if it did, the Netherlands would be in breach of international law pursuant to the European Convention on State Immunity, Articles 12(2) and 17 of the 2004 United Nations Convention on the Jurisdictional Immunities of States and Their Property, according to which, a State may claim immunity from the jurisdiction of a domestic court in a proceeding relating to an arbitration between States.[156]

118. The United Kingdom argues that "[e]ven if a Dutch court were to decide such a case, […] such decision could not affect the binding nature of the award of the Annex VII arbitral tribunal under international law ([the Convention]), and would, from the point of view of international law be a nullity".[157]

119. The United Kingdom submits that "the Dutch decisions [cited by Mauritius] had nothing to do with inter-State arbitration, and were reached on the basis of Dutch legal provisions which have nothing to do with inter-State arbitration or even the annulment of an arbitral award".[158] In fact, according to the United Kingdom, these cases "were not about the annulment of a decision, but were actions in tort against the arbitrator personally".[159]

---

[151] United Nations Convention on the Jurisdictional Immunities of States and Their Property, G.A. Res. 59/38, U.N. Doc. A/59/508 (Dec. 2, 2004), *opened for signature* Jan. 17, 2005.
[152] Reply of Mauritius, para. 87.
[153] Reply of Mauritius, para. 87, referring to *Telecom Malaysia v. Ghana,* District Court of The Hague, Petition No. HA/RK 2004.667, 18 October 2004 (at ASA Bulletin 186 (2005)).
[154] Reply of Mauritius, para. 89, citing the Supplemental Statement of Mr. O.L.O. de Witt Wijnen, Annex 3, para. 17.
[155] Response of the United Kingdom, para. 94.
[156] Response of the United Kingdom, para. 95.
[157] Rejoinder of the United Kingdom, para. 22.
[158] Rejoinder of the United Kingdom, para. 21.
[159] Rejoinder of the United Kingdom, para. 21.

120. The United Kingdom finally submits that "if there were such 'serious risk' [of annulment] as is asserted by Mauritius, States would be reluctant to use the facilities of the Permanent Court of Arbitration in The Netherlands or to agree to inter-state arbitrations being located there".[160]

IV. JUDGE GREENWOOD'S COMMENTS

121. Judge Greenwood begins his written comments by stating that he has read Mauritius's Memorial on Challenge and the United Kingdom's Response and confirming the content of his two disclosure statements.[161]

A. Standard to be Applied

122. Judge Greenwood explains that he regards the requirement of independence and impartiality whether as a judge or an arbitrator as a matter of the utmost importance.[162] He refers to the declaration he made, when taking office as a Judge of the ICJ, to perform his duties and exercise his powers as judge "honourably, faithfully, impartially and conscientiously," and explains that he has always considered it to be equally applicable to any work he performs as an arbitrator.[163] He further explains that when he accepted his nomination as an arbitrator in the present case, he bore in mind:

> *[…] the standards set out in Judge Guillaume's witness statement, which states what [he has] always understood to be the practice not only in the ICJ but also in ITLOS and in arbitrations between States, namely that a Judge or arbitrator should always recuse themselves from consideration of a case in which they have advised, represented or in some other manner been involved with one of the parties in relation to the dispute to be adjudicated but that there was no bar to a Judge or arbitrator sitting in a case which involved a State that they had advised or represented in other, unconnected, matters.*[164]

B. Application of the Specific Prior Involvement Standard to the Present Challenge

1. General Remarks

123. Judge Greenwood states that he has had no involvement with the United Kingdom or any other State in relation to any of the issues set out in the Statement of Claim, or more generally, issues relating to the Chagos Islands, the BIOT, or Diego Garcia.[165] Moreover, Judge Greenwood discloses that none of the work he carried out for the United Kingdom (or any other client) at any time before he became a Judge has given him any information about the Chagos Islands.[166]

2. Participation on the Board

124. With respect to his participation on the Board for the selection of the new Legal Adviser of the FCO, Judge Greenwood provides the following clarifications as to the role he played and the reason he was asked to participate.

---

[160] Response of the United Kingdom, para. 97.
[161] Judge Greenwood's Comments, para. 1.
[162] Judge Greenwood's Comments, para. 2.
[163] Judge Greenwood's Comments, para. 2.
[164] Judge Greenwood's Comments, para. 3.
[165] Judge Greenwood's Comments, para. 4.
[166] Judge Greenwood's Comments, para. 5.

125. Judge Greenwood remarks that his participation on the Board cannot be regarded as showing a continuation of his earlier work in advising the United Kingdom since it had nothing to do with any of the work he had earlier performed when he was a barrister.[167] Judge Greenwood states that his role was limited to a contribution to the Board's assessment of the qualifications of the candidates for the position of the Legal Adviser and did not entail advising the Board or the FCO on law or litigation.[168]

126. Judge Greenwood further comments that his participation on the Board was something which he was asked to undertake, and could undertake, only because his relationship with the United Kingdom had ended.[169] Judge Greenwood explains that "[i]t was because [he] had become a Judge and could no longer engage in work as a barrister that [he] had the independence of government and the seniority required to be an outside member of the Board".[170]

127. Judge Greenwood, adopting the words of Judge Higgins who had performed the same role in 2005, considers his participation on the Board "as a 'one-off' and certainly not as part of any 'relationship' of advising the United Kingdom".[171]

3. Previous Advocacy on Behalf of the United Kingdom

128. Judge Greenwood also submits that the only matter in which he advised or represented the United Kingdom falling within the three years prior to his nomination to the Tribunal is the *Entico* case, a case unconnected with the issues before the Tribunal.[172] Judge Greenwood explains that he did not refer to his participation in the *Kadi* case since, although judgment was not given until September 2008, his involvement ceased immediately after the oral hearings on 2 October 2007 as the UK was an intervener and not a party to the proceedings.[173]

129. Judge Greenwood recalls that if he undertook work for the United Kingdom on a range of subjects unconnected with this arbitration, he also appeared against the United Kingdom in a number of matters.[174] In addition, Judge Greenwood points to the fact that he advised or represented more than twenty States other than the United Kingdom.[175]

4. Further Observations

130. Judge Greenwood points out that since he became an ICJ Judge he is precluded from acting as counsel or as a legal adviser and that as such, he is in an entirely different position from that of an arbitrator who also conducts work as a lawyer in private practice.[176] Judge Greenwood observes that Mr. de Witt Wijnen is "wide of the mark," when he comments that Judge Greenwood's participation in the present proceedings reminded him of the ruling of a Dutch

[167] Judge Greenwood's Comments, para. 6.
[168] Judge Greenwood's Comments, para. 6.
[169] Judge Greenwood's Comments, para. 7.
[170] Judge Greenwood's Comments, para. 7.
[171] Judge Greenwood's Comments, para. 7.
[172] Judge Greenwood's Comments, para. 8, referring to *Entico Corp. v. United Nations Educational, Scientific and Cultural Association and Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 531 (Comm.).
[173] Judge Greenwood's Comments, para. 10, referring to *Kadi v. Council of the European Union, Commission of the European Communities, United Kingdom of Great Britain and Northern Ireland*.
[174] Judge Greenwood's Comments, para. 11.
[175] Judge Greenwood's Comments, para. 12.
[176] Judge Greenwood's Comments, para. 13.

court[177] that, in Mr. de Witt Wijnen's words, "an arbitrator in an important dispute could not at the same time act as advocate in another important case when the same principles were at stake". [178]

131. Judge Greenwood concludes that his participation as an arbitrator would be accepted by anyone familiar with the practice of the ICJ, ITLOS and international arbitration tribunals in inter-State disputes comparable to the present case as falling into the category of cases in which there is no justifiable ground for doubt as to his impartiality and independence.[179]

V. THE TRIBUNAL'S ANALYSIS

A. Introductory Remarks

132. The Tribunal, as constituted by four of its Members, as agreed by the Parties, in the proceedings to consider the challenge made by Mauritius to the appointment, on the nomination of the United Kingdom, of Judge Sir Christopher Greenwood as a Member of the Tribunal, has considered the extensive factual and legal arguments presented by the Parties in their written and oral submissions, all of which the Tribunal has found helpful. In this Decision on the Challenge, the Tribunal discusses the arguments of the Parties that it considers most relevant for its decision. The Tribunal announced its decision on 13 October 2011, reserving its reasons for a later date. The Tribunal now publishes its reasons. In these reasons the Tribunal, without repeating all the arguments advanced by the Parties, addresses what the Tribunal considers to be the matters on which it must rule in order to decide the issues arising between the Parties in this phase of the proceedings.

B. The Independence and Impartiality of Arbitrators Under Annex VII of the Convention: The Applicable Law

133. The qualifications of arbitrators appointed under Annex VII of the Convention are set out in Article 2 of that Annex. Reference is made to a list of arbitrators drawn up and maintained by the Secretary-General of the United Nations. Every State Party to the Convention is entitled to nominate up to four persons for inclusion in the list, "each of whom shall be a person experienced in maritime affairs and enjoying the highest reputation for fairness, competence and integrity".

134. In constituting an arbitral tribunal of five members under Annex VII the parties to the dispute shall each appoint one member "to be chosen preferably from the list referred to in article 2 of this Annex, who may be its national". The other three members of the tribunal, if appointed by agreement between the parties, shall also "preferably" be chosen from the list. If the parties are not in agreement regarding the choice of the other three members, the power of appointment falls either to a person or third State chosen by the parties or to the President of ITLOS, in accordance with Article 3(e). Appointments under Article 3(e) "shall be made from the list referred to in Article 2".

135. It is evident from these provisions that party-appointed arbitrators are not required to be drawn from the list (although in fact, in the present case, both those arbitrators were so drawn). Nevertheless, the requirements of "fairness, competence and integrity" may be regarded as

[177] *Telecom Malaysia v. Ghana*, District Court of The Hague, Petition No. HA/RK 2004.667, 18 October 2004 (at ASA Bulletin 186 (2005)).
[178] Judge Greenwood's Comments, para. 13.
[179] Judge Greenwood's Comments, para. 14.

equally applicable to party-appointed arbitrators from outside the list, since these qualifications may undoubtedly be regarded as deriving from general principles of international law and from the practice of international courts and tribunals.

136. Although not mandated by the Convention or by Annex VII thereto, it has become the practice in those arbitrations administered by the PCA for the parties to request that each arbitrator furnish a Declaration of Acceptance and a Statement of Impartiality and Independence. The form of this Declaration and Statement adopted by the PCA directs each arbitrator to consider "whether there exists any past or present relationship, direct or indirect, with any of the parties or their counsel, whether financial, professional or of another kind, and whether the nature of any such relationship is such that disclosure is called for pursuant to the criteria below. Any doubt should be resolved in favour of disclosure." The criteria are contained within the options which the arbitrator is then directed to choose among. The first option states: "1. I am impartial and independent with respect to each of the parties and intend to remain so; to the best of my knowledge there are no facts or circumstances, past or present, that need to be disclosed because they are likely to give rise to justifiable doubts as to my impartiality or independence." The alternative option states: "2. I am impartial and independent and intend to remain so; however, I wish to call your attention to the following facts and circumstances which I hereafter disclose because they might be of such a nature as to give rise to justifiable doubts as to my impartiality or independence."

137. Judge Greenwood made a Declaration and Statement under option 2, and a Further Disclosure Statement in response to a request from Mauritius. These Statements are discussed later in these reasons.

138. For the present, it may thus be accepted that the law applicable to the appointment of arbitrators in the present arbitral proceedings requires that that the arbitrators should enjoy the highest reputation for fairness, competence and integrity, and that there be no circumstances that might give rise to justifiable doubts as to the arbitrators' impartiality or independence.

139. It is now necessary to inquire whether there exist any additional principles or rules, deriving from general international law, applicable to the arbitrators in the present proceedings.

C. General Principles of International Law as Evidenced by the Practice of International Courts and Tribunals Relating to the Qualifications of Judges and Arbitrators

1. Courts and Tribunals Having Jurisdiction in Inter-State Cases

140. It is advisable to begin with the law and practice of courts and tribunals seized exclusively, or predominantly, of disputes between States, as is the case in the present proceedings. The law and practice of international tribunals dealing with cases between non-State parties, or between a State and a non-State entity, will be considered separately.

141. The law applicable to the qualifications of judges of the ICJ is set out in Articles 2, 16, 17, 24 and 31(6) of the Statute of the Court. According to Article 2, judges shall be "independent" and "of high moral character". According to Article 16 "no member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature". This rule does not apply to judges *ad hoc*.

142. It is clear that Article 16 of the Statute of the ICJ applies to judges only after their election to the Court, and does not disqualify those who exercised such functions before their election.

143. Article 17(1) of the Statute of the ICJ provides that "No member of the Court may act as agent, counsel, or advocate in any case." Article 17(2) of the Statute of the ICJ provides that: "No Member of the Court may participate in the decision in any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity." In other words, no judge, whether regular or *ad hoc*, can sit in a particular case if he or she has been involved previously with the very subject matter of that case.

144. The ICJ has dealt with objections to the participation of some of its Members in proceedings pursuant to Article 17(2) of the Court's Statute. In a contentious case, it decided not to accede to an application by South Africa relating to the Court's composition.[180] In this regard, the Tribunal wishes to emphasize that the fact that Judge Zafrulla Khan decided to recuse himself, having been persuaded by the Court's President to do so, does not detract from the Court's decision, which was reached by a majority vote.

145. The Court in later decisions maintained the consistent position that the prior activities of its Members as representatives of their governments did not attract the application of Article 17(2) of the ICJ Statute.[181] In the *Wall* case, even the dissenting Judge shared the Court's opinion that Judge Elaraby's previous diplomatic and governmental functions did not fall within the scope of Article 17 paragraph 2 of the Court's Statute. Judge Buergenthal's dissent concerned an interview Judge Elaraby gave two months before his election to the Court when he was no longer an official of his Government and hence spoke in his personal capacity.[182]

146. Article 24 of the ICJ Statute relates to "some special reason" – which is not specified – in which a serving judge may choose to recuse him- or herself, or where the President of the Court decides that a judge should not sit on the case.

147. Article 36(1) of the ICJ Statute applies the same rules to judges *ad hoc*, with the exception of Article 16.[183]

---

[180] *South West Africa* (*Ethiopia v. South Africa*; *Liberia v. South Africa*), Order of 18 March 1965, ICJ Reports 1965, p. 31.

[181] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970),* Advisory Opinion, ICJ Reports 1971, p. 16, para. 9; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Order of 30 January 2004, ICJ Reports 2004, p. 3.

[182] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Order of 30 January 2004, Dissenting Opinion of Judge Buergenthal, ICJ Reports 2004, p. 7, paras. 6-7.

[183] See also Practice Directions VII and VIII, both adopted by the Court on 7 February 2002, which provide further conditions applying *inter alia* to judges *ad hoc*. Practice Direction VII provides, in full: "The Court considers that it is not in the interest of the sound administration of justice that a person sit as judge *ad hoc* in one case who is also acting or has recently acted as agent, counsel or advocate in another case before the Court. Accordingly, parties, when choosing a judge *ad hoc* pursuant to Article 31 of the Statute and Article 35 of the Rules of Court, should refrain from nominating persons who are acting as agent, counsel or advocate in another case before the Court or have acted in that capacity in the three years preceding the date of the nomination. Furthermore, parties should likewise refrain from designating as agent, counsel or advocate in a case before the Court a person who sits as judge *ad hoc* in another case before the Court." Practice Direction VIII provides, in full: "The Court considers that it is not in the interest of the sound administration of justice that a person who until recently was a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the Court (principal legal secretary, first secretary or secretary), appear as agent, counsel or advocate in a case before the Court. Accordingly, parties should refrain from designating as agent, counsel or advocate in a case before the Court a person who in the three years preceding the date of the designation was a Member of the Court, judge *ad hoc*, Registrar, Deputy-Registrar or higher official of the Court."

148. Article 4(1) of the Rules of the ICJ provides that every Member of the Court, on assuming office, shall "solemnly declare that I will perform my duties and exercise my powers as judge honourably, faithfully, impartially and conscientiously".

149. The Statute and Rules of ITLOS are in substance the same as those of the ICJ and particular reference may be made to Articles 7, 8 and 17 of the Statute of ITLOS.

150. The PCA Optional Rules for Arbitrating Disputes Between Two States contain provisions concerning the qualification of arbitrators (Articles 6(4) and 8(3)) as well as standards governing the challenge of an arbitrator (Article 10):

(i) Article 6(4) provides that an appointing authority charged with appointing a sole arbitrator "shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties";

(ii) Article 8(3) provides that "[i]n appointing arbitrators pursuant to these Rules, the parties and the appointing authority are free to designate persons who are not Members of the Permanent Court of Arbitration at The Hague"; and

(iii) Article 10 reads: "(1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence."

151. The "Notes to the Text" of the PCA Optional Rules for Arbitrating Disputes Between Two States state that they are based on the UNCITRAL Arbitration Rules, with certain modifications, including, *inter alia,* modifications "to reflect the public international law character of disputes between States, and diplomatic practice appropriate to such disputes". The PCA Optional Rules for Arbitrating Disputes Between Two States have not thus far been adopted by the parties in the present dispute. However, the standard for arbitrator impartiality and independence embodied in Article 10 of those Rules has been adopted in a number of PCA-administered arbitrations, including those of the Eritrea-Ethiopia Boundary Commission,[184] the arbitral tribunal in the *OSPAR* case,[185] and the Annex VII Tribunal in the *MOX Plant* case.[186] As such, this standard can be considered to form part of the practice of inter-State arbitral tribunals.

2. Other International Courts and Tribunals

152. By way of comparison with the law and practice of courts and tribunals in inter-State cases, regard should be paid, since reliance has been placed on them by Mauritius, to the law and practice of other international courts and tribunals that are not seized of inter-State disputes, even though, for reasons to be stated later, the Tribunal does not regard the law and practice of such courts and tribunals as directly relevant to the present case.

153. Article 40 of the Rome Statute of the International Criminal Court[187] provides that judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

[184] *Eritrea-Ethiopia Boundary Commission (Eritrea/Ethiopia),* Rules of Procedure of the Commission, Article 8.
[185] *"OSPAR" Arbitration (Ireland v. United Kingdom),* Rules of Procedure of the Tribunal, Article 6.
[186] *MOX Plant Case (Ireland v. United Kingdom)*, Rules of Procedure of the Annex VII Tribunal, Article 6.
[187] Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90.

154. Rule 15(A) of the Rules of Procedure of the International Criminal Tribunal for the former Yugoslavia[188] provides that "[a] Judge may not sit on a trial or appeal in any case in which the judge has a personal interest or concerning which the judge has or has had any association which might affect his or her impartiality."

155. Article 12(1) of the UNCITRAL Arbitration Rules (as revised in 2010) provides that "any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality and independence". It is to be noted in this connection that UNCITRAL is a Commission of the United Nations rather than an international court or tribunal, but its proposed Arbitration Rules have been used in numerous inter-State arbitration agreements.

D. Principles and Rules Regarding the Independence and Impartiality of Arbitrators Developed by Non-Governmental Bodies

156. For reasons to be stated below at paragraphs 165 to 168, the Tribunal does not consider that principles and rules relating to arbitrators, developed in the context of international commercial arbitration and arbitration regarding investment disputes,[189] are applicable to inter-State disputes, such as the present. However, since Mauritius has placed emphasis in its pleadings and oral argument on such sources, at least its primary source should briefly be set out here.

157. In paragraph 1 of the Memorial on Challenge, it is stated that:

> *This application is made by Mauritius to protect its fundamental due process right to a fair hearing by an international tribunal that is – and is seen to be – independent, impartial and free from appearance of bias. The standard is reflected in the* Guidelines on Conflicts of Interest in International Arbitration *of the International Bar Association (IBA), which provide,* inter alia*, that even where actual bias is not present, an arbitrator should not serve where there is an appearance of bias.*[190]

158. Mauritius then relies upon the following specific provisions of the IBA Guidelines in support of the Challenge:

(i) Section 2.3.1 of the Waivable Red List, which describes the situation where "[t]he arbitrator currently represents or advises one of the parties or an affiliate of one of the parties";

(ii) Section 2.3.7 of the Waivable Red List, which describes the situation where "[t]he arbitrator regularly advises the appointing party or an affiliate of the appointing party, but neither the arbitrator nor his or her firm derives a significant financial income therefrom";

(iii) Section 3.1.1 of the Orange List, which describes the situation where "[t]he arbitrator has within the past three years served as counsel for one of the parties or an affiliate of one of the parties or has previously advised or been consulted by the party or an

[188] International Criminal Tribunal for the former Yugoslavia Rules of Procedure and Evidence, U.N. Doc. IT/32 (as amended Oct. 20, 2011).
[189] Mauritius refers to the IBA Guidelines; the UNCITRAL Rules (Articles 9 and 10 of the 1976 version; Articles 11 and 12 of the 2010 version); the 1998 International Chamber of Commerce Rules of Arbitration (Articles 7, 11 and 15); the Rules of the London Court of International Arbitration (Articles 5 and 10); the International Arbitration Rules of the American Arbitration Association (Articles 7 and 8)**;** and the 2010 Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (Articles 14 and 15). Memorial on Challenge, para. 25; Reply, para. 26.
[190] Memorial on Challenge, para. 1.

affiliate of the party making the appointment in an unrelated matter, but the arbitrator and the party or affiliate of the party have no ongoing relationship"; and

(iv) Section 3.2.3 of the Orange List, which refers to the situation where "[t]he arbitrator or his or her firm represents a party or an affiliate to the arbitration on a regular basis but is not involved in the current dispute".

159. The Tribunal recalls that in the IBA Guidelines, the "Red List" provides for circumstances that, depending on the facts of a given case, necessarily give rise to justifiable doubts as to the arbitrator's independence and impartiality, and is further divided into "waivable" and "non-waivable" conflicts. The "Orange List" refers to circumstances that, depending on the facts of the given case, may, in the eyes of the parties, give rise to justifiable doubts regarding an arbitrator's impartiality or independence.

160. The Claimant also refers to the Rules of Conciliation and Arbitration of the International Chamber of Commerce (1998), Article 7 of which provides that "every arbitrator must be and remain independent of the parties involved in the arbitration". It is further stipulated that "a prospective arbitrator shall sign a statement of independence and disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties".[191]

E. The Grounds of the Challenge to Judge Greenwood

161. Mauritius does not allege actual bias against Judge Greenwood. Indeed, it reiterated in its written pleadings and again in its oral argument its highest regard for the personal and professional qualities of Judge Greenwood. Mauritius bases its challenge on the ground of "appearance of bias". In paragraph 2 of Mauritius's Memorial on Challenge, the test to be applied is set out as follows:

> *The IBA Guidelines, national case law and international practice define 'appearance of bias' as a situation in which it is possible for an objective third party to have justifiable doubt about an arbitrator's impartiality.*[192] *This will be the case where an arbitrator has a longstanding and close professional relationship with one of the parties before his appointment, and it is all the more true where the relationship continues following appointment.*[193]

162. In substantiation of its claim of appearance of bias, Mauritius points to the following circumstances:

> *[Judge Greenwood] has represented the United Kingdom as counsel in a great number of cases before national and international courts between 1992 and 2008, including within the past three years. Many of these cases involved matters of war and peace, national*

[191] Equivalent provision is made in the ICC Arbitration Rules as revised in 2011 (in force from 1 January 2012), Article 11. See also Articles 14, 19 and 22 of the 2012 Rules.
[192] The footnote in the original (fn. 2) cites the following: IBA Guidelines, Annex 5, General Principle 2 and the Explanation to General Standard 2; Burgh House Principles on the Independence of the International Judiciary, Annex 6, Art. 8.1; *Perenco Ecuador Ltd. v. Republic of Ecuador and Empresa Estatal Petróleos del Ecuador ("PetroEcuador"),* Decision on Challenge to Arbitrator (8 Dec. 2009), paras. 54-58; *Urbaser S.A. and Consorcio de Aguas Bilbao Bizkaia, Bilbao Biskaia Ur Partzuergoa v. Argentine Republic*, ICSID Case No. ARB/07/26, Decision on Claimants' Proposal to Disqualify Professor Campbell McLachlan, Arbitrator (12 Aug. 2010), para. 43; *Prosecutor v. Furundžija*, ICTY Case No. IT-95-17/1-A, Appeals Chamber Judgment (21 July 2000), para. 189; and the Statement of Professor Abimbola A. Olowofoyeko, annexed to the Memorial, at paras. 44-75.
[193] Memorial on Challenge, para. 2.

> *security, counter-terrorism and other highly sensitive matters that raise issues of national interest and security.*
>
> *[…]*
>
> *[F]ollowing his appointment as arbitrator in these proceedings, during February and March 2011, Judge Greenwood had contributed to the appointment of the new Legal Adviser at the Foreign and Commonwealth Office, the UK government department that has responsibility for the conduct of these proceedings and the lead role in UN and other diplomatic and political initiatives relating to the Chagos Archipelago. This implies a continuing relationship, and one that raises serious concerns about perceptions as to the integrity of the proceedings. Mauritius regrets that the United Kingdom fails to see any problem where an arbitrator, following his appointment, contributes to the selection of one party's principal legal adviser.*[194]

F. The Response of the United Kingdom

163. The United Kingdom, in its written pleadings and oral argument, has urged, as to the applicable law, that:

> *The law and practice to be applied to the determination of the present challenge by Mauritius (the applicable standards) are not set down in any text. Neither the parties nor the Tribunal have adopted any provisions in this regard, nor are any rules laid down in [the Convention].*
>
> *In these circumstances, it is submitted that the Members of the Tribunal should have regard primarily to the rules and practice applied by other courts and tribunals dealing with inter-state cases. Of most relevance are the rules and practice of the International Court of Justice and the International Tribunal for the Law of the Sea, as well as inter-state arbitration, in particular under Annex VII of [the Convention].*[195]

164. In relation to the practice of the ICJ, the United Kingdom annexed to its Response an opinion by Judge Gilbert Guillaume, a former ICJ President. Judge Guillaume concluded:

> *[T]he practice of the Permanent Court of International Justice and that of the present Court is clear: a member of the Court or an* ad hoc *judge having had in the past close relations with one of the Parties to the dispute need not for that reason alone be disqualified. On the contrary, there is abundant practice to show that relations with one of the parties much closer than those alleged between Judge Greenwood and the United Kingdom does not at all prevent the person involved from sitting. In fact, many members of the International Court of Justice, as well as* ad hoc *judges, have formerly held posts of ministers or State officials (including that of Foreign Ministry legal advisers). On the other hand, it is prohibited for a member of the Court or an* ad hoc *judge to sit in a case if he had, in one way or another, been previously involved with the very subject matter of the case.*[196]

G. The Tribunal's Evaluation of the Applicable Law

165. The Tribunal has decided that the law applicable to the present arbitration is that to be found in Annex VII of the Convention as described in paragraphs 133 to 139 above, supplemented by the law and practice of international courts and tribunals in inter-State cases. There is no reason, in the Tribunal's view, for considering challenges to arbitrators appointed under Annex VII of the

[194] Memorial on Challenge, paras. 3-4.
[195] Response of the United Kingdom, paras. 45-46.
[196] Statement of Judge Guillaume, para. 6. Response of the United Kingdom, Annex 6.

Convention, be they appointed by the parties, or by an independent appointing authority, on grounds other than those contained in the law and practice of international courts and tribunals concerned only with inter-State cases. For this reason, the Tribunal does not consider the many other texts invoked by Mauritius, in particular the IBA Guidelines, to be relevant for the purposes of its analysis in the present proceedings.

166. This leads the Tribunal to the conclusion that a party challenging an arbitrator must demonstrate and prove that, applying the standards applicable to inter-State cases, there are justifiable grounds for doubting the independence and impartiality of that arbitrator in a particular case.

167. The Tribunal recalls that the system of inter-State dispute settlement is based upon the consent of the Parties, and more specifically upon the rules of public international law, the sources of which are set out in Article 38(1) of the Statute of the ICJ. In the Tribunal's view, Mauritius has not demonstrated that the rules adopted by non-governmental institutions such as the IBA have been expressly adopted by States, nor do they form part of a general practice accepted as law, nor fall within any other of the sources of international law enumerated in Article 38(1) of the Statute of the ICJ.

168. It follows that the Tribunal is not persuaded that such additional rules, which cannot be considered as a source of law as regards judges of ITLOS or the ICJ, are any more relevant to arbitral tribunals established under Annex VII of the Convention than they are to judges of ITLOS or the ICJ. The Tribunal in this context refers to Article 287(1) of the Convention, which gives States the option alternatively to submit a case to ITLOS, the ICJ, or arbitration under Annex VII (or, for purposes not relevant here, under Annex VIII). Article 287(1), together with Article 286 of the Convention, forms the expression of States' consent to the comprehensive dispute settlement framework created by the Convention. It cannot have been the intention behind that framework that different conditions would apply to the independence and impartiality of adjudicators in the third forum (arbitration under Annex VII) in comparison with the ICJ or ITLOS. In this context, where an Annex VII tribunal is an alternative forum to ITLOS or the ICJ, the Tribunal takes the view that only the rules applying to, and practice of, inter-State tribunals are of relevance to the qualification and challenge of arbitrators in proceedings under Annex VII.

169. For these reasons, the Tribunal is not convinced that the Appearance of Bias Standard as presented by Mauritius and derived from private law sources is of direct application in the present case. Scrutinizing several of the Statements submitted by Mauritius with the view to endorsing its position it is not clear to the Tribunal on which basis the experts come to the conclusion that a particular activity is to be considered as an appearance of bias; without being fixed within the framework of the applicable law, such an approach risks supporting a wholly subjective standard.

170. As for any application of the Netherlands Arbitration Act, the Tribunal notes that Mauritius did not pursue this point at the hearing. In any event, the Tribunal does not consider that there is any basis under the Convention for the application of the Netherlands Arbitration Act or the jurisdiction of the Dutch courts in these proceedings.

H. The Tribunal's Evaluation of the Evidence: Judge Greenwood's Prior Record as Counsel to the United Kingdom

171. On the basis of the rules of the ICJ, ITLOS and Annex VII arbitral tribunals, as well as the practice of those bodies, the Tribunal will now assess the evidence submitted by Mauritius.

172. Since it is not disputed that Judge Greenwood was not involved in the present dispute before he was appointed as arbitrator, the Tribunal notes that Article 8(1) of the Statute of ITLOS cannot serve as a ground for challenge.

173. As far as the frequency and regularity of Judge Greenwood's appearances to advise the UK Government, and appear as counsel on its behalf, are concerned, in the Tribunal's view regard is to be had to the practice of the ICJ in this evaluation, and in particular to the conditions that govern the activities of Members of the Court and judges *ad hoc,* as set out at paragraphs 141 to 148 above. In light of those conditions, and for the reasons given by Judge Guillaume in the Opinion cited above, the Tribunal is not persuaded that Judge Greenwood's prior activities as counsel are such as to give rise to justifiable doubts as to his independence or impartiality.

174. Finally, the Tribunal notes, although this is not in itself a reason for its decision, that, so far, it is not aware of any case under the Convention in which a judge or arbitrator has been successfully challenged on the ground that he or she held a senior position in government or had acted as counsel before being elected or nominated as judge or arbitrator. The United Kingdom has pointed to the Annex VII Tribunal in the *MOX Plant* case in this context, in which the late Sir Arthur Watts had served as arbitrator although he had previously held the position of the Legal Adviser to the FCO, and in which the parties to the dispute had accepted the standard set forth in Article 10 of the PCA Optional Rules for Arbitrating Disputes Between Two States.[197] The Tribunal would add that, given that a party which is entitled to challenge an arbitrator may validly waive its right to do so for a number of reasons, without such waiver or reasons ever being articulated, it views any instance of an absence of challenge with this consideration in mind.

I. The Tribunal's Evaluation of the Evidence: Judge Greenwood's Participation on the Board for the Selection of the FCO Legal Adviser

175. The Tribunal will now turn to Judge Greenwood's participation on the Board for selection of the FCO Legal Adviser and assess it on the legal basis as set out in paragraphs 165 to 170 above.

176. It is advisable to set out this evidence in some detail, since it was Judge Greenwood's participation on the Board in March 2011 for the selection of the new Legal Adviser to the FCO that was especially emphasized by Mauritius in its written pleadings and oral argument. It is also a matter on which there was a conflict of opinion between distinguished experts, whose reports were tendered by the Parties.

177. Judge Greenwood explained the facts of the matter in his submission to the Tribunal as follows:

> *So far as my participation in the Board which interviewed candidates for the position of Foreign and Commonwealth Legal Adviser is concerned, I believe that there has been a misunderstanding of the role I played and the reason why I was asked to participate. The Memorial of Mauritius refers to this participation as showing that I have a 'close and continuing relationship' with the United Kingdom, in effect a continuation of my earlier work in advising the UK. That is not the case. My participation in the Board had nothing to do with any of the work I had earlier performed when I was a barrister. I was not advising the Board or the Foreign Office on law or litigation. My role was simply to contribute to the Board's assessment of the qualifications of the candidates for the position.*

[197] *MOX Plant Case (Ireland v. United Kingdom)*, Rules of Procedure of the Annex VII Tribunal, Article 6.

> *Indeed, far from this being a continuation of a prior relationship with the United Kingdom, it was something which I was asked to undertake, and could undertake, only because the relationship had ended. It was because I had become a Judge and could no longer engage in work as a barrister that I had the independence of government and the seniority required to be an outside member of the Board. There was nothing unusual in my participation. As she explains in her witness statement, Judge Higgins had performed the same role in 2005 when the position of Legal Adviser had last been advertised. My understanding of what was involved was exactly the same as she describes in her witness statement. Like Judge Higgins I saw my participation in the Board as a 'one-off' and certainly not as part of any 'relationship' of advising the United Kingdom.*[198]

178. Dame Rosalyn Higgins, a former President of the ICJ, in her Statement referred to by Judge Greenwood in the passage above, stated, *inter alia*:

> *It never entered my head that sitting for a couple of days on an Appointment Board could be seen as overly close to Her Majesty's Government, nor that there was any conceivable issue with the relevant articles of the Statute. This was not a 'doubtful case' which I needed to refer to the President of the Court for decision.*
>
> *[…]*
>
> *Had there soon after been a case involving the United Kingdom, neither the UK Government, nor I, would, for a moment, have thought that I would have done other than vote on the merits of the case as I saw it. That is, of course a quite general point, and sitting on an Appointment Board would not have affected that situation.*[199]

179. A contrasting opinion was expressed by a former President of ITLOS, Judge Thomas A. Mensah. In his Statement, appended to the Reply of Mauritius to the Response of the United Kingdom, Judge Mensah commented that:

> *[I]t is my view that a member of the Tribunal would be expected to consult the President (and possibly seek the agreement of the President) before agreeing to serve on a body that plays a role in the selection of a senior official such as the Legal Adviser of a Ministry. At all events, I consider that advising a Government or Ministry in the choice of such a senior official is precisely the sort of activity which should be undertaken by a member of the Tribunal with due regard to the potential complications for the member if a case involving the Government comes before the Tribunal. This is because, while serving on a board to advise on the choice of a Legal Adviser for a Ministry may not* per se *constitute 'a political or administrative' function that is prohibited to a member of an international court or tribunal, there can be little doubt that performing such a function for a Government would constitute a 'relationship or association' with the Government that would plainly make it inappropriate for a member of ITLOS to sit in a case involving the State of that Government. This is all the more so where the member concerned has also had a close professional relationship with the Government, including acting as counsel for the Government within the past three years.*[200]

In his letter of 19 September 2011, Judge Mensah clarified that this statement did not reflect the practice of ITLOS but was his understanding of an internal discussion within ITLOS on incompatible activities of the members of ITLOS.

[198] Judge Greenwood's Comments, paras. 6-7.
[199] Statement of Dame Rosalyn Higgins, paras. 4-6. Response of the United Kingdom, Annex 7.
[200] Statement of Judge Thomas A. Mensah, pp. 2-4. Reply of Mauritius, Annex 1.

180. Neither of the above Statements can be regarded as evidence of the general practice of the ICJ or of ITLOS on the precise point at issue. They are opinions of eminent jurists with a record of long service in those two bodies.

181. In the Tribunal's view, the fact that the procedure for the selection of the FCO Legal Adviser occurred "simultaneously" with Judge Greenwood's position as an arbitrator in the present proceedings has required that the Tribunal scrutinize Judge Greenwood's participation in that procedure with special care.

182. It is not in dispute that Judge Greenwood's participation in the selection procedure was advisory only; it did not entail any advice on legal issues; it was confined to advising on one aspect of the candidates' suitability; and it entailed membership of a panel whose conclusion was unanimous. Furthermore, Judge Greenwood's participation in the procedure was of considerably limited duration: the interviews, discussion and decision took place over two days.

183. Mauritius has sought to present that participation as part of a "continuing" relationship. With respect for the care with which Mauritius argued this issue, the Tribunal does not accept that analysis. Judge Greenwood considered that it was his very distance from the UK Government, following his appointment to the International Court of Justice, that made him suitable for the role. The Tribunal finds Judge Greenwood's role to be consonant with the requirements pertaining to the activities of a judge of the ICJ as set out in paragraphs 141-148 above. Bearing those requirements in mind, it is the Tribunal's view that, in the circumstances, Judge Greenwood's participation in this process, which was restricted to that particular purpose and which was essentially limited to a brief participation in a panel, neither constituted nor continued an already existing relationship. For this reason, such a limited activity, which did not involve his advice on legal issues, is not of the kind that would give rise to justifiable doubts as to his impartiality and independence concerning the case to be decided by the Arbitral Tribunal.

J. Concluding Remarks

184. The Tribunal wishes to state that, in its opinion, the present proceedings to challenge Judge Greenwood's appointment to the Tribunal were not without object and purpose. Mauritius advanced carefully fashioned arguments, invoking substantial material in support of its position. If in the end the Tribunal has decided to reject those arguments, it is not for lack of respect for the cogency with which those arguments have been presented. Moreover, Mauritius has at all times declared its respect for the probity and standing of Judge Greenwood. The Tribunal therefore trusts that the present proceedings will have served to clear the air.

VI. COSTS

185. At the conclusion of the oral hearing the United Kingdom asked that the costs of the Challenge proceedings be reserved for later decision by the Tribunal. The Tribunal will thus reserve that question for further argument at the Merits phase, having regard also to its present reasons.

VII. DECISION

NOW THEREFORE, we, the other four members of the Arbitral Tribunal in this matter, having carefully considered the materials submitted by the Parties and by Judge Greenwood, and having established to our satisfaction our competence to decide this challenge in accordance with the agreement of the Parties,

HEREBY DECIDE:

(1) To dismiss the challenge against Judge Sir Christopher Greenwood CMG QC;

(2) To defer any decision regarding the costs of the Challenge.

Done at The Hague on 30 November 2011.

Professor Ivan Shearer (President)

Judge Albert J. Hoffmann

Judge James Kateka

Judge Rüdiger Wolfrum

Mr. Brooks W. Daly (Registrar)

IN THE MATTER OF THE CHAGOS MARINE PROTECTED AREA ARBITRATION

- before -

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

- between -

THE REPUBLIC OF MAURITIUS

- and -

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

AWARD

The Arbitral Tribunal:
Professor Ivan Shearer AM, President
Judge Sir Christopher Greenwood CMG, QC
Judge Albert Hoffmann
Judge James Kateka
Judge Rüdiger Wolfrum

Registry:
Permanent Court of Arbitration

18 March 2015

this page intentionally blank

AGENTS, COUNSEL AND OTHER REPRESENTATIVES OF THE PARTIES

AGENT OF MAURITIUS

Mr Dheerendra Kumar Dabee GOSK, SC
Solicitor-General of Mauritius

AGENT OF THE UNITED KINGDOM

Ms Alice Lacourt
Legal Counsellor
Foreign and Commonwealth Office

Replacing **Mr Christopher Whomersley CMG**
Deputy Legal Adviser
Foreign and Commonwealth Office

DEPUTY AGENT OF MAURITIUS

Ms Aruna Devi Narain
Parliamentary Counsel

DEPUTY AGENT OF THE UNITED KINGDOM

Ms Nicola Smith
Assistant Legal Adviser
Foreign and Commonwealth Office

Replacing **Ms Margaret Purdasy**
Assistant Legal Adviser
Foreign and Commonwealth Office

COUNSEL FOR MAURITIUS

Professor James Crawford AC, SC, FBA*
University of Cambridge

Professor Philippe Sands QC
Matrix Chambers

Ms Alison Macdonald
Matrix Chambers

Mr Paul Reichler
Foley Hoag LLP

Mr Andrew Loewenstein
Foley Hoag LLP

COUNSEL FOR THE UNITED KINGDOM

The Rt. Hon. Dominic Grieve QC, MP***
Her Majesty's Attorney General

Professor Alan Boyle
University of Edinburgh and Essex Court Chambers

Ms Penelope Nevill
20 Essex Street Chambers

Ms Amy Sander
Essex Court Chambers

Sir Michael Wood KCMG
20 Essex Street Chambers

Mr Samuel Wordsworth QC
Essex Court Chambers

JUNIOR COUNSEL FOR THE UNITED KINGDOM

Mr Eran Sthoeger

REPRESENTATIVES OF MAURITIUS

Mr Suresh Chandre Seeballuck GOSK**

REPRESENTATIVES OF THE UNITED KINGDOM

Ms Jo Bowyer
Foreign and Commonwealth Office

HE Dr Jaya Nyamrajsing Meetarbhan GOSK****
Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations

Ms Shiu Ching Young Kim Fat
Ministry of Foreign Affairs, Regional Integration and International Trade

ADVISERS TO MAURITIUS

Ms Elizabeth Wilmshurst CMG
Doughty Street Chambers

Dr Douglas Guilfoyle
University College London

JUNIOR COUNSEL FOR MAURITIUS

Mr Yuri Parkhomenko
Foley Hoag, LLP

Mr Remi Reichhold
Legal Assistant
Matrix Chambers

Mr Fernando L. Bordin

ASSISTANTS TO MAURITIUS

Mr Rodrigo Tranamil
Foley Hoag, LLP

Ms Nancy Lopez
Foley Hoag, LLP

Ms Mina Patel
Foreign and Commonwealth Office

Ms Neelam Rattan
Foreign and Commonwealth Office

Ms Rebecca Raynsford
Attorney General's Office

Mr Douglas Wilson
Attorney General's Office

* Professor James Crawford ceased to act as Counsel for Mauritius on 9 November 2014

** Mr Suresh Chandre Seeballuck and Dr Jaya Nyamrajsing Meetarbhan are no longer in the public service since January 2015

*** Dominic Grieve QC, MP held the office of Attorney General until 15th July 2014

TABLE OF CONTENTS

TABLE OF MAPS

GLOSSARY OF DEFINED TERMS / LIST OF ABBREVIATIONS

1965 Agreement	The agreement between the United Kingdom and the Mauritius Council of Ministers in 1965 to the detachment of the Chagos Archipelago
1995 Fish Stocks Agreement	The Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995
BIOT	The British Indian Ocean Territory
CHOGM	The Commonwealth Heads of Government Meeting
CLCS	The Commission on the Limits of the Continental Shelf
Conference	The Third UN Conference on the Law of the Sea
Convention	The 1982 United Nations Convention on the Law of the Sea
EPPZ	Environmental Protection and Preservation Zone
FCMZ	Fisheries Conservation and Management Zone
FCO	The Foreign and Commonwealth Office of the United Kingdom
ICJ	The International Court of Justice
ILC	The International Law Commission
ILC Guiding Principles	The International Law Commission's *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligation*
IOTC	The Indian Ocean Tuna Commission
IOTC Agreement	The Agreement for the Establishment of the Indian Ocean Tuna Commission
ITLOS	The International Tribunal for the Law of the Sea
Lancaster House Meeting	The meeting held at Lancaster House on the afternoon of 23 September 1965
Lancaster House Undertakings	Points (i) through (viii) of paragraph 22 of the final record of the Lancaster House Meeting of 23 September 1965
Mauritius	The Republic of Mauritius

MLP	The Mauritius Labour Party
MPA	Marine Protected Area
PCA	The Permanent Court of Arbitration
Public Consultation	The public consultation process carried out by the United Kingdom regarding the potential creation of the MPA
UNCLOS	The 1982 United Nations Convention on the Law of the Sea
United Kingdom	The United Kingdom of Great Britain and Northern Ireland

CHAPTER I - INTRODUCTION

A. THE PARTIES

1. The Applicant is the Republic of Mauritius ("**Mauritius**"). Mauritius became an independent State on 12 March 1968, prior to which it was a colony of the United Kingdom of Great Britain and Northern Ireland (the "**United Kingdom**"). Mauritius was previously a French colony from 1715 until 1814, at which time France ceded it to the United Kingdom.

2. The Respondent is the United Kingdom, which exercised colonial rule over Mauritius until its independence. The United Kingdom continues to administer the Chagos Archipelago, previously a dependency of the colony of Mauritius, as the British Indian Ocean Territory ("**BIOT**"). The BIOT was established on 8 November 1965.

3. Mauritius is represented in these proceedings by its Agent, Mr Dheerendra Kumar Dabee GOSK, SC, Solicitor-General of the Republic of Mauritius and its Deputy Agent, Ms Aruna Devi Narain.

4. The United Kingdom is represented in these proceedings by its Agent, Ms Alice Lacourt, Legal Counsellor at the Foreign and Commonwealth Office (the "**FCO**"), who replaced Mr Christopher A. Whomersley CMG, Deputy Legal Adviser, as Agent on 5 June 2014. The United Kingdom is further represented by its Deputy Agent, Ms Nicola Smith, who replaced Ms Margaret Purdasy in this position on 21 January 2015.

B. THE DISPUTE

5. The dispute between the Parties concerns a decision of the United Kingdom, taken on 1 April 2010, by which it established a Marine Protected Area ("**MPA**") around the Chagos Archipelago, which is administered by the United Kingdom as the BIOT. The MPA extends to a distance of 200 nautical miles from the baselines of the Chagos Archipelago and covers an area of more than half a million square kilometres.

6. According to Mauritius, the establishment of the MPA by the United Kingdom violates the 1982 United Nations Convention on the Law of the Sea (the "**Convention**" or "**UNCLOS**"), to which Mauritius and the United Kingdom are party, and other rules of international law.

7. Mauritius contends that the United Kingdom is not entitled to declare an MPA or other maritime zones because it is not the "coastal State" within the meaning of, *inter alia*, Articles 2, 55, 56 and 76 of the Convention. Alternatively, Mauritius contends that the United Kingdom is not

entitled unilaterally to declare an MPA over the objections of Mauritius in light of the undertakings made by the United Kingdom at the time of the detachment of the Chagos Archipelago, insofar as Mauritius has been endowed with certain rights of a "coastal State".

8. Mauritius further contends that the MPA is fundamentally incompatible with the rights and obligations provided for by the Convention, including the fishing rights of Mauritius in regard to the Chagos Archipelago and its surrounding waters. Mauritius alleges that the United Kingdom has also breached its obligations under the Convention and international law with respect to consultation and co-operation.

9. In its final submissions, Mauritius also contends that it was entitled to file Preliminary Information regarding the continental shelf surrounding the Chagos Archipelago with the United Nations Commission on the Limits of the Continental Shelf ("**CLCS**") and that the United Kingdom should not be permitted to prevent the CLCS from making recommendations in respect of any further submissions that Mauritius may make regarding the Chagos Archipelago.

10. In bringing these proceedings Mauritius has invoked Articles 286 and 287 of the Convention.

11. The United Kingdom challenges the Tribunal's jurisdiction over all aspects of the dispute. The United Kingdom first raised this challenge in its Preliminary Objections and at a hearing before the Tribunal on 11 January 2013 regarding the procedure to consider jurisdictional objections. By Order of 15 January 2013, the Tribunal rejected the United Kingdom's request for a separate procedural phase and decided that jurisdictional objections would be considered together with the proceedings on the merits.

12. According to the United Kingdom, these proceedings are an attempt by Mauritius to construct a case under the Convention in order to bring a dispute concerning sovereignty over the Chagos Archipelago within the jurisdiction of the Tribunal, which is "artificial and baseless."[1] Furthermore, the United Kingdom contends that Mauritius has failed to meet its obligation to consult with the United Kingdom concerning the violations of the Convention of which Mauritius complains.

13. With respect to the merits of Mauritius' claims, the United Kingdom asserts that it acquired sovereignty over the Chagos Archipelago in 1814, continued to exercise sovereignty at all relevant times, and is therefore unquestionably the coastal State for the purposes of the

[1] The United Kingdom's Counter-Memorial, para. 1.10.

Convention. The United Kingdom also denies that the MPA is incompatible with the rights of Mauritius under the Convention. Finally, the United Kingdom contends that it has complied fully with its obligations under the Convention and international law to consult and co-operate.

* * *

this page intentionally blank

CHAPTER II - PROCEDURAL HISTORY

A. THE INITIATION OF THIS ARBITRATION

14. By its *Notification and Statement of Claim* dated 20 December 2010, Mauritius initiated arbitration proceedings against the United Kingdom pursuant to Article 287 of the Convention and in accordance with Article 1 of Annex VII to the Convention.

B. THE CONSTITUTION OF THE ARBITRAL TRIBUNAL

15. In its *Notification and Statement of Claim*, Mauritius appointed Judge Rüdiger Wolfrum, a German national, as a member of the Tribunal in accordance with Article 3(b) of Annex VII to the Convention. On 19 January 2011, the United Kingdom appointed Judge Sir Christopher Greenwood CMG, QC, a British national, as a member of the Tribunal in accordance with Article 3(c) of Annex VII to the Convention.

16. Owing to disagreement between the Parties regarding the appointment of the remaining three members of the Tribunal, Mauritius sent a letter dated 21 February 2011 to the President of the International Tribunal for the Law of the Sea ("**ITLOS**"). Therein, Mauritius requested that the President of ITLOS appoint the remaining three members of the Tribunal in accordance with Article 3(e) of Annex VII to the Convention.

17. On 25 March 2011, the President of ITLOS appointed Judge James Kateka, a Tanzanian national, and Judge Albert Hoffmann, a South African national, as arbitrators, and Professor Ivan Shearer AM, an Australian national, as arbitrator and President of the Tribunal.

18. On 31 March 2011, the President of the Tribunal wrote to the Permanent Court of Arbitration (the "**PCA**") to ascertain whether the PCA was willing to serve as Registry for the proceedings. The PCA responded affirmatively by letter of the same date. By communications dated 4 and 6 April 2011, respectively, the United Kingdom and Mauritius confirmed that they had no objection to the PCA serving as Registry for the proceedings. The PCA's appointment was subsequently formalized on 21 March 2012 by the conclusion of Terms of Appointment.

C. THE CHALLENGE TO THE APPOINTMENT OF JUDGE GREENWOOD AND ITS DISMISSAL

19. On 2 May 2011, the PCA transmitted to the Parties the Declarations of Acceptance and Statements of Impartiality and Independence of the five arbitrators. An additional Disclosure Statement submitted by Judge Greenwood was also transmitted under the same cover.

20. On 19 May 2011, Mauritius requested further disclosure from Judge Greenwood concerning his relationship with the Government of the United Kingdom. Judge Greenwood provided a Further Disclosure Statement on 20 May 2011, in which he reiterated his independence and commitment to act with complete impartiality.

21. On 23 May 2011, Mauritius conveyed its intention to challenge the appointment of Judge Greenwood. On 30 May 2011, the Tribunal communicated to the Parties a proposed procedure and timetable for resolving the challenge to Judge Greenwood, in which the remaining members of the Tribunal would decide the challenge. The United Kingdom and Mauritius indicated their consent to this approach on 3 and 8 June 2011, respectively.

22. Between June and August 2011, Mauritius and the United Kingdom made submissions in respect of the challenge, in accordance with the agreed procedure.

23. On 4 October 2011, the Tribunal held a hearing on the challenge at the Peace Palace in The Hague, the Netherlands. On 13 October 2011, the Tribunal issued its decision (without reasons) to dismiss the challenge to the appointment of Judge Greenwood. The Tribunal subsequently provided written reasons in respect of its decision on 30 November 2011.

D. THE ADOPTION OF THE TERMS OF APPOINTMENT AND RULES OF PROCEDURE

24. On 6 January 2012, the Tribunal circulated draft Terms of Appointment for the proceedings and invited the Parties' comments. The Tribunal also invited the Parties to seek agreement on the procedural rules and on a schedule for the further conduct of the proceedings.

25. Following an exchange of correspondence, the Parties and the Tribunal reached agreement on the Terms of Appointment, which were finalized and signed on 21 March 2012.

26. Between January and March 2012, the Parties and the Tribunal exchanged correspondence concerning the draft Rules of Procedure, in particular with respect to the hearing venue and the procedure in the event of a request to consider objections to the Tribunal's jurisdiction in a preliminary procedural phase. Following consultation with the Parties, the Tribunal finalized and adopted the Rules of Procedure on 29 March 2012.

27. On 13 December 2012, following consultation with the Parties, the Tribunal issued Procedural Order Nº 1, specifying in greater detail the procedure to be followed with respect to submissions.

E. THE UNITED KINGDOM'S APPLICATION FOR THE BIFURCATION OF THE PROCEEDINGS AND THE PARTIES' WRITTEN SUBMISSIONS

28. On 1 August 2012, Mauritius submitted its *Memorial*.

29. On 31 October 2012, the United Kingdom submitted its *Preliminary Objections to Jurisdiction*, in which it requested, among other things, the bifurcation of proceedings to address its jurisdictional objections as a preliminary matter and a separate hearing on the question of bifurcation. On 21 November 2012, Mauritius submitted its *Written Observations on the Question of Bifurcation*, in which it opposed the bifurcation of the proceedings.

30. On 21 December 2012, the United Kingdom submitted a *Written Reply of the United Kingdom to the Written Observations of Mauritius* on the question of bifurcation.

31. On 11 January 2013, the Tribunal held a hearing on the question of bifurcation in Dubai, United Arab Emirates. On 15 January 2013, following the hearing, the Tribunal issued Procedural Order Nº 2, in which it rejected the United Kingdom's request for bifurcation and decided that jurisdictional objections would be considered with the proceedings on the merits.

32. On 17 January 2013, the United Kingdom requested an extension of time for the submission of its *Counter-Memorial*. The Parties subsequently agreed to an amended schedule for written submissions, which was conveyed to the Tribunal by a letter dated 30 January 2013. In accordance with this amended schedule, the United Kingdom submitted its *Counter-Memorial* on 15 July 2013.

33. On 15 November 2013, Mauritius requested an extension of time until 18 November 2013 to file its *Reply*. The Tribunal granted this request on 16 November 2013 on the basis that an equivalent extension was granted to the United Kingdom with respect to the filing of its *Rejoinder*. Mauritius submitted its *Reply* on 18 November 2013.

34. On 17 March 2014, the United Kingdom submitted its *Rejoinder*.

F. REDACTIONS TO DOCUMENTS IN ANNEX 185 TO MAURITIUS' *REPLY*

35. In its *Reply*, Mauritius noted that certain documents set out in Annex 185 thereto contained redactions. These documents had originally been disclosed by the United Kingdom in the course of separate judicial proceedings in the English courts to which Mauritius was not a party. Mauritius invited the United Kingdom to confirm that it would "submit, along with its

Rejoinder, unredacted copies of the documents at Annex 185" and reserved its right to make an application to the Tribunal in this respect.[2]

36. On 30 November 2013, the United Kingdom responded to Mauritius' invitation and indicated that it would revert in due course regarding the appropriateness of additional disclosure. The United Kingdom confirmed, in any event, that no redactions had been made for the purpose of suppressing evidence which might be unhelpful to it in these proceedings. The United Kingdom further asserted that it had "fully complied with international law practices and the applicable Rules of Procedure" in its production of documents.

37. On 13 December 2013, Mauritius invited the United Kingdom to confirm the basis on which it had made redactions to the documents in Annex 185 to Mauritius' *Reply* and whether it maintained any or all of those redactions in the present proceedings. On 19 December 2013, the United Kingdom repeated the contents of its letter of 30 November 2013 and stated that it would consider the extent to which any redactions could be removed in the course of drafting its *Rejoinder*.

38. On 9 January 2014, the Tribunal wrote to the Parties, recalling the Parties' correspondence and urging the United Kingdom to remove "all redactions that are not strictly required on grounds of irrelevancy or legal professional privilege" and to indicate the basis for each redaction that it wished to maintain.

39. On 11 February 2014, Mauritius wrote to the Tribunal, requesting an indication from the United Kingdom regarding the status of its review of the redacted documents. In response, on 14 February 2014, the United Kingdom noted that "there are a large number of redactions to be considered, and the process needs to be carried out in consultation with the counsel who represented the Government in the proceedings in the United Kingdom courts" and indicated that it would revert as soon as possible. On 19 February 2014, the Tribunal requested the United Kingdom to complete its review of all of the redacted documents by 3 March 2014.

40. On 3 March 2014, the United Kingdom provided a version of the documents contained in Annex 185 with some redactions removed, while maintaining a number of redactions "principally on the grounds of legal professional privilege, relationships with third countries and national security." By the same letter, the United Kingdom requested Mauritius to confirm that it had conducted a review of its own internal documents and that all relevant documents had been disclosed.

---

[2] Mauritius' Reply, para. 1.21.

41. On 14 March 2014, Mauritius invited the United Kingdom to indicate the basis for each remaining redaction, recalling the Tribunal's letter of 9 January 2014. Mauritius also confirmed, with respect to the United Kingdom's request, that "Mauritius considers that it has fully pleaded its case, including by way of disclosure of appropriate documentation."

42. On 18 March 2014, the Tribunal confirmed its intention for the United Kingdom to indicate the basis for each redaction it sought to maintain and requested that the United Kingdom comment on Mauritius' proposal for the Tribunal or a document master to review the unredacted texts and confirm in each instance that non-disclosure was justified. By the same letter, the Tribunal requested that Mauritius respond to the United Kingdom concerning the disclosure of its own internal documents.

43. On 25 March 2014, the United Kingdom submitted a version of the documents contained in Annex 185 with the grounds of each redaction indicated and noted that it was willing to accommodate discussions with the Tribunal on an *ex parte* basis regarding the rationale for any particular redaction.

44. On 7 April 2014, Mauritius set out its concerns regarding the United Kingdom's stated grounds for the remaining redactions and invited the Tribunal to request the United Kingdom to provide unredacted copies of the documents for *ex parte* review to ensure that the redactions were justified. With respect to Mauritius' internal documents, Mauritius noted that no order for document production had been sought, but indicated that, in any case, it had reviewed its own internal documents to the fullest extent possible and disclosed all relevant documents.

45. On 8 April 2014, the Tribunal requested the United Kingdom to make available unredacted copies of the documents in Annex 185 for examination by the Tribunal in Istanbul in advance of the hearing. By letter dated 9 April 2014, the United Kingdom confirmed its arrangements to transport the documents to Istanbul and invited the Tribunal to attend at the British Consulate-General in Istanbul on 21 April 2014.

46. On 14 April 2014, the Tribunal proposed a procedure in respect of the redacted documents, providing for a preliminary review by the Presiding Arbitrator of unredacted copies of the documents themselves, followed by a review by the Tribunal as a whole, "unless considered unnecessary in light of the Presiding Arbitrator's preliminary review."

47. On 20 April 2014, following a further exchange of correspondence with the Parties, the President informed the Parties that he would attend an *ex parte* meeting at the British Consulate-

General on 21 April 2014 and that this meeting would be "limited to confirming that the contents of each redaction qualify for non-disclosure on grounds recognized by the Tribunal."

48. On 21 April 2014, the President of the Tribunal, together with the Registrar, attended the *ex parte* meeting at the British Consulate-General in Istanbul. Thereafter, the President reported his findings to the Tribunal as a whole.

49. On 22 April 2014, the Tribunal wrote to the Parties, confirming the President's finding that each redaction was justified and conveying the Tribunal's decision that the redacted passages should not be subject to disclosure.

G. THE HEARING ON JURISDICTION AND THE MERITS

50. On 22 November 2013, the Tribunal, following consultations with the Parties and the PCA, confirmed that the hearing would take place in Istanbul, Turkey.

51. On 22 April 2014, the Tribunal, with the Parties' consent, confirmed the change in the place of the hearing by a formal amendment to Article 9(2) of the Rules of Procedure.

52. The hearing on jurisdiction and the merits took place from 22 April to 9 May 2014 at the facilities of the Pera Palace Hotel, Istanbul, Turkey. The following individuals participated on behalf of the Parties:

Mauritius

Agent
Mr Dheerendra Kumar Dabee GOSK, SC

Deputy Agent
Ms Aruna Devi Narain

Counsel
Professor James Crawford AC, SC, FBA
Professor Philippe Sands QC
Ms Alison MacDonald
Mr Paul S. Reichler
Mr Andrew Loewenstein

Representatives
Mr Suresh Chandre Seeballuck GOSK
HE Dr Jaya Nyamrajsigh Meetarbhan GOSK
Ms Shiu Ching Young Kim Fat

Advisers
Ms Elizabeth Wilmshurst CMG
Dr Douglas Guilfoyle

United Kingdom

Agent
Mr Christopher Whomersley CMG

Deputy Agent
Ms Margaret Purdasy

Counsel
The Rt. Hon. Dominic Grieve QC, MP
Professor Alan Boyle
Ms Penelope Nevill
Ms Amy Sander
Sir Michael Wood KCMG
Mr Samuel Wordsworth QC

Junior Counsel
Mr Eran Sthoeger

Representatives
Ms Jo Bowyer
Ms Mina Patel
Ms Neelam Rattan
Ms Rebecca Raynsford
Mr Douglas Wilson

Junior Counsel
Mr Yuri Parkhomenko
Mr Remi Reichhold
Mr Fernando L. Bordin

Assistants
Mr Rodrigo Tranamil
Ms Nancy Lopez

53. On 16 May 2014, the PCA issued a press release on the conclusion of the hearing on jurisdiction and the merits.

* * *

this page intentionally blank

CHAPTER III - FACTUAL BACKGROUND

A. GEOGRAPHY

54. Mauritius is composed of a group of islands,[3] situated in the south-western part of the Indian Ocean.[4] In addition to one main island, the Island of Mauritius, the territory of Mauritius includes the islands of Cargados Carojos Shoals (the St Brandon Group of 16 Islands and Islets);[5] Rodrigues Island; and Agalega.[6] Pursuant to Section 111 of its Constitution (as amended with effect from 1992), Mauritius also claims the territory of Tromelin Island (disputed by the French Republic) and the Chagos Archipelago (disputed by the United Kingdom).[7] The location of Mauritius and the Chagos Archipelago is shown in Map 1 on page 15.

55. The Chagos Archipelago comprises a number of coral atolls,[8] located in the middle of the Indian Ocean, some of which are above sea level and form islands.[9] The largest island of the Chagos Archipelago, Diego Garcia, is situated in the south-west of the archipelago.[10] The Chagos Archipelago is shown in Map 2 on page 17.

B. HISTORICAL BACKGROUND

56. Beginning in the late 15th century, Portuguese explorers began to venture into the Indian Ocean and recorded the location of Mauritius and the other Mascarene Islands, Rodrigues and Réunion (the latter presently a French overseas department). In the 16th century, the Portuguese were joined by Dutch and English sailors, both nations having established East India Companies to exploit the commercial opportunities of the Indian Ocean and the Far East. Although Mauritius was used as a stopping point in the long voyages to and from the Indian Ocean, no attempt was made to establish a permanent settlement.[11]

---

3 Mauritius' Memorial, para. 2.3.

4 The United Kingdom's Counter-Memorial, para. 2.13.

5 Mauritius' Memorial, para. 2.3.

6 Mauritius' Memorial, para. 2.3; The United Kingdom's Counter-Memorial, para. 2.13.

7 Mauritius' Memorial, para. 2.3.

8 Final Transcript, 81:3-4.

9 The United Kingdom's Counter-Memorial, paras. 2.3, 2.9.

10 Mauritius' Memorial, para. 2.6; The United Kingdom's Counter-Memorial, 2.11.

11 Mauritius' Memorial, paras. 2.7-2.10.

57. The first permanent colony in Mauritius was established by the Dutch East India Company in 1638.[12] The Dutch maintained a small presence on Mauritius, with a brief interruption, until 1710 at which point the Dutch East India Company abandoned the island.[13] Following the Dutch departure, the French government took possession of Mauritius in 1715, renaming it the *Ile de France*.[14]

58. The Chagos Archipelago was known during this period, appearing on Portuguese charts as early as 1538, but remained largely untouched.[15] France progressively claimed and surveyed the Archipelago in the mid-18th century and granted concessions for the establishment of coconut plantations, leading to permanent settlement. Throughout this period, France administered the Chagos Archipelago as a dependency of the *Ile de France*.[16]

59. In 1810, the British captured the *Ile de France*[17] and renamed it Mauritius.[18] By the Treaty of Paris of 30 May 1814, France ceded the *Ile de France* and all its dependencies (including the Chagos Archipelago) to the United Kingdom.[19]

60. These early historical events are not in dispute between the Parties.[20]

C. THE BRITISH ADMINISTRATION OF MAURITIUS AND THE CHAGOS ARCHIPELAGO

61. From the date of the cession by France until 8 November 1965, when the Chagos Archipelago was detached from the colony of Mauritius, the Archipelago was administered by the United Kingdom as a Dependency of Mauritius.[21] During this period, the economy of the Chagos Archipelago was primarily driven by the coconut plantations and the export of copra (dried coconut flesh) for the production of oil, although other activities developed as the population of

12 Mauritius' Memorial, paras. 2.7, 2.10.

13 Mauritius' Memorial, para. 2.10.

14 Mauritius' Memorial, para. 2.10.

15 Mauritius' Memorial, paras. 2.8, 2.11.

16 Mauritius' Memorial, para. 2.16.

17 Mauritius' Memorial, para. 2.15; The United Kingdom's Counter-Memorial, para. 2.17.

18 Mauritius' Memorial, para. 2.18.

19 Mauritius' Memorial, paras. 2.15-2.16; The United Kingdom's Counter-Memorial, paras. 2.16-2.18.

20 Final Transcript, 98:10-13.

21 Mauritius' Memorial, paras. 2.17, 2.22; The United Kingdom's Counter-Memorial, paras. 2.16, 2.19, 2.32.

THE LOCATION OF THE CHAGOS ARCHIPELAGO

Nautical Miles
200 100 0 200 400 600

Kilometers
200 0 200 400 600

Nominal Scale at Latitude 0° - 1:30,000,000

Map 1

Projection / Datum:
Mercator / WGS84

The base map is taken from Natural Earth.
This map is for illustrative purposes only.

this page intentionally blank

THE CHAGOS ARCHIPELAGO AND REEF FORMATIONS

Nautical Miles
20 10 0 20 40 60
Kilometers
20 10 0 20 40 60
Nominal Scale at Latitude 5°S - 1:1,725,000

Map 2

Projection / Datum:
Mercator / WGS84

Coral Reef data from 'Global Distribution of Coral Reefs' (2010) UNEP-WCMC, WorldFish Centre and TNC (The Nature Conservancy).
http://data.unep-wcmc.org/pdfs/1/WCMC-008-CoralReefs2010.pdf?1413198084

This map is for illustrative purposes only.

this page intentionally blank

the Archipelago expanded.[22] British administration over the Chagos Archipelago was exercised by various means, including by visits to the Chagos Archipelago made by Special Commissioners and Magistrates from Mauritius.[23]

62. Although the broad outlines of British Administration of the colony during this period are not in dispute, the Parties disagree as to the extent of economic activity in the Chagos Archipelago and its significance for Mauritius, and on the significance of the Archipelago's status as a dependency.[24] Mauritius contends that there were "close economic, cultural and social links between Mauritius and the Chagos Archipelago"[25] and that "the administration of the Chagos Archipelago as a constituent part of Mauritius continued without interruption throughout that period of British rule".[26] The United Kingdom, in contrast, submits that the Chagos Archipelago was only "very loosely administered from Mauritius"[27] and "in law and in fact quite distinct from the Island of Mauritius."[28] The United Kingdom further contends that "[t]he islands had no economic relevance to Mauritius, other than as a supplier of coconut oil"[29] and that, in any event, economic, social and cultural ties between the Chagos Archipelago and Mauritius during this period are irrelevant to the Archipelago's legal status.[30]

D. THE INDEPENDENCE OF MAURITIUS

63. Beginning in 1831, the administration of the British Governor of Mauritius was supplemented by the introduction of a Council of Government, originally composed of *ex-officio* members and members nominated by the Governor.[31] The composition of this Council was subsequently democratized through the progressive introduction of elected members.[32] In 1947, the adoption of a new Constitution for Mauritius replaced the Council of Government with separate

22 Mauritius' Reply, para. 2.20.

23 Mauritius' Memorial, para. 2.22; The United Kingdom's Counter-Memorial, paras. 2.16, 2.24.

24 Mauritius' Memorial, para. 2.17; The United Kingdom's Counter-Memorial, para. 2.19.

25 Mauritius' Reply, para. 2.18.

26 Mauritius' Memorial, para. 2.17.

27 The United Kingdom's Counter-Memorial, para. 2.19.

28 The United Kingdom's Counter-Memorial, para. 2.32.

29 The United Kingdom's Counter-Memorial, para. 2.19.

30 The United Kingdom's Rejoinder, para. 2.21.

31 Mauritius' Memorial, para. 2.30.

32 Mauritius' Memorial, para. 2.30.

Legislative and Executive Councils.[33] The Legislative Council was composed of the Governor as President, 19 elected members, 12 members nominated by the Governor and 3 *ex-officio* members.[34]

64. The first election of the Legislative Council took place in 1948, and the Mauritius Labour Party (the "**MLP**") secured 12 of the 19 seats available for elected members.[35] The MLP strengthened its position in the 1953 election by securing 14 of the available seats, although the MLP lacked an overall majority in the Legislative Council because of the presence of a number of members appointed by the Governor.[36]

65. The 1953 election marked the beginning of Mauritius' move towards independence.[37] Following that election, Mauritian representatives began to press the British Government for universal suffrage, a ministerial system of government and greater elected representation in the Legislative Council. By 1959, the MLP-led government had openly adopted the goal of complete independence.

66. Constitutional Conferences were held in 1955, 1958, 1961, and 1965,[38] resulting in a new constitution in 1958 and the creation of the post of Chief Minister in 1961 (renamed as the Premier after 1963).[39] In 1962, Dr Seewoosagur Ramgoolam (later Sir Seewoosagur Ramgoolam) became the Chief Minister[40] within a Council of Ministers chaired by the Governor and, following the 1963 election, formed an all-party coalition government to pursue negotiations with the British on independence.[41]

67. The final Constitutional Conference was held in London in September 1965 and was principally concerned with the debate between those Mauritian political leaders favouring independence and those preferring some form of continued association with the United Kingdom.[42] On 24 September 1965, the final day of the conference, the Secretary of State for the Colonies, the

---

33 Mauritius' Memorial, para. 2.31; Final Transcript, 99:11-15.

34 Mauritius' Memorial, para. 2.31.

35 Mauritius' Memorial, para. 2.32; Final Transcript, 99:16-17.

36 Mauritius' Memorial, para. 2.32; Final Transcript, 99:20 to 100:2.

37 Mauritius' Memorial, para. 2.32; The United Kingdom's Counter-Memorial, para. 2.42.

38 Mauritius' Memorial, paras. 2.33-2.40; The United Kingdom's Counter-Memorial, paras. 2.42-2.44; Final Transcript, 100:3-19.

39 The United Kingdom's Counter-Memorial, para. 2.43.

40 Mauritius' Memorial, para. 2.36; Final Transcript, 100:15-16.

41 Mauritius' Memorial, paras. 2.37-2.38; The United Kingdom's Counter-Memorial, para. 2.43.

42 Mauritius' Memorial, para. 2.40; The United Kingdom's Counter-Memorial, para. 2.44.

Rt. Hon. Anthony Greenwood MP,[43] who was the minister in the United Kingdom Government with responsibility for Mauritius, announced that the United Kingdom Government intended that Mauritius would proceed to full independence.[44]

68. Mauritius became independent on 12 March 1968.[45]

E. THE DETACHMENT OF THE CHAGOS ARCHIPELAGO

69. In conjunction with the move toward Mauritian independence, the United Kingdom formulated a proposal to separate the Chagos Archipelago from the remainder of the colony of Mauritius, and to retain the Archipelago under British control. According to Mauritius, the proposal to separate the Chagos Archipelago stemmed from a decision by the United Kingdom in the early 1960s to "accommodate the United States' desire to use certain islands in the Indian Ocean for defence purposes."[46]

70. The record before the Tribunal sets out a series of bilateral talks between the United Kingdom and the United States in 1964 at which the two States decided that, in order to execute the plans for a defence facility in the Chagos Archipelago, the United Kingdom would "provide the land, and security of tenure, by detaching islands and placing them under direct U.K. administration."[47]

71. The suitability of Diego Garcia as the site of the planned defence facility was determined following a joint survey of the Chagos Archipelago and certain islands of the Seychelles in 1964.[48] Following the survey, the United States sent its proposals to the United Kingdom, identifying Diego Garcia as its first preference as the site for the defence facility.[49] The United

---

43 At the first session of the hearings in Istanbul, counsel for Mauritius stated for the record that Mr Anthony Greenwood was not related to Sir Christopher Greenwood; Final Transcript, 18:12.

44 Mauritius Constitutional Conference 1965, presented to Parliament by the Secretary of State for the Colonies by Command of Her Majesty, Command Paper 2797 at para. 20 (October 1965) (**Annex UKCM-11**).

45 Mauritius Independence Act 1968 (**Annex UKCM-19**); The Mauritius Independence Order 1968 (**Annex UKCM-20**).

46 Mauritius' Memorial, para. 3.3.

47 "British Indian Ocean Territory" 1964-1968, Chronological Summary of Events relating to the Establishment of the "B.I.O.T." in November, 1965 and subsequent agreement with the United States concerning the Availability of the Islands for Defence Purposes at p. 9, FCO 32/484 (**Annex MM-3**).

48 Mauritius' Memorial, paras. 3.7 to 3.9; Robert Newton, *Report on the Anglo-American Survey in the Indian Ocean* at para. 20, 1964, CO 1036/1332 (**Annex MM-2**).

49 Letter dated 14 January 1965 from the Counselor for Politico-Military Affairs at the US Embassy in London to the Head of the Permanent Under-Secretary's Department, UK Foreign Office

Kingdom and the United States conducted further negotiations between 1964 and 1965 regarding the desirability of "detachment of the entire Chagos Archipelago,"[50] as well as the islands of Aldabra, Farquhar and Desroches (then part of the colony of the Seychelles).[51] They further discussed the terms of compensation that would be required "to secure the acceptance of the proposals by the local Governments."[52]

72. On 19 July 1965, the Governor of Mauritius was instructed to communicate the proposal to detach the Chagos Archipelago to the Mauritius Council of Ministers and to report back on the Council's reaction.[53] The initial reaction of the Mauritian Ministers, conveyed by the Governor's report of 23 July 1965, was a request for more time to consider the proposal. The report also noted that Sir Seewoosagur Ramgoolam expressed "dislike of detachment".[54] At the next meeting of the Council on 30 July 1965, the Mauritian Ministers indicated that detachment would be "unacceptable to public opinion in Mauritius" and proposed the alternative of a long-term lease, coupled with safeguards for mineral rights and a preference for Mauritius if fishing or agricultural rights were ever granted.[55] The Parties differ in their understanding of the strength of, and motivation for, the Mauritian reaction.[56] In any event, on 13 August 1965, the Governor of Mauritius informed the Mauritian Ministers that the United States objected to the proposal of a lease.[57]

73. Discussions over the detachment of the Chagos Archipelago continued in a series of meetings between certain Mauritian political leaders, including Sir Seewoosagur Ramgoolam,[58] and the

---

(**Annex-MM-5**); *see also* Letter dated 15 January 1965 from the British Embassy, Washington to the UK Foreign Office (**Annex MM-6**).

50 Letter dated 10 February 1965 from the Counselor for Politico-Military Affairs at the US Embassy in London to the Head of the Permanent Under-Secretary's Department, UK Foreign Office (**Annex MM-7**).

51 Foreign Office Telegram No. 3582 to Washington, 30 April 1965, FO 371/184523 (**Annex MM-9**)

52 Foreign Office Telegram No. 3582 to Washington, 30 April 1965, FO 371/184523 (**Annex MM-9**); *see also* Permanent Under-Secretary's Department (Foreign Office), Secretary of State's Visit to Washington and New York, 21-24 March, Defence Interests in the Indian Ocean, Brief No. 14, 18 March 1965, FO 371/184524 (**Annex MM-8**).

53 Colonial Office Telegram No. 198 to Mauritius, No. 219 to Seychelles, 19 July 1965, FO 371/184526 (**Annex MM-10**).

54 Mauritius Telegram No. 170 to the Colonial Office, 23 July 1965, FO 371/184526 (**Annex MM-10**).

55 Mauritius Telegram No. 175 to the Colonial Office, 30 July 1965, FO 371/184526 (**Annex MM-13**).

56 *See* Final Transcript, 168:12-24; 599:16 to 600:12; 924:17-20.

57 Mauritius Telegram No. 188 to the Colonial Office, 13 August 1965, FO 371/184526 (**Annex MM-15**).

58 In addition to Sir Seewoosagur Ramgoolam, the Mauritian leaders involved in these discussions were Attorney General Jules Koenig (*Parti Mauricien Social Democrate*), Minister Sookdeo Bissoondoyal

Secretary of State for the Colonies, Anthony Greenwood, coinciding with the Constitutional Conference of September 1965 in London.[59] Over the course of three meetings, the Mauritian leaders pressed the United Kingdom with respect to the compensation offered for Mauritian agreement to the detachment of the Archipelago, noting the involvement of the United States in the establishment of the defence facility and Mauritius' need for continuing economic support (for example through a higher quota for Mauritius sugar imports into the United States), rather than the lump sum compensation being proposed by the United Kingdom.[60] The United Kingdom took the firm position that obtaining concessions from the United States was not feasible; the United Kingdom did, however, increase the level of lump sum compensation on offer from £1 million to £3 million and introduced the prospect of a commitment that the Archipelago would be returned to Mauritius when no longer needed for defence purposes.[61] The Mauritian leaders also met with the Economic Minister at the U.S. Embassy in London on the question of sugar quotas,[62] and Sir Seewoosagur Ramgoolam met privately with Prime Minister Harold Wilson on the morning of 23 September 1965.[63] The United Kingdom's record of this conversation records Prime Minister Wilson having told Sir Seewoosagur Ramgoolam that –

> in theory, there were a number of possibilities. The Premier and his colleagues could return to Mauritius either with Independence or without it. On the Defence point, Diego Garcia could either be detached by order in Council or with the agreement of the Premier and his colleagues. The best solution of all might be Independence and detachment by agreement, although he could not of course commit the Colonial Secretary at this point.[64]

(Independent Forward Bloc) and Minister Abdool Razack Mohamed (Muslim Committee of Action) and Minister Maurice Paturau (independent). *See* Mauritius' Memorial, para. 3.22 n. 120.

59 The need for defence issues to be kept separate from the Constitutional Conference was first raised in a private meeting between Sir Seewoosagur Ramgoolam and the Secretary of State on 3 September 1965. *See* Note of a meeting with the Secretary of State at 10 a.m. on 3 September 1965 (**Annex UKR-5**).

60 For the records of the meetings on 13 and 20 September 2014, see Mauritius – Defence Matters: record of a meeting in the Secretary of State's room in the Colonial Office at 10.30 a.m. on Monday 13 September 1965 (**Annex UKR-6**); Record of a Meeting in the Colonial Office at 9.00 a.m. on Monday, 20th September, 1965, Mauritius – Defence Issues, FO 371/184528 (**Annex MM-16**).

61 *Ibid*.

62 Note of a Meeting held at the Embassy of the U.S.A., London, at 11.30 a.m. on Wednesday 15 September 1965 (**Annex UKR-7**).

63 Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 a.m. on Thursday, 23 September 1965, FO 371/184528 (**Annex MM-18**). For the briefing documents prepared in advance of the Prime Minister's meeting, see Colonial Office, Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius, 22 September 1965, PREM 13/3320 (**Annex MM-17**).

64 Record of a Conversation between the Prime Minister and the Premier of Mauritius, Sir Seewoosagur Ramgoolam, at No. 10, Downing Street, at 10 a.m. on Thursday, 23 September 1965, FO 371/184528 at p. 3 (**Annex MM-18**).

74. The meetings culminated in the afternoon of 23 September 1965 (the "**Lancaster House Meeting**") in a provisional agreement on the part of Sir Seewoosagur Ramgoolam and his colleagues[65] to agree in principle to the detachment of the Archipelago in exchange for the Secretary of State recommending certain actions by the United Kingdom to the Cabinet.[66] The draft record of the Lancaster House Meeting set out the following:

> Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr. [Seewoosagur] Ramgoolam, Mr. Bissoondoyal and Mr. Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-
>
> (i) negotiations for a defence agreement between Britain and Mauritius;
>
> (ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
>
> (iii) compensation totalling up to [illegible] Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
>
> (iv) the British Government should use its good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
>
> (v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;
>
> (vi) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius.
>
> SIR S. RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

75. Thereafter, Sir Seewoosagur Ramgoolam addressed a handwritten note to the Under-Secretary of State at the Colonial Office, Mr Trafford Smith, setting out further conditions relating to navigational and meteorological facilities on the Archipelago, fishing rights, emergency landing facilities, and the benefit of mineral or oil discoveries. Sir Seewoosagur Ramgoolam's note provided as follows:

> Dear Mr. Trafford Smith,
>
> I and Mr Mohamed have gone through the enclosed paper on the question of Diego Garcia and another near island (i.e. two altogether) and we wish to point out the amendments that should be effected on page 4 of this document. The matters to be added formed part of the original requirements submitted to H.M.G. We think that these can be incorporated in any final agreement.

---

65 Mr Koenig of the *Parti Mauricien Social Democrate* was not present for this final meeting.

66 The draft record of this meeting is set out at Records relating to meetings on 23 September 1965 (**Annex UKR-8**).

With kind regards,

S. Ramgoolam

P.S. The two copies handed over to me are herewith enclosed. [67]

76. The third page to Sir Seewoosagur Ramgoolam's note set out the following items:

> (vii) Navigational & Meteorological facilities
>
> (viii) Fishing rights
>
> (ix) Use of Air Strip for Emergency Landing and if required for development of the other islands
>
> (x) Any mineral or oil discovered on or near islands to revert to the Mauritius Government.[68]

77. These additions were incorporated into paragraph 22 of the final record of the Lancaster House Meeting, which the Tribunal considers to warrant quotation in full:

> RECORD OF A MEETING HELD IN LANCASTER HOUSE
> AT 2. 30 P.M. ON THURSDAY 23rd SEPTEMBER
>
> MAURITIUS DEFENCE MATTERS
>
> Present:- The Secretary of State
> (in the Chair)
>
> | | |
> |---|---|
> | Lord Taylor | Sir S. Ramgoolam |
> | Sir Hilton Poynton | Mr. S. Bissoondoyal |
> | Sir John Rennie | Mr. J. M. Paturau |
> | Mr. P. R. Noakes | Mr. A. R. Mohamed |
> | Mr. J. Stacpoole | |
>
> THE SECRETARY OF STATE expressed his apologies for the unavoidable postponements and delays which some delegations at the Constitutional Conference had met with earlier in the day. He explained that he was required to inform his colleagues of the outcome of his talks with Mauritian Ministers about the detachment of the Chagos Archipelago at 4 p.m. that afternoon and was therefore anxious that a decision should be reached at the present meeting.
>
> 2. He expressed his anxiety that Mauritius should agree to the establishment of the proposed facilities, which besides their usefulness for the defence of the free world, would be valuable to Mauritius itself by ensuring a British presence in the area. On the other hand it appeared that the Chagos site was not indispensable and there was therefore a risk that Mauritius might lose this opportunity. In the previous discussions he had found himself caught between two fires: the demands which the Mauritius Government had made, mainly for economic concessions by the United States, and the evidence that the United States was unable to concede these demands. He had throughout done his best to ensure that whatever arrangements were agreed upon should secure the maximum benefit for Mauritius. He was prepared to recommend to his colleagues if Mauritius agreed to the detachment of the Chagos Archipelago:-

---

[67] Manuscript letter of 1 October 1965 (**Annex UKCM-9**).

[68] Manuscript letter of 1 October 1965 (**Annex UKCM-9**).

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) that if Mauritius became independent, there should be an understanding that the two governments would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) that the British Government should use its good offices with the United States Government in support of Mauritius request for concessions over the supply of wheat and other commodities

(iv) that compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and others affected in the Chagos Islands.

This was the furthest the British Government could go. They were anxious to settle this matter by agreement but the other British Ministers concerned were of course aware that the islands were distant from Mauritius, that the link with Mauritius was an accidental one and that it would be possible for the British Government to detach them from Mauritius by Order in Council.

3. SIR S. RAMGOOLAM replied that the Mauritius Government were anxious to help and to play their part in guaranteeing the defence of the free world. He asked whether the Archipelago could not be leased, (THE SECRETARY OF STATE said that this was not acceptable). MR. BISSOONDOYAL enquired whether the Islands would revert to Mauritius if the need for defence facilities there disappeared. THE SECRETARY OF STATE said that he was prepared to recommend this to his colleagues.

4. MR. PATURAU said that he recognised the value and importance of an Anglo-Mauritius defence agreement, and the advantage for Mauritius if the facilities were established in the Chagos Islands, but he considered the proposed concessions a poor bargain for Mauritius.

5. MR. BISSOONDOYAL asked whether there could be an assurance that supplies and manpower from Mauritius would be used so far as possible. THE SECRETARY OF STATE said that the United States Government would be responsible for construction work and their normal practice was to use American manpower but he felt sure the British Government would do their best to persuade the American Government to use labour and materials from Mauritius.

6. SIR S. RAMGOOLAM asked the reason for Mr. Koenig’s absence from the meeting and MR. BISSOONDOYAL asked whether the reason was a political one, saying that if so this might affect the position.

7. Mr. MOHAMED made an energetic protest against repeated postponements of the Secretary of State's proposed meeting with the M.C.A. [Muslim Committee of Action], which he regarded as a slight to his party.

8. THE SECRETARY OF STATE repeated the apology with which he had opened the meeting, explaining that it was often necessary in such conferences to concentrate attention on a delegation which was experiencing acute difficulties, while he himself had been obliged to devote much time to a crisis in another part of the world.

9. MR MOHAMED then handed the Secretary of State a recent private letter from Mauritius which disclosed that extensive misrepresentations about the course of the Conference had been published in a Parti Mauricien newspaper. THE SECRETARY OF STATE commented that such misrepresentations should be disregarded, and that MR. MOHAMED had put forward the case for his community with great skill and patience.

10. MR. MOHAMED said that his party was ready to leave the bases question to the discretion of H.M.G. and to accept anything which was for the good of Mauritius. Mauritius needed a guarantee that defence help would be available nearby in case of need.

11. At SIR S. RAMGOOLAM's request the Secretary of State repeated the outline he had given at a previous meeting of the development aid which would be available to Mauritius between 1966-1968, viz. a C.D. & W. [Commonwealth Development & Welfare] allocation totalling £2.4 million (including carryover) thus meaning that £800,000 a year would be available by way of grants in addition Mauritius would have access to Exchequer loans, which might be expected to be of the order of £1m. a year, on the conditions previously explained. He pointed out that Diego Garcia was not an economic asset to Mauritius and that the proposed compensation of £3m. would be an important contribution to Mauritius development. There was no chance of raising this figure.

12. SIR S. RAMGOOLAM said that there was a gap of some £4m. per year between the development expenditure which his government considered necessary in order to enable the Mauritian economy to "take off" and the resources in sight, and enquired whether it was possible to provide them with additional assistance over a 10 year period to bridge this gap.

13. THE SECRETARY OF STATE mentioned the possibility of arranging for say £2m. of the proposed compensation to be paid in 10 instalments annually of £200,000.

14. SIR S. RAMGOOLAM enquired about the economic settlement with Malta on independence and was informed that these arrangements had been negotiated in the context of a special situation for which there was no parallel in Mauritius.

15. SIR H. POYNTON pointed out that if Mauritius did not become independent within three years, the Colonial Office would normally consider making a supplementary allocation of C.D. & W. grant money to cover the remainder of the life of the current C.D. & W. Act, i.e. the period up to 1970. He added that if Mauritius became independent, they would normally receive the unspent balance of their C.D. & W. allocation in a different form and it would be open to them after the three year period to seek further assistance such as Britain was providing for a number of independent Commonwealth countries.

16. SIR S. RAMGOOLAM said that he was prepared to agree in principle to be helpful over the proposals which H.M.G. had put forward but he remained concerned about the availability of capital for development in Mauritius and hoped that the British Government would be able to help him in this respect.

17. MR. BISSOONDOYAL said that while it would have been easier to reach conclusions if it had been possible to obtain unanimity among the party leaders, his party was prepared to support the stand which the Premier was taking. They attached great importance to British assistance being available in the event of a serious emergency in Mauritius.

18. MR. PATURAU asked that his disagreement should be noted. The sum offered as compensation was too small and would provide only temporary help for Mauritius economic needs. Sums as large as £25m. had been mentioned in the British press and Mauritius needed a substantial contribution to close the gap of £4-5m. in the development budget. He added that since the decision was not unamimous [*sic*], he foresaw serious political trouble over it in Mauritius.

19. THE SECRETARY OF STATE referred to his earlier suggestion that payment of the monetary compensation should be spread over a period of years.

20. SIR S. RAMGOOLAM said that he was hoping to come to London for economic discussions in October. The Mauritius Government's proposals for development expenditure had not yet been finalised, but it was already clear that there would be a very substantial gap on the revenue side.

21. SIR H. POYNTON said that the total sum available for C.D. & W. assistance to the dependent territories was a fixed one and it would not be possible to increase the allocation for one territory without proportionately reducing that of another.

22. Summing up the discussion, the SECRETARY OF STATE asked whether he could inform his colleagues that Dr. [Sir Seewoosagur] Ramgoolam, Mr. Bissoondoyal and Mr. Mohamed were prepared to agree to the detachment of the Chagos Archipelago on the understanding that he would recommend to his colleagues the following:-

(i) negotiations for a defence agreement between Britain and Mauritius;

(ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;

(iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;

(iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;

(v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;

(vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:

  (a) Navigational and Meteorological facilities;

  (b) Fishing Rights;

  (c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;

(viii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.

23. SIR S. RAMGOOLAM said that this was acceptable to him and Messrs. Bissoondoyal and Mohamed in principle but he expressed the wish to discuss it with his other ministerial colleagues.

24. THE SECRETARY OF STATE pointed out that he had to leave almost immediately to convey the decision to his own colleagues and LORD TAYLOR urged the Mauritian Ministers not to risk losing the substantial sum offered and the important assurance of a friendly military presence nearby.

25. SIR S. RAMGOOLAM said that Mr. Paturau had urged him to make a further effort to secure a larger sum by way of compensation, but the Secretary of State said there was no hope of this.

26. SIR J. RENNIE said that while he had hoped that Mauritius would be able to obtain trading concessions in these negotiations, this was now ruled out. It was in the interest of

> Mauritius to take the opportunity offered to ensure a friendly military presence in the area. What was important about the compensation was the use to which the lump sum was put.
>
> 27. SIR S. RAMGOOLAM mentioned particular development projects, such as a dam and a land settlement scheme, and expressed the hope that Britain would make additional help available in an independence settlement.
>
> 28. SIR H. POYNTON said that the Mauritius Government should not lose sight of the possibility of securing aid for such purposes from the World Bank, the I.D.A. and from friendly governments. While Mauritius remained a colony such powers as Western Germany regarded Mauritius economic problems as a British responsibility but there was the hope that after independence aid would be available from these sources. When Sir S. Ramgoolam suggested that he had said that grants could be extended for up to 10 years, Sir H. Poynton pointed out that he had only indicated that when the period for which the next allocation had been made expired, it would be open to the Mauritius Government to seek further assistance, from Britain, even though Mauritius had meanwhile become independent. It would not be possible to reach any understanding at present beyond saying that independence did not preclude the possibility of negotiating an extension of Commonwealth aid.
>
> 29. At this point the SECRETARY OF STATE left for 10, Dowing Street [*sic*], after receiving authority from Sir S. Ramgoolam and Mr. Bissoondoyal to report their acceptance in principle of the proposals outlined above subject to the subsequent negotiation of details. Mr. Mohamed gave the same assurance, saying that he spoke also for his colleague Mr. Osman. Mr. Paturau said he was unable to concur.[69]

Collectively, the Tribunal will refer to points (i) through (viii) of paragraph 22 of the record of this meeting as the "**Lancaster House Undertakings**".

78. On 6 October 1965, instructions were sent to the Governor of Mauritius to secure "early confirmation that the Mauritius Government is willing to agree that Britain should now take the necessary legal steps to detach the Chagos Archipelago from Mauritius on the conditions enumerated in (i)–(viii) in paragraph 22 of the enclosed record [of the Lancaster House Meeting]."[70] The Secretary of State went on to note that –

> 5. As regards points (iv), (v) and (vi) the British Government will make appropriate representation to the American Government as soon as possible. You will be kept fully informed of the progress of these representations.
>
> 6. The Chagos Archipelago will remain under British sovereignty, and Her Majesty's Government have taken careful note of points (vii) and (viii).[71]

79. On 5 November 1965, the Governor of Mauritius informed the Colonial Office as follows:

> Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that

---

69 Record of a Meeting held in Lancaster House at 2.30 p.m. on Thursday 23rd September [1965], Mauritius Defence Matters, CO 1036/1253 at paras. 22-23 (**Annex MM-19**).

70 Colonial Office Despatch No. 423 to the Governor of Mauritius, 6 October 1965, FO 371/184529 (**Annex MM-21**).

71 *Ibid*.

(1) statement in paragraph 6 of your despatch "H.M.G. have taken careful note of points (vii) and (viii)" means H.M.G. have in fact agreed to them.

(2) As regards (vii) undertaking to Legislative Assembly excludes

(a) sale or transfer by H.M.G. to third party or

(b) any payment or financial obligation by Mauritius as condition of return.

(3) In (viii) "on or near" means within area within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.[72]

80. The Governor also noted that "[Parti Mauricien Social Démocrate] Ministers dissented and (are now) considering their position in the government."[73] The Parties differ regarding the extent to which Mauritian consent to the detachment was given voluntarily.[74]

81. The detachment of the Chagos Archipelago was effected by the establishment of the BIOT on 8 November 1965 by Order in Council.[75] Pursuant to the Order in Council, the governance of the newly created BIOT was made the responsibility of the office of the BIOT Commissioner, appointed by the Queen upon the advice of the United Kingdom FCO. The BIOT Commissioner is assisted in the day-to-day management of the territory by a BIOT Administrator.

82. On the same day, the Secretary of State cabled the Governor of Mauritius as follows:

> As already stated in paragraph 6 of my despatch No. 423, the Chagos Archipelago will remain under British sovereignty. The islands are required for defence facilities and there is no intention of permitting prospecting for minerals or oils on or near them. The points set out in your paragraph 1 should not therefore arise but I shall nevertheless give them further consideration in view of your request.[76]

83. On 12 November 1965, the Governor of Mauritius cabled the Colonial Office, querying whether the Mauritian Ministers could make public reference to the items in paragraph 22 of the record of the Lancaster House Meeting and adding "[i]n this connection I trust further consideration promised . . . will enable categorical assurances to be given."[77]

84. On 19 November 1965, the Colonial Office cabled the Governor of Mauritius as follows:

> U.K./U.S. defence interests.

---

72 Mauritius Telegram No. 247 to the Colonial Office, 5 November 1965, FO 371/184529 (**Annex MM-25**).

73 *Ibid.*

74 *See* Final Transcript, 148:3-10; 248:24 to 249:3; 523:7 to 524:13.

75 British Indian Ocean Territory Order 1965 (S.I. 1965/1920) (**Annex MM-32**)(**Annex UKCM-10**).

76 Colonial Office Telegram No. 298 to Mauritius, 8 November 1965, FO 371/184529 (**Annex MM-29**).

77 Text of cable reproduced in Note on Mauritius and Diego Garcia (**Annex UKR-13**).

> There is no objection to Ministers referring to points contained in paragraph 22 of enclosure to Secret despatch No. 423 of 6th October so long as qualifications contained in paragraphs 5 and 6 of the despatch are borne in mind.
>
> 2. It may well be some time before we can give final answers regarding points (iv), (v) and (vi) of paragraph 22 and as you know we cannot be at all hopeful for concessions over sugar imports and it would therefore seem unwise for anything to be said locally which would raise expectations on this point.
>
> 3. As regards point (vii) the assurance can be given provided it is made clear that a decision about the need to retain the islands must rest entirely with the United Kingdom Government and that it would not (repeat not) be open to the Government of Mauritius to raise the matter, or press for the return of the islands on its own initiative.
>
> 4. As stated in paragraph 2 of my telegram No. 298 there is no intention of permitting prospecting for minerals and oils. The question of any benefits arising therefrom should not [. . .] [illegible][78]

85. On 21 December 1965, in response to questions in the Mauritius Legislative Assembly regarding the obligations agreed to by the United Kingdom, Mr Forget (on behalf of the Premier and Minister of Finance) identified the following agreements (among other points):

> [. . .]
>
> (e) If the British Government decides that the Chagos Archipelago is no longer required for defence purposes, the islands will be returned to Mauritius. The question what would happen in such circumstances to any installations in the Chagos Archipelago is, of course, a hypothetical one, and would no doubt be discussed between the interested Governments in light of practical requirements and considerations at the time.
>
> [. . .]
>
> (i) The Honourable Member's question is, again, a hypothetical one and I should make clear that there has never been any indication of minerals in the Chagos Archipelago, which is a string of coral atolls. The British Government has no intention of allowing prospecting for minerals while the islands are being used for defence purposes. For the position thereafter, I would refer the Honourable Member to the first sentence of the reply to Question (e).[79]

86. Following the public announcement of the detachment of the Chagos Archipelago, the matter was raised in the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. On 16 December 1965, the Generally Assembly adopted Resolution 2066(XX) as follows:

> 2066 (XX). Question of Mauritius
>
> *The General Assembly,*
>
> *Having considered* the question of Mauritius and other islands composing the Territory of Mauritius,

---

78 Colonial Office Telegram 313, 19 November 1965, *reproduced in* Note on Mauritius and Diego Garcia (**Annex UKR-13**).

79 Debate in Mauritius' Legislative Assembly of 21 December 1965 (**Annex UKCM-15**).

Having examined the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius,[16]

Recalling its resolution 1514 (XV) of 14 December 1960 containing the Declaration on the Granting of Independence to Colonial Countries and Peoples,

Regretting that the administering Power has not fully implemented resolution 1514 (XV) with regard to that Territory,

Noting with deep concern that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration, and in particular of paragraph 6 thereof,

1. *Approves* the chapters of the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples relating to the Territory of Mauritius, and endorses the conclusions and recommendations of the Special Committee contained therein ;

2. *Reaffirms* the inalienable right of the people of the Territory of Mauritius to freedom and independence in accordance with General Assembly resolution 1514 (XV);

3. *Invites* the Government of the United Kingdom of Great Britain and Northern Ireland to take effective measures with a view to the immediate and full implementation of resolution 1514 (XV);

4. *Invites* the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity;

5. *Further invites* the administering Power to report to the Special Committee and to the General Assembly on the implementation of the present resolution;

6. *Requests* the Special Committee to keep the question of the Territory of Mauritius under review and to report thereon to the General Assembly at its twenty-first session.

1398th plenary meeting,
16 December 1965. [80]

The status of Mauritius was also raised, along with that of other non-self-governing territories, in General Assembly resolutions adopted on 20 December 1966[81] and 19 December 1967.[82]

87. In 1975, in anticipation of the transition of the Seychelles to independence the following year, the United Kingdom and the United States entered into discussions on the possibility of returning Aldabra, Farquhar and Desroches to the Seychelles. Neither the United Kingdom nor the United States saw any defence need for the islands, and the United Kingdom considered that the return would facilitate a smooth transition.[83] It was also recognized that the islands remained

80 United Nations General Assembly Resolution 2066 (XX) (**Annex MM-38**).

81 United Nations General Assembly Resolution 2232 (XXI) (**Annex MM-45**).

82 United Nations General Assembly Resolution 2357 (XXII) (**Annex MM-51**).

83 For a partial record of the U.S./U.K. review of the potential return of Aldabra, Farquhar and Desroches to the Seychelles, see Memorandum by the UK Secretary of State for Foreign and Commonwealth Affairs, "British Indian Ocean Territory: The Ex-Seychelles Islands", 4 July 1975 (**Annex MM-72**); Briefing note

populated and that the political repercussions of the resettlement of the Chagossians[84] (discussed below) would render it impractical to take similar steps on the other BIOT islands. On 18 March 1976, the United States, United Kingdom, and Seychelles reached an agreement to return the islands, with effect from the independence of the Seychelles on 29 June 1976, in exchange for a commitment by the Seychelles not to permit military access to the islands by third States and to continue a policy of strict nature conservancy, in particular with respect to Aldabra.[85] The agreement was given effect by the adoption on 9 June 1976 of an Order in Council.[86]

F. THE REMOVAL OF THE CHAGOSSIAN POPULATION

88. At the time of the detachment of the Chagos Archipelago in 1965, there were approximately 1,360 persons resident on the islands.[87] Including those born on the islands, the total Chagossian population may be considered to have been between 1,500 and 1,750 persons.[88]

89. On 30 December 1966, the United Kingdom and the United States concluded an Agreement Concerning the Availability for Defense Purposes of the British Indian Ocean Territory which provided for "the islands [to] be available to meet the needs of both Governments for defense" and that "required sites [for defence facilities] shall be made available to the United States authorities without charge".[89] Pursuant to a further exchange of notes, kept secret at the time,

---

dated 14 July 1975 from John Hunt to the UK Prime Minister (**Annex MM-73**); Office of International Security Operations Bureau, Politico-Military Affairs, United States Department of State, "Disposition of the Seychelles Islands of the BIOT", 31 October 1975 (**Annex MM-74**); Anglo/US Consultations on the Indian Ocean: November 1975, Agenda Item III, Brief No. 4: Future of Aldabra, Farquhar and Desroches, November 1975 (**Annex MM-75**); British Embassy, Washington, November 1975, Minutes of Anglo-US Talks on the Indian Ocean held on 7 November 1975 (Extract) (**Annex MM-76**).

84 The term "Chagossian" refers to the inhabitants of the Chagos Archipelago. At various points in the record before the Tribunal, the term "Ilois" is also used to refer to this population.

85 Heads of Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland, the Administration of the "British Indian Ocean Territory" and the Government of Seychelles Concerning the Return of Aldabra, Desroches and Farquhar to Seychelles to be Executed on Independence Day, FCO 40/732 (**Annex MM-79**).

86 The British Indian Ocean Territory Order 1976 (S.I. 1976/893) (**Annex UKCM-32**).

87 *See* Robert Newton, *Report on the Anglo-American Survey in the Indian Ocean* at para. 7, 1964, CO 1036/1332 (**Annex MM-2**).

88 Final Transcript, 392:23 to 393:8, *citing* R. Gifford & R.P. Dunne, "A Dispossessed People: the Depopulation of the Chagos Archipelago 1965–1973" 20 *Population, Space and Place*, pp. 37-49 (2014).

89 Exchange of Notes Constituting an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning the Availability for Defence Purposes of the British Indian Ocean Territory, London, 30 December 1966, 603 UNTS 273 (**Annex MM-46**).

the United States agreed to contribute £5 million to the costs of establishing the BIOT, to be paid by waiving United Kingdom payments in respect of joint missile development programmes.[90]

90. Between 1968 and 1973, the United Kingdom proceeded to arrange for the purchase of privately held land and to remove the Chagossian population from the Archipelago. On 16 April 1971, the BIOT Commissioner passed Immigration Ordinance, 1971, which provided in section 4 that "[n]o person shall enter the Territory or, being in the Territory, shall be present or remain in the Territory, unless he is in possession of a permit or his name is endorsed on a permit in accordance with the provisions of . . . this Ordinance".[91] The record indicates that the resettlement and compensation of the Chagossian population had been contemplated in discussions with the United States as early as January 1964,[92] and the Lancaster House Undertakings (see above at paragraph 77) included reference to "direct compensation to landowners and the cost of resettling others affected in the Chagos Islands."[93]

91. Further to talks conducted in early 1972, the United Kingdom agreed to pay Mauritius the sum of £650,000 as compensation for the costs of resettling persons displaced from the Chagos Archipelago.[94]

92. In 1975, a former resident of the Chagos Archipelago, Mr Michel Vencatassen, initiated a claim for compensation in the courts of England and Wales against the British Government. This was settled in 1982 with an agreement in which the United Kingdom would pay £4 million into a

---

90 For British correspondence relating to the U.S. contribution, see Minute dated 12 May 1967 from the Secretary of State for Defence to the Foreign Secretary, FO 16/226 (**Annex MM-48**); Minute dated 22 May 1967 from a Colonial Office official, A. J. Fairclough, to a Minister of State, with a Draft Minute appended for signature by the Secretary of State for Commonwealth Affairs addressed to the Foreign Secretary, FCO 16/226 (**Annex MM-49**).

91 Reproduced in *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 1)* [2001] QB 1067 (Laws LJ and Gibbs J).

92 *See* "British Indian Ocean Territory" 1964-1968, Chronological Summary of Events relating to the Establishment of the "B.I.O.T." in November, 1965 and subsequent agreement with the United States concerning the Availability of the Islands for Defence Purposes at p. 5, FCO 32/484 (**Annex MM-3**).

93 Record of a Meeting held in Lancaster House at 2.30 p.m. on Thursday 23rd September [1965], Mauritius Defence Matters, CO 1036/1253 (**Annex MM-19**).

94 For correspondence relating to the United Kingdom's payment in respect of resettlement costs, see Letter dated 26 June 1972 from the British High Commission, Port Louis, to the Prime Minister of Mauritius (**Annex MM-66**); Letter dated 4 September 1972 from Prime Minister of Mauritius to British High Commissioner, Port Louis (**Annex MM-67**); Letter dated 24 March 1973 from Prime Minister of Mauritius to the British High Commissioner, Port Louis (**Annex MM-69**).

fund for the former residents of the Archipelago.[95] On 7 July 1982, Mauritius and the United Kingdom concluded an agreement pursuant to which –

> The Government of the United Kingdom shall *ex gratia* with no admission of liability pay to the Government of Mauritius for and on behalf of the Ilois[96] and the Ilois community in Mauritius in accordance with Article 7 of this Agreement the sum of £4 million which, taken together with the payment of £650,000 already made to the Government of Mauritius, shall be in full and final settlement of all claims [arising from the removal or resettlement of the population of the Chagos Archipelago].[97]

The 1982 agreement was then implemented in Mauritius by the Ilois Trust Fund Act of 30 July 1982.[98]

93. In 1998, another former resident of the Chagos Archipelago, Mr Olivier Bancoult, sought judicial review in the courts of England and Wales of section 4 of the BIOT Immigration Ordinance, 1971 (see paragraph 90 above). On 3 November 2000, the High Court held that "there is no principled basis upon which s.4 of the Ordinance can be justified as having been empowered by s.11 of the BIOT Order",[99] insofar as the removal of the Chagossian population did not fall within the Commissioner's power to "make laws for the peace, order and good government of the Territory".[100]

94. On 3 November 2000, the Commissioner enacted the BIOT Immigration Ordinance, 2000, which restricted access to the Archipelago, but included an exception allowing Chagossians entry, except with respect to Diego Garcia.

95. In April 2002, a group of 4,959 former residents of the Chagos Archipelago and their descendants brought a claim against the Attorney General of England and Wales and the BIOT Commissioner for compensation and restoration of property rights. On 9 October 2003, the High Court dismissed this action on the grounds that no tort at common law was committed by the removal of the Chagossian population and that further compensation for property loss was

---

95 Mauritius' Memorial, para. 3.75; summarized in *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] 1 AC 453, para. 12.

96 The term "Ilois" refers to the same population of former residents of the Archipelago as the term "Chagossians".

97 Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Mauritius concerning the Ilois, Port Louis, 7 July 1982, with amending Exchange of Notes, Port Louis, 26 October 1982, Cmnd. 8785, 1316 UNTS 128.

98 Ilois Trust Fund Act 1982, Act No 6 of 1982, 30 July 1982.

99 *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 1)* [2001] QB 1067 at para. 57 (Laws LJ and Gibbs J).

100 Immigration Ordinance 1971 s. 11, as reproduced in *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 1)* [2001] QB 1067 at para. 57 (Laws LJ and Gibbs J).

precluded by the Limitation Act, 1980 and the Claimants' renunciation of claims in exchange for the compensation provided in 1982.[101]

96. On 10 June 2004, the United Kingdom adopted, by Order in Council, the British Indian Ocean Territory (Constitution) Order, 2004, which provided in section 9 as follows:

> No right of abode in the Territory
>
> 9. - (1) Whereas the Territory was constituted and is set aside to be available for the defence purposes of the Government of the United Kingdom and the Government of the United States of America, no person has the right of abode in the Territory.
>
> (2) Accordingly, no person is entitled to enter or be present in the Territory except as authorised by or under this Order or any other law for the time being in force in the Territory.[102]

On the same day, the United Kingdom adopted, by Order in Council, the British Indian Ocean Territory (Immigration) Order, 2004, replacing BIOT Immigration Ordinance, 2000 and removing the exception allowing Chagossians entry, except with respect to Diego Garcia. The Order also created a penal offence of unlawful entry into the territory.[103]

97. In August 2004, Mr Bancoult initiated proceedings seeking judicial review of the 2004 Orders in Council. After decisions in the High Court[104] and Court of Appeal[105] quashing section 9 of the (Constitution) Order, 2004 as irrational insofar as it was unconnected to the well-being of the Chagossian population, the House of Lords (by three votes to two) allowed an appeal by the Secretary of State. In so doing, the House of Lords held (per Lord Hoffmann) that "Her Majesty exercises her powers of prerogative legislation for a non-self-governing colony on the advice of her ministers in the United Kingdom and will act in the interests of her undivided realm, including both the United Kingdom and the colony"[106] and that, in light of the assessment that resettlement was economically unviable and the Chagossian interest in funded resettlement, it was "impossible to say, taking fully into account the practical interests of the Chagossians, that

---

101 *Chagos Islanders v. Attorney General* [2003] EWHC 2222 at paras. 737-747 (Ouseley J). The Court of Appeal denied leave to appeal on 22 July 2004. *See Chagos Islanders v. Attorney General* [2004] EWCA Civ 997, per Sedley LJ.

102 British Indian Ocean Territory (Constitution) Order 2004 (**Annex UKCM-77**).

103 British Indian Ocean Territory (Immigration) Order 2004 (**Authority MM-53**).

104 *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2006] EWHC 1038 (Admin).

105 *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2008] QB 365.

106 *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2009] 1 AC 453 at para. 47 (Hoffmann LJ).

the decision to reimpose immigration control on the islands was unreasonable or an abuse of power."[107]

98. Thereafter, Mr Bancoult and other Chagossians pursued their claims before the European Court of Human Rights. In December 2012, the European Court held in *Chagos Islanders v. The United Kingdom* that the claim was inadmissible, on the grounds that –

> in settling their claims in the Ventacassen litigation and in accepting and receiving compensation, those applicants have effectively renounced further use of these remedies. They may no longer, in these circumstances, claim to be victims of a violation of the [European Convention on Human Rights], within the meaning of Article 34 of the [European Convention on Human Rights]. Those applicants who were not party to the proceedings but who could at the relevant time have brought their claims before the domestic courts have, for their part, failed to exhaust domestic remedies as required by Article 35 § 1 of the [European Convention on Human Rights].[108]

99. In the course of the proceedings before the present Tribunal, the Attorney-General of England and Wales, the Rt. Hon. Dominic Grieve QC MP made the following statement regarding the Chagossian population:

> we regret very much the circumstances in which they were removed from the islands and recognise that what was done then should not have happened. A substantial sum in compensation was paid to the former inhabitants in the 1980s—a point that was recognised by the European Court of Human Rights in their recent decision. When in Opposition, the political party of which I'm a member said that we would look again at our current policy for BIOT. When we first came into Government, we were constrained by the proceedings in the European Court of Human Rights. But immediately after those proceedings were concluded, my colleague, the Foreign Secretary, announced that we would be looking again at the question of the United Kingdom's policy towards BIOT. As part of that review we are looking again at the question of resettlement. And we hope to be able to reach conclusions in the early part of next year in respect of that.[109]

G. SUBSEQUENT RELATIONS BETWEEN MAURITIUS AND THE UNITED KINGDOM CONCERNING THE CHAGOS ARCHIPELAGO

100. Between 1968 and 1980, Mauritius generally did not raise the question of the Chagos Archipelago in public fora and diplomatic communications. The Parties differ as to the significance of the absence of public claims by Mauritius. In Mauritius' view, this silence must be understood in light of the "difficult socio-economic situation" and Mauritius' heavy reliance on the United Kingdom in the years following independence.[110] According to the United Kingdom, the silence indicates that "until 1980, the then Government of Mauritius did not

---

107 *Ibid*. at para. 58.

108 *Chagos Islanders v. the United Kingdom*, no. 35622/04, para. 81, 12 December 2012.

109 Final Transcript, 43:9-19.

110 Mauritius' Reply, para. 2.94.

question the obvious fact that at independence the BIOT was not part of the territory of the Republic of Mauritius."[111]

101. On 7 July 1982, following elections and a change of government, the Parliament of Mauritius adopted the Interpretation and General Clauses (Amendment) Act, 1982, which incorporated the Chagos Archipelago into the definition of Mauritius for the purposes of Mauritian law as follows:

> Section 2(b) of the [Interpretation and General Clauses Act] is amended in the definition of "State of Mauritius" or "Mauritius" by deleting the words "Tromelin and Cargados Carajos" and replacing them by the words "Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia".[112]

102. On 21 July 1982, the Parliament of Mauritius established a Select Committee on the Excision of the Chagos Archipelago to examine the circumstances of the detachment of the islands. The Select Committee interviewed surviving participants of the events of 1965, although their recollections were inconsistent and differed in material respects from the documentary record set out above (see paragraphs 69–85). The Select Committee's Report was published on 1 June 1983 and was strongly critical of the detachment of the Archipelago, the lack of transparency with which the pre-independence Government of Mauritius handled the matter, and the lack of candour of a number of the participants in their testimony to the Committee. The Select Committee also identified what it described as a "blackmail element" in the way in which the question of detachment had been presented by the United Kingdom and concluded that detachment had represented a violation of the UN Charter.[113]

103. Since 1980, Mauritius contends that "[i]t has consistently asserted its rights [to sovereignty over the Chagos Archipelago] in statements to the UN General Assembly".[114] According to Mauritius, it "has also consistently asserted its sovereignty over the Chagos Archipelago in bilateral communications with the UK".[115] The Parties differ as to whether Mauritius'

---

111 The United Kingdom's Rejoinder, para. 2.61.

112 Interpretation and General Clauses (Amendment) Act 1982 (**Annex UKR-26**).

113 Report of the Select Committee of the Mauritius Assembly on the Excision of the Chagos Archipelago, June 1983 (**Annex UKCM-46**).

114 Mauritius' Reply, para. 2.85; *see also* Extracts from Annual Statements Made by Mauritius to the United Nations General Assembly (Chagos Archipelago) (**Annex MM-95**).

115 Mauritius' Reply, para. 2.86; see also Letter dated 9 January 1998 from the Prime Minister of Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-106**); Note Verbale dated 5 July 2000 from the Ministry of Foreign Affairs and International Trade, Mauritius to the British High Commission, Port Louis, No. 52/2000 (1197) (**Annex MM-111**); Note Verbale dated 6 November 2000 from the Ministry of Foreign Affairs and Regional Cooperation, Mauritius to the British High Commission, Port Louis, No. 97/2000 (1197/T4) (**Annex MM-113**); Letter dated 30 December 2009 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK

statements to the United Nations indicate a claim of current sovereignty or simply a claim to the eventual return of the islands, pursuant to the United Kingdom's undertaking, when no longer required for defence purposes. In either event, the United Kingdom has consistently responded by maintaining its view that the Chagos Archipelago remains British.[116]

104. In its 1992 Constitution, Mauritius incorporated the following definition of Mauritius:

> 'Mauritius' includes –
>
> (a) the Islands of Mauritius, Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including Diego Garcia and any other island comprised in the State of Mauritius;
>
> (b) the territorial sea and the air space above the territorial sea and the islands specified in paragraph (a);
>
> (c) the continental shelf; and
>
> (d) such places or areas as may be designated by regulations made by the Prime Minister, rights over which are or may become exercisable by Mauritius.[117]

105. On 31 May 1977, Mauritius adopted its Maritime Zones Act, 1977.[118] On 27 December 1984, Mauritius adopted the Maritime Zones (Exclusive Economic Zones) Regulations, 1984, setting out, *inter alia*, the coordinates of the exclusive economic zone surrounding the Chagos Archipelago.[119] The United Kingdom protested against this action on 18 February 1985.[120]

106. On 25 July 1997, the United Kingdom acceded to the Convention, with an Instrument of Accession extending to the BIOT. Mauritius did not object. According to Mauritius, limited resources inhibit its ability to track all accessions to multilateral treaties that may implicate the Chagos Archipelago, but "[w]henever Mauritius has noted that a multilateral convention has been so extended, it has not failed to protest."[121] Mauritius did object to the extension of the

---

Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-157**); Letter dated 19 February 2010 from the Secretary to Cabinet and Head of the Civil Service, Mauritius to the British High Commissioner, Port Louis (**Annex MM-162**); Note Verbale dated 2 April 2010 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 11/2010 (1197/28/10) (**Annex MM-167**); Letter dated 20 October 2011 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-172**); Letter dated 21 March 2012 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-173**).

116 The United Kingdom's Counter-Memorial, paras. 2.84-2.88.

117 The Constitution of Mauritius (Amendment No. 3) Act 1991, section 19 (**Annex UKR-32**).

118 Final Transcript, 423:5-8.

119 *See* The United Kingdom's Counter-Memorial, para. 2.102.

120 United Kingdom's Note Verbale of 18 February 1985 (**Annex UKCM-50**).

121 Final Transcript, 141:7-8.

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (the "**1995 Fish Stocks Agreement**")[122] and has stated in these proceedings that "Mauritius does not accept that the United Kingdom is entitled to extend the territorial scope of its treaty obligations to the Archipelago."[123]

107. On 28 February 2005, Mauritius adopted the Maritime Zones Act, 2005, replacing earlier legislation.[124] Pursuant to this Act, on 5 August 2005, Mauritius adopted the Maritime Zones (Baselines and Delineating Lines) Regulations, 2005, setting out the geographical coordinates for the baselines of, *inter alia*, the Chagos Archipelago.[125] On 26 July 2006, Mauritius conveyed these geographical coordinates to the UN Secretary-General.[126] On 27 June 2008, Mauritius made a further deposit of charts and geographical coordinates with the United Nations.[127] On 19 March 2009, the United Kingdom protested against Mauritius' deposit of information in respect of the Chagos Archipelago.[128] On 9 June 2009, Mauritius reiterated its non-recognition of the BIOT to the United Nations.[129]

108. On 14 January 2009, in talks (conducted under a sovereignty umbrella) between the United Kingdom and Mauritius concerning the Chagos Archipelago, the United Kingdom indicated that it was not interested in making a submission to the Commission on the Limits of the Continental

---

122 Final Transcript, 141:8-10; *see also* Declarations to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, *available at* <http://www.un.org/depts/los/convention_agreements/fish_stocks_agreement_declarations.htm>.

123 Final Transcript, 141:5-7.

124 Maritime Zones Act 2005 (**Annex MM-131**).

125 Final Transcript, 423:9-20.

126 Note Verbale dated 26 July 2006 from the Permanent Mission of the Republic of Mauritius to the United Nations, New York, to the UN Secretary General, No. 4678/06 (**Annex MM-134**).

127 *See* Deposit by the Republic of Mauritius of charts and lists of geographical coordinates of points, pursuant to article 16, paragraph 2, and article 47, paragraph 9, of the Convention, M.Z.N. 63. 2008. LOS (Maritime Zone Notification) 27 June 2008, *available at* http://www.un.org/depts/los/LEGISLATIONANDTREATIES/losic/losic28e.pdf

128 Final Transcript, 509:1-4; *see also* Note Verbale dated 19 March 2009 from the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland to the Secretary-General to the United Nations concerning a deposit of charts and lists of geographical coordinates by the Republic of Mauritius, *reproduced in* United Nations, Law of the Sea Bulletin No. 69, *available at* http://www.un.org/depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin69e.pdf

129 Note Verbale dated 9 June 2009 from Permanent Mission of the Republic of Mauritius to the United Nations, New York to the Secretary General of the United Nations, No. 107853/09 (**Annex MM-147**).

Shelf, but was open to the possibility of a joint submission with Mauritius in light of the impending deadlines for States Parties to submit preliminary information.[130] The content of these discussions is set out in detail below in connection with the Tribunal's consideration of its jurisdiction over Mauritius' Third Submission (see paragraphs 331–343).

109. On 6 May 2009, Mauritius submitted preliminary information concerning the outer limits of the continental shelf in the Chagos Archipelago to the CLCS.[131]

110. On 21 July 2009, a second round of Mauritius–United Kingdom talks took place (again under a sovereignty umbrella), in which submissions to the CLCS were discussed. The United Kingdom did not object to Mauritius' submission of preliminary information to the CLCS, and the Parties agreed to move forward with the joint preparation of a full submission.[132] The Joint Communiqué issued after the talks stated as follows:

> Both delegations were of the view that it would be desirable to have a coordinated submission for an extended continental shelf in the Chagos Archipelago/British Indian Ocean Territory region to the UN Commission on the Limits of the Continental Shelf, in order not to prejudice the interest of Mauritius in that area and to facilitate its consideration by the Commission. It was agreed that a joint technical team would be set up with officials from both sides to look into possibilities and modalities of such a coordinated approach, with a view to informing the next round of talks.[133]

A third round of joint talks was proposed for November 2009 or January 2010,[134] but did not take place in light of developments discussed below (see paragraphs 131–141).

---

130 There is no agreed record of this meeting. The United Kingdom's record is set out in UK Foreign and Commonwealth Office, Overseas Territories Directorate, "British Indian Ocean Territory: UK/Mauritius Talks", 14 January 2009 (**Annex MR-128**). Mauritius' record is set out in Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, "Meeting of Officials on the Chagos Archipelago/British Indian Ocean Territory held at the Foreign and Commonwealth Office, London, Wednesday 14 January 2009, 10 a.m.", 23 January 2009 (**Annex MR-129**). The Joint Communqué issued at the close of the meeting mentions only a "mutual discussion" concerning "the continental shelf". Joint communiqué of meeting of 14 January 2009 (**Annex UKCM-93**).

131 Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183 (**Annex MM-144**).

132 Again, there is no agreed record of this meeting. The United Kingdom's record is set out in UK Foreign and Commonwealth Office, Overseas Territories Directorate, "UK/Mauritius Talks on the British Indian Ocean Territory", 24 July 2009 (**Annex MR-143**). Mauritius' record is set out in Information Paper by the Prime Minister of Mauritius, Second Meeting at Senior Officials' Level between Mauritius and UK on the Chagos Archipelago, CAB(2009) 624, 12 August 2009 (**Annex MR-144**).

133 Joint Communiqué, Second round of bilateral talks between Mauritius and the UK on the Chagos Archipelago, 21 July 2009, Port Louis, Mauritius (**Annex MM-148**).

134 Note Verbale dated 5 November 2009 from Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 46/2009 (1197/28/4) (**Annex MM-150**).

111. In its *Rejoinder* in these proceedings, submitted on 14 March 2014, the United Kingdom commented on Mauritius' submission of preliminary information to the CLCS as follows:

> Mauritius cannot alter the status of the BIOT continental shelf by making its own submission to the CLCS with respect to BIOT. [. . .] In accordance with the terms of article 76(7), only the coastal State may delineate the outer limits of the continental shelf. In accordance with article 76(8), only the coastal State may submit information to the CLCS on the limits of the shelf beyond 200 nautical miles. Mauritius is not the coastal State in respect of BIOT and as such it has no standing before the CLCS with respect to BIOT.[135]

H. SUBSEQUENT RELATIONS BETWEEN MAURITIUS AND THE UNITED KINGDOM CONCERNING FISHING RIGHTS

112. Following the detachment of the Chagos Archipelago, the Colonial Office cabled the Governor of Mauritius on 10 November 1965, seeking details of the nature and extent of fishing around the islands.[136] On 17 November 1965, the Governor replied as follows:

> (a) Nature fishing practised: mainly handline with some basket and net fishing by local population for own consumption.
>
> (b) Use of international waters: nil, though vessels from Seychelles and occasionally Mauritius use anchorage facilities.
>
> (c) Extent territorial waters: unknown. Area covered by banks (up to 80 fathoms) about 6,000 square miles.
>
> (d) Value as source of fish: best reference report Wheeler Ommaney, Mauritius Seychelles Fisheries Survey. Fishable area roughly 2,433 square miles. Available potential: fish 95,000 tons, shark 147,000 tons.[137]

113. Following correspondence exchanged with the Governor of Mauritius,[138] BIOT officials,[139] and officials in the United States[140] regarding the form of fishing limits, the BIOT Commissioner established a fisheries zone contiguous to the territorial sea of the BIOT on 10 July 1969. This fisheries zone extended from the outer limit of the (then) 3 nautical mile territorial sea to 12

---

135 The United Kingdom's Rejoinder, para. 8.39.

136 Colonial Office Telegram No. 305 to Mauritius, 10 November 1965 (**Annex MM-34**).

137 Mauritius Telegram (unnumbered) to the Secretary of State for the Colonies, 17 November 1965 (**Annex MM-37**).

138 *See* Letter dated 12 July 1967 from the UK Commonwealth Office to the Governor of Mauritius, FCO 16/226 (**Annex MM-50**).

139 Despatch dated 28 April 1969 from J. W. Ayres, Foreign and Commonwealth Office to J. R. Todd, Administrator, BIOT, FCO 31/2763 (**Annex MM-52**).

140 In respect of the United Kingdom's consultation with the United States, see Letter dated 6 September 1968 from A. Brooke Turner, UK Foreign Office to K.M. Wilford, British Embassy, Washington, FCO 31/134 (**Annex MR-68**); Telegram No. 3129 dated 22 October 1968 from British Embassy Washington to UK Foreign and Commonwealth Office, FCO 141/1437 (**Annex MR-69)**.

nautical miles from the low waterline (or otherwise from the baselines from which the territorial sea was measured).[141]

114. On 17 April 1971, the BIOT Commissioner enacted the Fisheries Limits Ordinance, 1971. The ordinance imposed a general prohibition of commercial fishing within the 12 nautical mile limit set out therein. Section 4 empowered the Commissioner "for the purpose of enabling fishing traditionally carried on in any area within the contiguous zone" to designate countries whose nationals would be exempted from the prohibition.[142]

115. On 2 July 1971, the British High Commission in Port Louis was directed in the following terms to inform Mauritius that Mauritian fishermen would be exempted from the ordinance:

> Included within the BIOT fishing zone are certain waters which have been traditionally fished by vessels from Mauritius. [. . .] the Commissioner of BIOT will use his powers under Section 4 of BIOT Ordinance No 2/1971, to enable Mauritian fishing boats to continue fishing in the 9-mile contiguous zone in the waters of the Chagos Archipelago. This exemption stems from the understanding on fishing rights reached between HMG and the Mauritius Government, at the time of the Lancaster House Conference in 1965 [. . .]. We would be most grateful if you would inform the Mauritius Government of the foregoing at whatever level you consider appropriate.[143]

116. Although the record does not indicate any order formally designating Mauritius pursuant to Section 4 of the ordinance, the BIOT Administrator reported in 1972 that "Mauritians have been declared as traditional fishermen in BIOT as the islands formerly formed part of Mauritius."[144] The Parties are, in any event, agreed that the "understanding was that Mauritian-flagged vessels were designated to fish in the 3nm-12nm contiguous zone."[145]

117. By July 1983, the United Kingdom had noted the absence of an order formally designating Mauritius for the purposes of the 1971 Ordinance and was considering steps to "regularise the position."[146] Shortly thereafter, the discovery in August 1983 that several Mauritian fishing vessels were operating in the territorial sea around the Chagos Archipelago without the knowledge of British officials, and were also gathering coconuts on the outlying islands,

---

141 "British Indian Ocean Territory" Proclamation No. 1 of 1969 (**Annex MM-53**).

142 "British Indian Ocean Territory" Ordinance No. 2 of 1971 (**Annex MM-60**).

143 Despatch dated 2 July 1971 from M. Elliott, UK Foreign and Commonwealth Office to R. G. Giddens, British High Commission, Port Louis, FCO 31/2763 (**Annex MM-63**).

144 Despatch dated 26 May 1972 from J. R. Todd, BIOT Administrator to P. J. Walker, UK Foreign and Commonwealth Office, FCO 31/2763 (**Annex MM-65**).

145 The United Kingdom's Counter-Memorial, para. 2.98; *see also* Mauritius' Reply, para. 2.100.

146 Minute dated 5 August 1983 from Maritime, Aviation and Environment Department to East Africa Department, UK Foreign and Commonwealth Office, "BIOT: Fishing Ordinance" (**Annex MR-88**).

prompted the United Kingdom to "look afresh at [its] policy on access by Mauritian vessels to BIOT".[147]

118. On 12 August 1984, the BIOT Commissioner adopted the Fishery Limits Ordinance, 1984 and repealed the 1971 Ordinance.[148] The new ordinance provided for the designation of particular States as eligible to fish in the territorial sea and contiguous zone surrounding the Chagos Archipelago. Following designation, vessels from such States were required to comply with a licensing regime to specify the type of fishing and areas in which it could be carried out. On 21 February 1985, Mauritius was formally designated pursuant to the Fisheries Limit Ordinance, 1984 "for the purpose of enabling fishing traditionally carried on in any area within the fishery limits to be continued by fishing boats registered in Mauritius".[149]

119. On 23 July 1991, the United Kingdom wrote to Mauritius, providing advance notice that the Commissioner would shortly declare a 200 nautical mile Fisheries Conservation and Management Zone ("**FCMZ**") in the waters surrounding the Chagos Archipelago. The United Kingdom explained the measure in the following terms:

> There are good environmental reasons for this action. Tuna stocks migrate around the Indian Ocean, large numbers passing through the area to be included in the 200 mile zone. In the view of the British Government on the advice of technical experts, it is important that these waters are subject to regulatory control through licensing. If we fail to exercise our responsibilities stocks will dwindle to the detriment of other Indian Ocean states and territories. It is important also that we conserve the stock position and so protect the future fishing interests of the Chagos group. An extension of the zone will allow the application of regulations relating to types of net and fishing gear.
>
> In view of the traditional fishing interests of Mauritius in the waters surrounding British Indian Ocean Territory, a limited number of licences free of charge have been offered to artisanal fishing companies for inshore fishing. We shall continue to offer a limited number of licences free of charge on this basis.[150]

Mauritius responded to this communication by reiterating its claim to sovereignty over the Chagos Archipelago.[151]

---

147 Letter from WN Wenban-Smith, East Africa Department to PS/Mr Rifkind, 23 August 2014, Redacted documents from the Judicial Review Proceedings (*Bancoult v. Secretary of State for Foreign and Commonwealth Affairs*) (**Annex MR-185**).

148 BIOT Ordinance No. 11 of 1984 (**Annex UKCM-49**).

149 British Indian Ocean Territory Notice No. 7 of 1985 (**Annex MM-98**).

150 Note Verbale dated 23 July 1991 from British High Commission, Port Louis, to Government of Mauritius, No. 043/91 (**Annex MM-99**).

151 Note Verbale dated 7 August 1991 from Ministry of External Affairs, Mauritius to British High Commission, Port Louis, No. 35(91) 1311 (**Annex MM-100**).

120. On 1 October 1991, the BIOT Commissioner issued a Proclamation establishing the FCMZ.[152] On the same day, the BIOT Commissioner adopted the Fisheries (Conservation and Management) Ordinance, 1991, replacing the Fisheries Limit Ordinance, 1984.[153] The 1991 Ordinance extended the licensing regime of the 1984 Ordinance, but no longer required the prior designation of a State as a criteria for licensing.

121. On 1 July 1992, the United Kingdom informed Mauritius in the following terms that it would continue to issue fishing licenses for Mauritian vessels free of charge:

> There are no plans to establish an exclusive economic zone around the Chagos islands. HMG takes seriously its obligations to ensure the conservation of the resources of the Archipelago and declared a 200 mile exclusive fishing zone on 1 October 1991 as its contribution to safeguarding the tuna and other fish stocks of the Indian Ocean. The British Government has honoured the commitments entered into in 1965 to use its good offices with the United States Government to ensure that fishing rights would remain available to Mauritius as far as practicable. It has issued free licences for Mauritius fishing vessels to enter both the original 12 mile fishing zone of the territory and now the wider waters of the exclusive fishing zone. It will continue to do so, provided that the Mauritian vessels respect the licence conditions laid down to ensure proper conservation of local fishing resources.[154]

122. On 27 January 1994, Mauritius and the United Kingdom established the British-Mauritian Fisheries Commission to address the conservation of fish stocks. In the Joint Statement setting out the creation of the Commission, the Parties agreed to a comprehensive "sovereignty umbrella" pursuant to which neither the creation of the Commission nor any activity carried out pursuant to it would be understood to prejudice the Parties' respective positions regarding the Chagos Archipelago.[155]

123. On 13 August 2003, the United Kingdom informed Mauritius in the following terms that it intended to establish an Environmental Protection and Preservation Zone ("**EPPZ**") encompassing the same geographical area of the FCMZ:

> The Government of Mauritius will wish to be aware that in order to help preserve and protect the environment of the Great Chagos Bank, the British Government proposes to issue a similar Proclamation [to the FCMZ] by the Commissioner for BIOT, but this time establishing an Environmental (Protection and Preservation) Zone. This will be defined so as to have the same geographical extent as BIOT's FCMZ. It will not involve any change in the land areas comprised within BIOT. A copy of the Proclamation, together with copies of

---

152 British Indian Ocean Territory Proclamation No. 1 of 1991 (**Annex MM-101**).

153 British Indian Ocean Territory Ordinance No. 1 of 1991 (**Annex MM-102**).

154 Letter dated 1 July 1992 from the British High Commissioner, Port Louis, to the Prime Minister of Mauritius (**Annex MM-103**).

155 Joint Statement on the Conservation of Fisheries under a 'sovereignty umbrella', 27 January 1994 (**Annex UKCM-62**).

> the relevant charts and co-ordinates, will be deposited with the UN under Article 75 of UNCLOS later this year.[156]

124. On 17 September 2003, the BIOT Commissioner issued British Indian Ocean Territory Proclamation No. 1 of 2003, establishing the EPPZ.[157] In response to concerns raised by Mauritius over the EPPZ,[158] the United Kingdom stated that the nature of the FCMZ/EPPZ was not a full exclusive economic zone for all purposes.[159] The United Kingdom deposited the geographical coordinates for the EPPZ with the UN Secretary-General on 12 March 2004.[160] Mauritius protested against this deposit on 14 and 20 April 2004.[161]

125. The Parties differ regarding the scale and significance of the fishing conducted by Mauritian vessels pursuant to the foregoing regime. The United Kingdom looks at the number of licences issued by the BIOT administration and concludes that "the take-up of commercial fishing licenses by Mauritian-flagged vessels was very low, in some years nil".[162] Mauritius relies on the catch data of its Ministry of Fisheries to conclude that "there have been catches by Mauritian fishing vessels in Chagos Archipelago since at least 1977. The mean annual catch is 164 tons."[163]

I. THE MARINE PROTECTED AREA

1. Initial Steps regarding the MPA and the United Kingdom's Consultations with Mauritius

126. On 9 February 2009, the London newspaper *The Independent* reported that a giant marine park was planned for the Chagos Archipelago.[164] This publication prompted the Mauritian Ministry

---

156 Letter dated 13 August 2003 from the Director of Overseas Territories Department, UK Foreign and Commonwealth Office, to the Mauritius High Commissioner, London (**Annex MM-120**).

157 British Indian Ocean Territory Proclamation No. 1 of 2003 (**Annex MM-121**).

158 Letter dated 7 November 2003 from the Minister of Foreign Affairs and Regional Cooperation, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-122**).

159 Letter dated 12 December 2003 from the Minister responsible for Overseas Territories, UK Foreign and Commonwealth Office to the Minister of Foreign Affairs and Regional Cooperation, Mauritius (**Annex MM-124**).

160 Law of the Sea Bulletin No. 54 (2004) at p. 128.

161 *See* Note Verbale dated 14 April 2004 from the Permanent Mission of the Republic of Mauritius to the United Nations, New York, to the Secretary General of the United Nations, No. 4780/04 (NY/UN/562) (**Annex MM-126**); Note Verbale dated 20 April 2004 from the Mauritius High Commission, London to the UK Foreign and Commonwealth Office, Ref. MHCL 886/1/03 (**Annex MM-127**).

162 The United Kingdom's Counter-Memorial, para. 2.111.

163 Mauritius' Reply, para. 2.124.

164 S. Gray, "Giant marine park plan for Chagos", *The Independent*, 9 February 2009 (**Annex MM-138**).

of Foreign Affairs, Regional Integration and International Trade, the following month, to reiterate its view on sovereignty over the Chagos Archipelago:

> both under Mauritian law and international law, the Chagos Archipelago is under the sovereignty of Mauritius [. . .] The creation of any Marine Park in the Chagos Archipelago will therefore require, on the part of all parties that have genuine respect for international law, the consent of Mauritius. [165]

127. In response, the United Kingdom FCO reiterated that it had no doubts regarding the United Kingdom's sovereignty over the BIOT and stated further as follows:

> the proposal for a marine park in the Chagos Archipelago (BIOT) is the initiative of the Chagos Environment Network and not of the Government of the United Kingdom of Great Britain and Northern Ireland. However, the Government of the United Kingdom of Great Britain and Northern Ireland welcomes and encourages recognition of the global importance of the British Indian Ocean Territory and notes the very high standards of preservation there that have been made possible by the absence of human settlement in the bulk of the territory and the environmental stewardship of the BIOT Administration and the US military. [166]

128. During the second round of Mauritius–United Kingdom joint talks on 21 July 2009 (see paragraph 110 above), the issue of a potential marine protected area was raised. The United Kingdom's account of the meeting records the following:

> 8. The UK delegation explained that environmental law had been strengthened in BIOT over the last 15 years with the establishment of strict nature reserves, Ramsar designation in [Diego Garcia] and the establishment of an EPPZ. The Territory and its environs had become one of the most valuable sites in the world for coral biodiversity and also had the cleanest oceans and was a valuable scientific resource. This was due to lack of inhabitants. The UK derived no commercial benefit from resources. The fishery was a loss-making venture and heavily subsidised by HMG. Looking ahead, the value of BIOT as a reserve/sanctuary for marine life and coral would only increase. It was better to invest available resources in a higher level of environmental protection. There was a proposal from the Chagos Environment Network (CEN). One of the ideas being mooted was that the whole of the EEZ be a no-take zone for fishing. The scientific basis had not yet been fully established but the idea merited consideration. An alternative route would be a more gradual process, i.e., to designate the reefs as no take or another proposal of a different / larger area than that of the closure of reef areas extending 12 n miles from the 200m depth contour and leave the rest of the fishery open.
>
> 9. There were powerful arguments in the UK to establish a marine protected area. However, many questions still needed to be worked through. The UK delegation explained the advantage to Mauritius that through a marine protected area, the value of the Territory would be raised and this resource would eventually be ceded to Mauritius. No decisions had yet been taken. The UK was discussing issues with the

---

165 Note Verbale dated 5 March 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 2009(1197/28) (**Annex MM-139**).

166 Note Verbale dated 13 March 2009 from the UK Foreign and Commonwealth Office to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, No. OTD 04/03/09 (**Annex MM-140**).

US: BIOT was created for defence purposes and the environmental agenda must not overcome that purpose.

10. The Mauritian delegation explained that they had taken exception to the proposal from the CEN but on the basis that it implied that the Mauritians had no interest in the environment. They had also found it necessary to protest on sovereignty grounds. There was a general agreement that scientific experts should be brought together. However, the Mauritians welcomed the project but would need to have more details and understand the involvement of the Mauritian government. The UK delegation explained that not many details were available as the UK wanted to talk to Mauritius before proposals were developed. If helpful the UK could, for the purposes of discussion, produce a proposal with variations on paper for the Mauritians to look at.

11. The UK delegation added that the Foreign Secretary was minded to go towards a consultative process and that would be a standard public consultation, However, the UK had wanted to speak to Mauritius about the ideas beforehand. Also, we needed to bear in mind the case before the [European Court of Human Rights]. Any ideas proposed would be without prejudice to any judgment by the Court.[167]

129. The Mauritian account records the same exchanges in the following terms:

(v) Establishment of Marine Protected Area

This item was included at the request of the British side. It explained that the UK Government wished to start dialogue on a proposal made by a British Non-Governmental Organisation to establish a marine protected area in the region of the Chagos Archipelago.

The British side supports the proposal for the following reasons:

(a) the region is still pristine as a result of non-settlement; and should remain one of the very few such rare areas in the world;

(b) the benefits out of fishing activities accrue mostly to developed countries rather than to those of the region; and

(c) the conservation and preservation of the pristine environment outweighs, by far, the benefits derived from fishing activities.

In reply, the Mauritian side while expressing concern that the matter was not a subject of prior discussions with Mauritius, welcomed the proposal, since it concerns the protection of the environment, the moreso that it is in line with the policy of Government to promote sustainable development.

The Mauritius side asked for additional details in respect of the proposed project.

The Mauritian side agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks. The British side made it clear that any proposal for the establishment of the marine protected area would be without prejudice to the outcome of the decision at the European Court of Human Rights.[168]

---

167 UK Foreign and Commonwealth Office, Overseas Territories Directorate, "UK/Mauritius Talks on the British Indian Ocean Territory", 24 July 2009 (**Annex MR-143**).

168 Information Paper by the Prime Minister of Mauritius, Second Meeting at Senior Officials' Level between Mauritius and UK on the Chagos Archipelago, CAB(2009) 624, 12 August 2009 (**Annex MR-144**).

130. The Joint Communiqué issued following the talks stated:

> The British delegation proposed that consideration be given to preserving the marine biodiversity in the waters surrounding the Chagos Archipelago/British Indian Ocean Territory by establishing a marine protected area in the region. The Mauritian side welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks. The UK delegation made it clear that any proposal for the establishment of the marine protected area would be without prejudice to the outcome of the proceedings at the European Court of Human Rights.[169]

131. On 10 November 2009, the United Kingdom initiated a public consultation process regarding the potential creation of the MPA (the "**Public Consultation**"). On the same day, the British High Commissioner provided the Foreign Minister of Mauritius, Dr Arvin Boolell, with a copy of the Public Consultation document[170] and the United Kingdom's Foreign Secretary placed a call to the Prime Minister of Mauritius, Dr Navinchandra Ramgoolam.[171] The United Kingdom's record of this telephone call read as follows:

> The Foreign Secretary said that he understood that UK and Mauritian officials had been talking very productively about a marine protected area being created during the bilateral discussions on areas of mutual cooperation on BIOT. He wanted to reassure PM Ramgoolam that the public consultation being launched was on the *idea* of an MPA and it was only an *idea* at this point. Going out to consultation was the right thing to do before making any decisions. We would talk to Mauritius before we made any final decision. Mauritian views were important. We were arranging a facilitator to travel out to Port Louis and to Victoria in January to hold meetings with all interested parties. While the focus would be on the Chagossian community, the facilitator would also listen to other peoples' views.
>
> The Foreign Secretary reassured PM Ramgoolam that there would be no impact on the UK commitment to cede the Territory to Mauritius when it was no longer needed for defence purposes. In the meantime, an MPA provided a demonstration of our bilateral relationship of trust and would make something of the remarkable features that exist in BIOT. He hoped the UK and Mauritius could work closely together on this.
>
> PM Ramgoolam responded that environmental protection was an important subject for him. He had a few problems with the consultation document which he had only just seen and would be sending a Note Verbale on this. His first problem was on page 12 "we {Mauritius} have agreed in principle to the establishment of an MPA". This was not the case. Could we amend the consultation document?
>
> In addition Mr Ramgoolam said that the consultation document completely overlooked the issue of resettlement. A total ban on fishing would not be conducive to resettlement. Neither was there any mention of the sovereignty issue. PM Ramgoolam did not want the MPA consultation to take place outside of the bilateral talks between the UK and Mauritius on Chagos.

---

169 Joint Communiqué, Second round of bilateral talks between Mauritius and the UK on the Chagos Archipelago, 21 July 2009, Port Louis, Mauritius (**Annex MM-148**).

170 UK Foreign and Commonwealth Office, Consultation on Whether to Establish a Marine Protected Area in the "British Indian Ocean Territory", November 2009 (**Annex MM-152**).

171 Prime Minister of Mauritius, December 1995 to September 2000 and from July 2005 to December 2014. Dr Navinchandra Ramgoolam is the son of Sir Seewoosagur Ramgoolam.

> The Foreign Secretary said he hoped there had been no misunderstanding. He understood that the discussions between the UK and Mauritius had been positive. He would ask officials to look at page 12 of the consultation document. *Comment: we have amended the language in page 12 to reflect more closely the wording in the communiqué.* He added that while the bilateral talks were an important forum, the purpose of the consultation was to bring the idea of an MPA to a wider public. Neither the consultation nor any decision would prejudice the court cases or any of the issues PM Ramgoolam referred to. He hoped PM Ramgoolam would see that the consultation was a positive thing.
>
> PM Ramgoolam repeated his point that a ban on fishing would be incompatible with resettlement. The Foreign Secretary suggested he make that point in the consultation but there were all sorts of ways of organising sustainable fishing. Resettlement was a different question and would take enormous resources regardless of which Government did this. He knew that PM Ramgoolam was aware of the Government's strong position on this issue.
>
> PM Ramgoolam said he had a problem with the consultation document saying that the BIOT Commissioner would make the declaration of an MPA. They wanted it to be declared by the UK Government as Mauritius did not recognise BIOT. He pointed out that he had elections next year. *Comment: this should not be an insurmountable problem. The Foreign Secretary might instruct the BIOT Commissioner to declare an MPA and make this clear in any press release.*
>
> The Foreign Secretary said he believed that there was nothing in the document that weakened the Mauritian claim on sovereignty. There was no reason for Mauritius to criticise Ramgoolam on that score. The UK commitment to cede the Territory was as before. He added that he had a lot of respect for PM Ramgoolam's political skills and could not see the consultation being a problem for PM Ramgoolam.
>
> PM Ramgoolam said he would take up the issue with Gordon Brown at CHOGM. He asked if the subject could be brought up at the next bilateral talks. The Foreign Secretary agreed that it could be.[172]

132. On the same day, Mauritius wrote to the British High Commission regarding the consultation document's representation of Mauritian support for the MPA:

> The Ministry of Foreign Affairs, Regional Integration and International Trade wishes to inform the High Commission that the Government of the Republic of Mauritius has not welcomed the establishment of a marine protected area during the bilateral talks on the Chagos Archipelago held in Mauritius last July, contrary to what is stated at page 12 of the Consultation Document.
>
> In that regard, the Ministry of Foreign Affairs, Regional Integration and International Trade would like to point out that what was stated in the Joint Communiqué issued following the bilateral talks of last July was that the Mauritian side had welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides would meet to examine the implications of the concept with a view to informing the next round of talks.
>
> The Ministry of Foreign Affairs, Regional Integration and International Trade therefore requests that the Foreign and Commonwealth Office accordingly amend its Consultation

[172] Record of telephone call between Foreign Secretary and Mauritian Prime Minister, 10 November 2009 (**Annex UKCM-106**).

> Document to accurately reflect the position of the Government of the Republic of Mauritius.[173]

133. The United Kingdom indicated in the following terms that it would correct the consultation document:

> The British High Commission would like to underline that the purpose of the consultation is to gain views on a proposal made by an environmental NGO: the Chagos Conservation Trust. No policy decision has been made on the issue in hand. Our approach aims to be consultative and inclusive: the Chagos Conservation Trust's MPA proposal was discussed with the Government of Mauritius in bilateral talks on BIOT/Chagos Islands prior to the launch of the public consultation. We anticipate further discussion in the next round of bilateral talks, which we had hoped to hold this month, but which now look likely to be held in early 2010.
>
> In light of this constructive and ongoing dialogue, the British High Commission would like to reassure the Ministry of Foreign Affairs, Regional Integration and International Trade that no offence was intended by the wording on page 12 of the draft consultation document that was shared with you on 10 November. We were, therefore, happy to amend the wording of the final document (released later that day on the following site: (http://www.ukinmauritius.fco.gov.uk) to reflect the views expressed in your Note Verbale.[174]

134. On 23 November 2009, Mauritius wrote further to the United Kingdom as follows:

> The Ministry of Foreign Affairs, Regional Integration and International Trade, whilst welcoming the amendment at page 12 of the Consultation Document, regrets to note that the precise stand of the Mauritian side on the MPA project, as stated in the Joint Communiqué issued following the bilateral talks of last July and in its Note Verbale of 10 November 2009, has not been fully reflected in the amended Consultation Document. That stand, as per the Joint Communiqué, reads as follows:-
>
> "The Mauritian side welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks".
>
> Furthermore, the Ministry of Foreign Affairs, Regional Integration and International Trade would like to state that since there is an on-going bilateral Mauritius-UK mechanism for talks and consultations on issues relating to the Chagos Archipelago and a third round of talks is envisaged early next year, the Government of the Republic of Mauritius believes that it is inappropriate for the consultation on the proposed marine protected area, as far as Mauritius is concerned, to take place outside this bilateral framework.
>
> The Government of Mauritius considers that an MPA project in the Chagos Archipelago should not be incompatible with the sovereignty of the Republic of Mauritius over the Chagos Archipelago and should address the issues of resettlement, access to the fisheries resources, and the economic development of the islands in a manner which would not prejudice an eventual enjoyment of sovereignty. A total ban on fisheries exploitation and omission of those issues from any MPA project would not be compatible with the long-term resolution of, or progress in the talks, on the sovereignty issue.

---

173 Note Verbale dated 10 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 48/2009 (1197/28/10) (**Annex MM-153**).

174 Note Verbale dated 11 November 2009 from the British High Commission, Port Louis, to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, No. 54/09 (**Annex MM-154**).

> The stand of the Government of Mauritius is that the existing framework for talks on the Chagos Archipelago and the related environmental issues should not be overtaken or bypassed by the consultation launched by the British Government on the proposed MPA.[175]

2. The Commonwealth Heads of Government Meeting and its Aftermath

135. On 27 November 2009, the Parties' respective Prime Ministers, Dr Navinchandra Ramgoolam, GCSK, MP, FRCP and the Rt. Hon. Gordon Brown MP were present at the Commonwealth Heads of Government Meeting ("**CHOGM**") in Trinidad and Tobago. The Parties agree that the Prime Ministers had a separate discussion regarding the MPA, but disagree as to its contents.

136. Mauritius' contemporaneous record of the conversation is as follows:

> 33. A tête-à-tête meeting took place between the British Prime Minister and myself in the morning of Friday 27 November 2009. Two main subjects were covered:
>
> (a) Mauritian Sovereignty over the Chagos Archipelago; and
>
> (b) the Marine Protected Area.
>
> 34. I explained to the British Prime Minister that the bilateral talks which we have engaged with the British side are going on in a positive atmosphere and that it is imperative that the issue of sovereignty continues to be addressed.
>
> 35. I stated that Mauritius does not recognize the British Indian Ocean Territory and therefore, we cannot even discuss the issue of a Marine Protected Area with them. I emphasized that the issue of resettlement remains a pending issue and Mauritian fishing rights have to be taken into consideration. I therefore indicated that since bilateral talks were intended to deal with all the issues concerning Chagos progressively, this is the venue we should continue to use to further our discussions.
>
> 36. The British Prime Minister paid tribute to the leadership role played by Mauritius in the deliberations of the meeting particularly on the issue of Climate Change from the perspective of Small Island Developing Countries. On the issue of Marine Protected Area, he assured me that nothing would be done to undermine resettlement and the sovereignty claim of Mauritius over the Chagos Archipelago and that he would put a hold on this project.[176]

137. In the present proceedings, Dr Ramgoolam recalls the conversation further in the following terms:

> 10. [. . .] I [. . .] took the opportunity to convey to Mr Brown the deep concern of Mauritius over the proposal of the United Kingdom to establish a 'marine protected area' around the Chagos Archipelago and the launching of a public consultation by the UK Foreign and Commonwealth Office on 10 November 2009, just two weeks earlier, in this regard. That announcement had been the subject of media attention. I indicated to Mr Brown that when the British High Commissioner in Mauritius had

---

175 Note Verbale dated 23 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/10 (**Annex MM-155**).

176 Extract of Information Paper CAB (2009) 953 – Commonwealth Heads of Government Meeting, 9 December 2009 (**Annex MR-148**).

called on me on 22 October 2009 to announce the UK's proposal, I had expressed surprise that he was not able to offer me any document in relation to that proposal and told him that I would raise the matter with the British Prime Minister during the forthcoming CHOGM in Port of Spain. I had made very clear the objection of Mauritius to the UK's proposal.

11. I also conveyed to Mr Brown that since the bilateral talks between Mauritius and the United Kingdom were intended to deal with all issues relating to the Chagos Archipelago, they were the only proper forum in which there should be further discussions on the proposed 'marine protected area'.

12. I further pointed out that the issues of sovereignty and resettlement remained pending and that the rights of Mauritius in the Chagos Archipelago waters had to be taken into consideration.

13. In response, Mr Brown asked me once again: "What would you like me to do?" I remember these words clearly.

14. I replied: "You must put a stop to it". There could have been no doubt that I was referring to the proposed 'marine protected area'.

15. Mr Brown then said: "I will put it on hold". He told me that he would speak to the British Foreign Secretary. He also assured me that the proposed 'marine protected area' would be discussed only within the framework of the bilateral talks between Mauritius and the UK.[177]

138. The United Kingdom's account of the same conversation differs. Based on internal United Kingdom correspondence, by 8 December 2009 the British High Commission became aware of Dr Ramgoolam's understanding of his exchange with Mr Brown and sought clarification from London. The Foreign and Commonwealth Office then approached the Prime Minister's Office whose account, as relayed, was to the effect that "the PM did not say that the consultation/MPA proposal was over or that the issue had finished. What we are told the PM said is that were Ramgoolam to be haemorrhaging support in the run up to Mauritian elections, then the PM would do what he could to be helpful – this leading in to the question around delaying any decision until after the Mauritian election."[178] As presented in these proceedings, the United Kingdom's view of this conversation is that "Gordon Brown did not say what the Mauritian Prime Minister understood him to have said".[179]

139. On 15 December 2009, the UK Foreign Secretary, David Miliband, wrote to the Mauritius Foreign Minister, Dr Arvin Boolell, recalling their parallel discussions at the CHOGM:

---

177 Statement of Dr the Honourable Navinchandra Ramgoolam, Prime Minister of the Republic of Mauritius, 6 November 2013 (**Annex MR-183**).

178 E-mail from Andrew Allen, Head of Southern Oceans Team, Overseas Territories Directorate, Foreign and Commonwealth Office to Ewan Ormiston, Deputy High Commissioner Mauritius, 8 December 2009 (**UK Arbitrator's Folder, Tab 75**).

179 Final Transcript, 502:13-14.

> I very much welcomed the opportunity to meet you at CHOGM. We had a useful discussion on the proposal for a Marine Protected Area in the British Indian Ocean Territory. I believe we both agree that without prejudice to wider political issues, discussed below, there is an opportunity to protect an area of outstanding natural beauty which contains islands, reef systems and waters which in terms of preservation and biodiversity are among the richest on the planet. As we agreed at the time, both the UK and Mauritius now need to reflect on next steps and work to bridge any differences in approach.
>
> At our meeting, you mentioned your concerns that the UK should have consulted Mauritius further before launching the consultation exercise. I regret any difficulty this has caused you or your Prime Minister in Port Louis. I hope you will recognize that we have been open about the plans and that the offer of further talks has been on the table since July.
>
> I would like to reassure you again that the public consultation does not in any way prejudice or cut across our bilateral intergovernmental dialogue with Mauritius on the proposed Marine Protected Area. The purpose of the public consultation is to seek the views of the wider interested community, including scientists, NGOs, those with commercial interests and other stakeholders such as the Chagossians.
>
> The consultations and our plans for an MPA do not in any way impact on our commitment to cede the territory when it is no longer needed for defence purposes. Our ongoing bilateral talks are an excellent forum for your Government to express its views on the MPA. We welcome the prospect of further discussion in the context of these talks, the next round of which now look likely to happen in January.
>
> As well as the MPA there are, of course, many other issues for bilateral discussion. My officials remain ready to continue the talks and I hope that Mauritius will take up the opportunity to pursue this bilateral dialogue.
>
> [. . .][180]

140. Dr Boolell responded to the Foreign Secretary on 30 December 2009 as follows:

> During our recent meeting in the margins of the Commonwealth Heads of Government Meeting, I had expressed the concerns of the Government of Mauritius about the Marine Protected Area project. I had stated that it was inappropriate for the British authorities to embark on consultations on the matter outside the bilateral Mauritius-United Kingdom mechanism for talks on issues relating to the Chagos Archipelago.
>
> On the substance of the proposal, I had conveyed to you that the Government of Mauritius considers that the establishment of a Marine Protected Area around the Chagos Archipelago should not be incompatible with the sovereignty of Mauritius over the Chagos Archipelago. As you are aware, the Mauritian position, as also endorsed at various multilateral fora, is that the Chagos Archipelago was illegally excised by the British Government from the territory of Mauritius prior to the grant of independence to Mauritius. The Government of Mauritius has repeatedly informed the British Government that it does not recognize the so-called British Indian Ocean Territory and deplores the fact that Mauritius is still not in a position to exercise effective control over the Chagos Archipelago as a result of the illegal excision of its territory.
>
> Moreover, the issues of resettlement in the Chagos Archipelago, access to the fisheries resources and the economic development of the islands in a manner that would not prejudice the effective exercise by Mauritius of its sovereignty over the Chagos Archipelago are matters of high priority to the Government of Mauritius. The exclusion of

[180] Letter dated 15 December 2009 from the UK Secretary of State for Foreign and Commonwealth Affairs to the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius (**Annex MM-156**).

> such important issues in any discussion relating to the proposed establishment of a Marine Protected Area would not be compatible with resolution of the issue of sovereignty over the Chagos Archipelago and progress in the ongoing talks between Mauritius and the United Kingdom.
>
> In these circumstances, as I have mentioned, Mauritius is not in a position to hold separate consultations with the team of experts of the UK on the proposal to establish a Marine Protected Area.
>
> You will no doubt be aware that, in the margins of the last CHOGM, our respective Prime Ministers agreed that the Marine Protected Area project be put on hold and that this issue be addressed during the next round of Mauritius-United Kingdom bilateral talks.[181]

141. On the same day, Mauritius dispatched a Note Verbale to the United Kingdom, stating as follows:

> The Ministry of Foreign Affairs, Regional Integration and International Trade wishes to inform the Foreign and Commonwealth Office that the Government of Mauritius considers that the next round of bilateral talks between the two Governments cannot take place during the month of January 2010, in the absence of satisfactory clarification and reassurances on the part of the Government of the United Kingdom on issues raised by the Government of Mauritius in the above-mentioned Note Verbale [of 23 November 2009] in relation to the Marine Protected Area project and in view of the continuation by the Government of the United Kingdom of the initial consultation process it had embarked upon.
>
> The Government of Mauritius trusts that it will receive, within a reasonable period, adequate clarification and reassurances on the part of the Government of the United Kingdom on the issues raised in the above-mentioned Note Verbale.[182]

142. On 13 January 2010, Foreign Minister Boolell called on the British High Commissioner, Mr John Murton. The conversation that ensued covered the differing understandings of the Prime Ministers' meeting at CHOGM and potential ways forward. The High Commissioner's record is as follows:

> By far the biggest issue was the outcome of the PM Brown/PM Ramgoolam tete-a-tete. Ramgoolam had briefed Cabinet following the meeting at CHOGM and told them that Brown had agreed to 'drop' the consultation. He was very (and unusually) clear and definitive about this and had clearly expected Brown to make some sort of statement to this effect. Ramgoolam also briefed the press on the matter and took pride in pointing to this result as stemming from his good relationship with Brown (Boolell noted he had a 'soft spot' for him). As the days wore on after the summit without a statement, Ramgoolam became increasingly frustrated. When Miliband's letter arrived (which we had written thinking it was very conciliatory), Ramgoolam took this as a kick in the teeth. Ramgoolam's anger triggered the notes of 30 December and, upon Ramgoolam's instructions, the press briefing by Boolell earlier this month.
>
> Some of these points are manageable, but the discord between Ramgoolam's readout of the PM's meeting and the readout from Brown is clearly large and, in many ways,

---

181 Letter dated 30 December 2009 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-157**).

182 Note Verbale dated 30 December 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/4 (**Annex MM-158**).

> insurmountable. I detected no sense that the Mauritians are playing a game on this. Ramgoolam clearly believes Brown promised him what he had wanted and that, somehow, Miliband has sought to circumvent this. I assured Boolell this wasn't the case and showed him the readout we had received from No 10. We both scratched our heads.
>
> I noted we needed a way forward that allowed the MPA consultation to continue and ensured that the issue did not become a political burden to the Government here. I passed across the draft letter I had shared with you yesterday and explained that, if we sent such a letter, a conciliatory reply from the Mauritians would go a long way to resolving things. Boolell suggested a number of changes to the letter.[183]

143. On 20 January 2010, the British High Commissioner met with Prime Minister Ramgoolam on the subject of the MPA consultations. The United Kingdom's record of this conversation is, in relevant part, as follows:

> PM Ramgoolam reiterated his record of the bilateral with Gordon Brown: Brown had been 'very thankful' for all Ramgoolam had done sorting out the CHOGM Summit impasse with Sri Lanka - enabling Sri Lanka to climb down without being humiliated. When Ramgoolam had begun setting out his case on BIOT, Brown had 'interrupted' him to say 'Navin, what do you want?'. Ramgoolam says he had asked for the MPA consultation to be stopped, and Brown had agreed: "It's done." Hence Mauritius' upset when David Miliband's letter of 15 December indicated the consultation was ongoing.
>
> I went through our version of events and explained the readout we had received from the meeting. I noted that, although I obviously hadn't been present, I knew and trusted the PM's [Private Secretary]. In light of the readout we'd received, David Miliband's letter was written in good faith as a constructive gesture. We'd been stung by the reaction it had met, particularly by the mis-reporting of Boolell's comments in the press and the claim we'd been 'dishonest'. Discussions with Koonjul and Boolell had revealed that the MFA here hadn't been fully aware of the extent of consultations we'd had with Ramgoolam himself, and this had (wrongly) coloured their advice to the PM. Mauritian non-participation at recent seminars wasn't helpful; they could easily have taken part under some form of disclaimer on sovereignty. More willingness to engage from them could have dispelled a lot of misunderstanding. He took these points.
>
> Looking forward, I explained how my goal in meeting the PM was to enable both sides to move forward without humiliation and to avoid any further painting-into-corners. Ramgoolam jumped in: should he write to Gordon Brown to clarify the outcome of the CHOGM meeting? I sought to deflect him from this: for such a move not to backfire, the PM would have to be sure that he'd get the answer he wanted from Gordon Brown - there were political issues in the mix in the UK too. Was he sure this would work? Ramgoolam pondered aloud about what he perceived as David Miliband's strong commitment to the MPA and whether recent political events in the UK might inhibit Gordon Brown from pushing Miliband to rein in the consultation, even if he'd wanted to.
>
> I noted that I had been working with Boolell to draft a letter that might help both sides move forward. Boolell was keen for the PM to see it. I didn't want to send the letter until I knew it would help the situation. The draft answered all of Mauritius' concerns re consultation with [the Government of Mauritius] taking place through bilateral talks, sovereignty, non-prejudice to settlement case at ECHR etc. Ramgoolam undertook to look at it with Ruhee. He was glad no other copies existed yet.
>
> [. . .]

---

183 E-mail from John Murton, British High Commissioner in Port Louis, Mauritius to Joanne Yeadon, BIOT Administrator, 14 January 2010 (**UK Arbitrator's Folder, Tab 77**).

> I followed up afterwards by telephone with Ruhee, principally to alert him to the [Public Consultation] facilitator's impending arrival (there hadn't been a good moment to raise this in the meeting). We'd need to factor a line on this into the letter to clear the way for her to come without it becoming a politically exploitable issue here.[184]

144. On 4 February 2010, Mauritius submitted written evidence to the UK House of Commons Select Committee on Foreign Affairs in respect of the MPA:

> 2. Since there is an on-going bilateral Mauritius-UK mechanism for talks and consultations on issues relating to the Chagos Archipelago, it is inappropriate and insulting for the British Government to pursue consultations globally on the proposal for the establishment of an MPA around the Chagos Archipelago outside this bilateral framework. This position was brought to the attention of the British Government by way of Note Verbale dated 23 November 2009 issued by the Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius to the UK Foreign and Commonwealth Office. We have not received any answer yet whilst the FCO continues to defy our deep concerns on this process.
>
> 3. The manner in which the Marine Protected Area proposal is being dealt with makes us feel that it is being imposed on Mauritius with a predetermined agenda.
>
> 4. The establishment of an MPA around the Chagos Archipelago must be compatible with the sovereignty of Mauritius over the Chagos Archipelago. Any endorsement of the proposed unilateral initiative of the FCO's, particularly in some scientific quarters, would be tantamount to condoning the violation of international law and the enduring human tragedy.
>
> 5. Moreover, the issue of resettlement in the Chagos Archipelago, access to the fisheries resources, and the economic development of the islands in a manner which would not prejudice the effective exercise by Mauritius of its sovereignty over the Chagos Archipelago are matters of high priority to the Government of Mauritius.
>
> 6. The exclusion of such important issues from any MPA project and a total ban on fisheries exploitation would not be compatible with resolution of the issue of sovereignty over the Chagos Archipelago and progress in the ongoing talks between Mauritius and the United Kingdom.
>
> 7. The existing framework of talks between Mauritius and the UK on the Chagos Archipelago and the related environmental issues should not be overtaken or bypassed by the public consultation launched by the British Government on the proposed establishment of an MPA around the Chagos Archipelago.
>
> 8. The establishment of any MPA around the Chagos Archipelago should also address the benefits that Mauritius should derive from any mineral or oil that may be discovered in or near Chagos Archipelago (as per the undertaking given in 1965).[185]

---

184 E-mail from John Murton, British High Commissioner in Port Louis, Mauritius to Joanne Yeadon, BIOT Administrator, and Colin Roberts, BIOT Commissioner and Director of the Overseas Territories Directorate, 20 January 2010 (**UK Arbitrator's Folder, Tab 78**).

185 Written Evidence of the Mauritius High Commissioner, London, on the UK Proposal for the Establishment of a Marine Protected Area around the Chagos Archipelago, to the House of Commons Select Committee on Foreign Affairs (**Annex MM-160**).

145. On 8 February 2010, the British High Commissioner met again with Foreign Minister Boolell on the subject of the MPA. The United Kingdom's record of this conversation is, in relevant part, as follows:

> Much of the time was spent covering old ground, including [Government of Mauritius] unhappiness with the way the consultation was launched and the divergent readouts from the PM-PM meeting at CHOGM. We noted that repeated media briefing from the Mauritian side was unhelpful (e.g. Saturday's Mauricien).
>
> Boolell raised the issue of Chagossian resettlement and the meaning of our 'without prejudice' phrase in the MPA consultation document. We noted it meant respect for the [European Court of Human Rights] judgement. We then sought to unpick the issue of resettlement from the MPA, underlining once more the risks that resettlement potentially posed to our commitment to cede the islands when no longer needed for defence purposes. There was considerable discussion of the role of the Chagossian community in this process.
>
> [. . .]
>
> In discussing the way forward from here, Boolell suggested that we meet with Cabinet Secretary Seebaluck [*sic*] to request bilateral talks. We might do so using a 'short' letter: our earlier draft had been too 'long' and 'open to misinterpretation'. Once the 12th February [the originally scheduled end of the Public Consultation] was past, the atmosphere would be 'conducive' and 'welcoming' to a new round of talks. We alluded to the fact that we might not find it easy to draw a line under the consultation without some form of engagement with the Chagossians, noting that some argued there was a requirement to engage fully even with those not able to respond to a written consultation process.
>
> It was clear that the Mauritians would not welcome the visit of the facilitator. Boolell noted that a visit would be a 'slight' on the people and Government of Mauritius. They wanted to retain their 'sovereign rights'. We asked if a [video teleconference]-based consultation be easier [*sic*] for the Mauritians to swallow? Boolell could only agree to take note of this and consider the matter, but didn't commit.
>
> We said that, if talks could be restarted (and we'd been waiting for the Mauritians to discuss dates since 22 January), they'd be productive only if Mauritius came with a clear sense of what it realistically wanted rather than either (a) demanding sovereignty as they had done in London or (b) dwelling only on those things that were unacceptable to Mauritius. It would be best to focus on areas of common ground and potential cooperation. The idea of an MPA provided areas for joint work - the Mauritian Finance Minister had set aside money for MPAs in his recent budget. We thought there was enough common ground for this to be a constructive area.
>
> Boolell took the point and raised a couple of issues that could be profitably discussed:
>
> - demarcation of the continental shelf;
> - the terminology 'MPA'. Marine Protected Area gave the idea of 'ownership' and the UK 'protecting' its sovereignty claim. Conservation/Preservation were better words, or at least 'the protection of the marine environment'. Mauritius was increasingly recognising it was an 'Oceanic state' and cooperation around this sphere could be helpful.
> - future PM-PM engagement;
> - trilateral discussions with the US [we countered this wasn't within our gift]

- a rest from nuclear ships visiting DG (just to give some political space at home in Mauritius)[186]

146. On 15 February 2010, the United Kingdom wrote to Mauritius, referencing the latter's Note Verbale of 30 December 2009 and enquiring only as to "an indication as to when the Government of Mauritius would be willing to reschedule such a meeting: either in London or Port Louis."[187] The Secretary to the Cabinet of Mauritius, Mr Seeballuck, responded on 19 February 2010, referencing the CHOGM discussion and stating:

> 3. I wish to reiterate the position of the Government of Mauritius to the effect that the consultation process on the proposed MPA should be stopped and the current Consultation Paper, which is unilateral and prejudicial to the interests of Mauritius withdrawn. Indeed, the Consultation Paper is a unilateral UK initiative which ignores the agreed principles and spirit of the ongoing Mauritius-UK bilateral talks and constitutes a serious setback to progress in these talks.
>
> 4. I further wish to inform you that the Government of Mauritius insists that any proposal for the protection of the marine environment in the Chagos Archipelago area needs to be compatible with and meaningfully take on board the position of Mauritius on the sovereignty over the Chagos Archipelago and address the issues of resettlement and access by Mauritians to fisheries resources in that area.
>
> 5. I also wish to state that the Government of Mauritius is keen to resume the bilateral talks on the premises outlined above.[188]

147. On 19 March 2010, the British High Commission responded to Mauritius' Note of 15 February 2010, reiterating the United Kingdom's views on sovereignty over the Archipelago and on resettlement, and stating with respect to the MPA Public Consultation as follows:

> The United Kingdom should like to reiterate that no decision on the creation of an MPA has yet been taken. However, as stated previously in discussions between Ministers and Officials and set out clearly in the MPA consultation document, the establishment of any marine protected area will have no impact on the United Kingdom's commitment to cede the Territory to Mauritius when it is no longer needed for defence purposes. Additionally, the United Kingdom is keen to continue dialogue about environmental protection within bilateral framework or separately. The public consultation does not preclude, overtake or bypass these talks.[189]

---

186 E-mail from John Murton, British High Commissioner in Port Louis, Mauritius to Joanne Yeadon, BIOT Administrator, 8 February 2010 (**UK Arbitrator's Folder, Tab 79**).

187 Note Verbale No. 6/2010 from British High Commission to Mauritius Ministry of Foreign Affairs, 15 February 2010 (**Annex UKR-64**).

188 Letter dated 19 February 2010 from the Secretary to Cabinet and Head of the Civil Service, Mauritius to the British High Commissioner, Port Louis (**Annex MM-162**).

189 Letter dated 19 March 2010 from the British High Commissioner, Port Louis, to the Secretary to Cabinet and Head of the Civil Service, Mauritius (**Annex MM-163**). The same details were transmitted by Note Verbale on 26 March 2010. Note Verbale dated 26 March 2010 from British High Commission, Port Louis, to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, No. 14/2010 (**Annex MM-164**).

The High Commissioner further stated that "[l]ike Mauritius, the UK is keen to continue these bilateral talks as there are many other things we can discuss with regards to BIOT."[190]

3. The Declaration of the MPA

148. The Public Consultation ran until 5 March 2010. Thereafter, the Foreign Secretary received a detailed report from the consultation facilitator summarizing the consultation process and the comments received. The summary of the facilitator's report presented the consultation as follows:

> [. . .]
>
> 6. The response was wide ranging, with a global reach. It included inputs from private individuals, academic and scientific institutions, environmental organisations and networks, fishing and yachting interests, members of the Chagossian community, British MPs and peers and representatives of other governments.
>
> 7. The great majority of respondents - well over 90% - made clear that they supported greater marine protection of some sort in the Chagos Archipelago in principle. However, views on this proposal were more mixed, covering a wide spectrum of views. Responses did not confine themselves to the options listed in the Consultation Document.
>
> 8. The main difference between the responses was their view on potential resettlement of members of the Chagossian community, and whether this question should be tackled before designation of any MPA, or whether changes could be made later if circumstances changed, in an MPA agreed, as the Consultation Document suggests, in the context of the Government's policy on the Territory, without prejudice to ongoing legal proceedings.
>
> 9. Of those who supported one of the three listed options the great majority supported Option 1, *a full no-take marine reserve for the whole of the territorial waters and Environmental Preservation and Protection Zone (EPPZ)/Fisheries Conservation and Management Zone (FCMZ).* The reasons given were generally very much in line with the conservation, climate change and scientific benefits set out in the Consultation Document. A number also highlighted a legacy element, as well as the opportunity to show leadership and provide an example for others, while contributing to meeting a number of global environmental commitments.
>
> 10. In terms of numbers, support for options 2 and 3 was limited. However, they were universally the choice of the Indian Ocean commercial tuna fishing community, as well as a number of regional interests. While agreeing that there was a strong case for protecting the fragile reef environment, this group considered that the scientific case for the extra benefits of option 1 was not strongly demonstrated and the group did not want to see a negative economic impact on the tuna industry. In addition, a limited number of private individuals thought that controlled, licensed fishing at around the current level was sufficient protection and was not causing significant decline or degradation.
>
> 11. A significant body of response did not support proceeding with any of the three listed options at the current time. Of this group, some, including most but not all of the Chagossian community, argued simply for abandoning or postponing the current

190 *Ibid.*

> proposal until further consultation and agreement could take place, while others proposed one or another different option (a 'fourth option'), which sought to take account of Chagossian (and in some cases other regional) requirements.
>
> 12. As well as their headline comments on preferred options, respondents raised a number of issues of interest or concern to them. These included: the consultation process itself; the rights and interests of the Chagossian community; regional interests and concerns; enforcement of an MPA; costs associated with an MPA; yachting interests; piracy; Diego Garcia and the US base; bycatch from commercial fishing, including sharks and fragile species; fish stocks; reputational issues; and other proposed environmental measures. These are described in more detail in a final section which summarises the issues covered in responses received to each of the Consultation questions.[191]

149. The United Kingdom's further decision-making with respect to the MPA was then marked by significant differences between the political and diplomatic/civil service level. On 30 March 2010, the BIOT Administrator made a submission to the Parliamentary Under Secretary and Foreign Secretary entitled "British Indian Ocean Territory (BIOT): Proposed Marine Protected Area (MPA): Next Steps". Summarizing relevant considerations, including vis-à-vis Mauritius, the submission recommended as follows:

> **Preferred options**
>
> That the Foreign Secretary announces the publication of the report on the responses to the FCO public consultation into whether to create an MPA in the Territory; commenting on the level of interest in the consultation and general support for environmental protection and for a no-take fishing zone; noting that the consultation has thrown up a range of views which need to be explored further; stating that he believes that the establishment of an MPA is the way ahead for the protection of the environment of the Territory and that he will ask officials to work towards this. But he should stop short of announcing that he is going to ask the BIOT Commissioner to declare an MPA in the Territory at this stage. I attach a draft statement which could be used as both as a press statement and as a Written Ministerial Statement.[192]

150. After receiving an indication that the Foreign Secretary was contemplating moving ahead directly with the declaration of the MPA, the BIOT Commissioner and BIOT Administrator exchanged correspondence with the British High Commissioner in Mauritius regarding the likely Mauritian reaction to such action. In the course of internal correspondence, the British High Commissioner stated his view that "to declare the MPA today could have very significant negative consequences for the bilateral relationship. It would be seen by the Government here in

---

191 R. Stevenson, Consultation Facilitator, *'Whether to establish a marine protected area in the British Indian Ocean Territory: Consultation Report'*, Executive Summary (**Annex UKCM-121**).

192 Submission dated 30 March 2010 from Joanne Yeadon, Head of BIOT & Pitcairn Section, to Colin Roberts, Director, Overseas Territories Directorate, the Private Secretary to Parliamentary Under Secretary Chris Bryant and the Private Secretary to the Foreign Secretary, "British Indian Ocean Territory (BIOT): Proposed Marine Protected Area (MPA): Next Steps" (**Annex MR-152**).

general, and by PM Ramgoolam in particular, as exceedingly damaging timing."[193] Reacting to this concern, on 31 March 2010, the BIOT Administrator provided a further minute to the Foreign Secretary as follows:

> 1. The FS has said that, in an ideal world, he would like to declare an MPA in BIOT and spend 3 months reaching some sort of agreement with the Mauritian government on the governance of the area but making it clear that we will have 3 months to consult them but if they won't come to an agreement, we will go ahead without them. You have asked for options, whether this is feasible and possible implications. We have discussed this with our High Commissioner in Port Louis.
>
> 2. The "3 months", or any defined period, to hammer out details of some sort of management structure will not fly in Mauritius. Ramgoolam would not be able to commit to negotiating in this framework if an MPA had already been declared. Any such offer would be seen as forcing them into a position and would only antagonize them further.
>
> 3. What might work in Mauritius is the announcement as suggested in my submission of 30 March. Our High Commissioner thinks that there might be a market for a proposal to work with Mauritius as a privileged partner on management issues but this would need to be done prior to a final decision and such talks would have to precede any formal announcement of an MPA. If Mauritius were not prepared to engage in any sensible way, we would want to press on without them, but we would want to give them time to reflect and ourselves time to manage the negative consequences.
>
> 4. The High Commissioner has asked that the Foreign Secretary be made aware that the timing could not be worse locally than to declare a full no-take MPA today. The Parliamentary Labour Party of Mauritius is currently in a closed door meeting and it is expected that they will announce their own elections during the course of today. All Ministers are uncontactable and so the High Commission have no capacity to manage political reactions. He also wanted to point out that declaring an MPA today could have very significant negative consequences for the bilateral relationship. It would be seen, especially by Ramgoolam, as exceedingly damaging timing and pressure would be on for him to commit to taking legal action to challenge the establishment of an MPA. The Foreign Secretary will recall the atmospherics of his telephone conversation with Ramgoolam on the day the consultation was launched.[194]

151. On 31 March 2010, the Private Secretary to the Foreign Secretary wrote to the BIOT Administrator, conveying the following decision:

> The Foreign Secretary was grateful for your submission and the copy of the report on the consultations. He has carefully considered the arguments in the submission and the views expressed during the consultation. He was grateful for your further note today. He has considered the submission in light of the High Commissioner's views and has given serious thought to the different possible options for announcing an MPA.

---

193 E-mail dated 31 March 2010 from John Murton, British High Commissioner to Mauritius, to Colin Roberts, Director, Overseas Territories Directorate and Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office (**Annex MR-156**).

194 Minute dated 31 March 2010 from Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office to Colin Roberts, Director, Overseas Territories Directorate and the Private Secretary to the Foreign Secretary, "British Indian Ocean Territory: MPA: Next Steps: Mauritius" (**Annex MR-158**).

> The Foreign Secretary has decided to instruct Colin Roberts [the BIOT Commissioner] to declare the full MPA (option one) on 1 April. There will then need to be an announcement to this effect.
>
> I would be grateful if you could take forward both.[195]

152. On 1 April 2010, the BIOT Commissioner issued Proclamation No. 1 of 2010, formally establishing the MPA.[196] Before the Proclamation was made public, the UK Foreign Secretary placed a call to the Prime Minister of Mauritius. According to the United Kingdom FCO's minute of the call:

> 1. The Foreign Secretary said that he wanted to inform the Mauritius Prime Minister that he would today instruct the BIOT Commissioner to establish a Marine Protected Area (MPA) in the British Indian Ocean Territory. We were telling the Prime Minister this in advance as we did not want there to be any surprises.
>
> 2. The Foreign Secretary said that both the UK and Mauritius were commited [*sic*] to the environmental agenda and the establishment of the MPA had no impact on the UK commitment to cede BIOT to Mauritius when the territory was no longer needed for defence purposes. Nor would it prejudice the legal position of Mauritius or the Chagos Islanders. The UK valued the relationship with Mauritius and the Foreign Secretary hoped that we could cooperate together to ensure that the MPA was a success.
>
> 3. The Foreign Secretary said there had been a very large response to the consultation exercise with about a quarter of a million responses. This was a remarkable number. The majority of the responses were straightforward but there had also been responses from the environmental, political, governmental and scientific communities and some from the business community. The consultation showed that those arguing for commercial exploitation of the area were clearly in the minority. There had been some debate around the no-take approach and there was overwhelming support for that.
>
> 4. Ramgoolam said that he was disappointed that there had not been bilateral discussions. He asked if it might be possible to delay the announcement until after the Mauritius elections. It was a controversial issue in Mauritius. The Foreign Secretary said that the consultation had been thorough and there had already been an extension to the consultation period. It would not be possible to delay the announcement. The UK would stress that the decision was without prejudice to the legal position of the Chagos Islanders or to the discussions with Mauritius on the Territory.
>
> 5. The Foreign Secretary said he would say very clearly that we would work with all interested parties, in Britain and internationally, on the implementation of the no-take approach. He would also make clear that our commitment to the government and people of Mauritius in respect of ceding sovereignty at the appropriate time was strong and clear. While recognising the disagreement with the Mauritius Government on the process leading up to the establishment of the MPA, he hoped that this could bring the two governments together to work in the best interests of the environment.

---

195 E-mail exchange between Catherine Brooker, Private Secretary to the Foreign Secretary and Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office, 30-31 March 2010 (**Annex MR-155**).

196 British Indian Ocean Territory Proclamation No. 1 of 2010 (**Annex MM-166**).

6. Ramgoolam said that he had to take the line that Mauritius disagreed with the decision on the MPA but he would like to say that he and the Foreign Secretary had talked about sovereignty. The Foreign Secretary stressed that the sovereignty issue had not changed and Ramgoolam should not seek to suggest that was the purpose of the phone call. If it would help, Ramgoolam could say that if both governments were re-elected then there could be early bilateral talks on the implementation of the MPA.

7. Ramgoolam said that when the Mauritians tried to talk to the United States about BIOT the Americans took the line that Mauritius needed to settle the sovereignty issue with the UK first. The Foreign Secretary said that our position was clear. We would cede the Territory to Mauritius when we no longer required the base.[197]

153. On 2 April 2010, Mauritius protested against the declaration of the MPA in the following terms:

> The Government of the Republic of Mauritius strongly objects to the decision of the British Government to create a marine protected area (MPA) around the Chagos Archipelago, as announced by UK Secretary of State for Foreign and Commonwealth Affairs David Miliband yesterday.
>
> The Government of the Republic of Mauritius wishes to recall that on several occasions following the announcement by the British authorities for an international consultation on their proposal for the creation of an MPA in the waters of the Chagos Archipelago, the Government of Mauritius conveyed its strong opposition to such a project being undertaken without consultation with and the consent of the Government of the Republic of Mauritius. In this regard, the Ministry refers to its Notes Verbales No. 1197/28/10 dated 23 November 2009 and No. 1197/28/4 dated 30 December 2009 in particular. The position of the Government of Mauritius was also conveyed directly by the Prime Minister of Mauritius to British Prime Minister Gordon Brown during the Commonwealth Heads of Government Meeting (CHOGM) in Port of Spain last November and earlier to British Foreign Secretary David Miliband over the phone. The Minister of Foreign Affairs, Regional Integration and International Trade of Mauritius, Dr. the Hon. Arvin Boolell, also communicated the position of Mauritius to Foreign Secretary Miliband during CHOGM in Port of Spain and to the British High Commissioner at several meetings.
>
> It was explained in very clear terms during the above-mentioned meetings that Mauritius does not recognize the so-called British Indian Ocean Territory and that the Chagos Archipelago, including Diego Garcia, forms an integral part of the sovereign territory of Mauritius both under our national law and international law. It was also mentioned that the Chagos Archipelago, including Diego Garcia, was illegally excised from Mauritius by the British Government prior to grant of independence in violation of United Nations General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965.
>
> The Government of the Republic of Mauritius further believes that the creation of an MPA at this stage is inconsistent with the right of settlement in the Chagos Archipelago of Mauritians, including the right of return of Mauritians of Chagossian origin which presently is under consideration by the European Court of Human Rights following a representation made by Mauritians of Chagossian origin.
>
> The Government of the Republic of Mauritius will not recognize the existence of the marine protected area in case it is established and will look into legal and other options that are now open to it. The more so, the Anglo-US Lease Agreement in respect of the Chagos Archipelago, concluded in breach of the sovereignty rights of Mauritius over the Chagos

[197] Notes of telephone call from Foreign Secretary to Mauritius' Prime Minister of 1 April 2010 in e-mail of 1 April 2010 from Global Response Centre (**Annex UKR-67**).

> Archipelago, is about to expire in 2016 and the Chagos Archipelago, including Diego Garcia, should be effectively returned to Mauritius at the expiry of the Agreement.[198]

154. On 6 April 2010, the United Kingdom declared a general election. In response to a question posed during the hearing regarding the speed with which the decision to declare the MPA was taken, the United Kingdom noted as follows:

> there was an election due at the beginning of May, which was a little over four weeks later. In the British system of government, when an election is called, essentially government stops. No new policies can be introduced. So, either Mr. Miliband took his decision on 1 April—which is the last possible date he could do so before the election —or he could leave the decision for the incoming government four weeks later. He took the decision, he did lose office, a new government came in, and they confirmed his decision.[199]

4. Consultations between the United Kingdom and Mauritius following the Declaration of the MPA

155. On 3 June 2010, Prime Minister Ramgoolam raised the issue of the MPA declaration during a meeting with the new UK Foreign Secretary, William Hague.[200]

156. On 1 September 2010, the BIOT Administrator made a submission to the Foreign Secretary regarding the implementation and financing of the MPA. This submission recounted the United Kingdom's analysis of the Mauritian attitude to the MPA in the following terms:

> 9. At his meeting with Prime Minister Ramgoolam on 3 June, the Foreign Secretary advised that he would familiarise himself with the issues surrounding the MPA but would not raise Ramgoolam's hopes. He stressed that he could not give Ramgoolam any reason to hope for a change in policy but that he and Mr Bellingham did want to work closely with Ramgoolam and his government. Mr Bellingham repeated these messages when he met Foreign Minister Boolell at the AU Summit on 22 July 2010. The Acting High Commissioner in Port Louis has also recently informed Foreign Minister Boolell of the Minister for Africa's letters to Lord Luce and Olivier Bancoult. However, the Mauritians are likely still to be disappointed: they had high hopes for the new Government. This issue is likely to continue to cause tension in our otherwise good bilateral relations with Mauritius, and could impact on our wider bilateral objectives, including working with Mauritius on counter piracy in the Indian Ocean.
>
> 10. The decision to continue with the MPA of itself is unlikely to push Mauritius to seek an Advisory Opinion at the International Court of Justice. But Boolell warned the Acting High Commissioner in Port Louis on 23 August that they would be prepared

198 Note Verbale dated 2 April 2010 from Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 11/2010 (1197/28/10) (**Annex MM-167**).

199 Final Transcript, 888:22 to 889:4.

200 While a new government had since assumed office in the United Kingdom, the Mauritius general election conducted on 5 May 2010 returned the government to power. There is no joint record of this meeting. For Mauritius' record, see Extract of Information Paper CAB (2010) 295 – Official Mission to France and the United Kingdom, 9 June 2010 (**Annex MR-161**). For the United Kingdom's record of the same meeting, see United Kingdom record of meeting of 3 June 2010 (**Annex UKCM-116**).

> to do so if there were no progress on sovereignty. They would also seek compensation for income accrued over the period of time which the "UK had denied them their rights over the Territory". While we are confident in the strength of our legal case, a decision by Mauritius to challenge our position on sovereignty would be awkward. We will need to develop an active approach to Mauritius, therefore, being clear about our red lines, but being positive about bilateral talks and options for an advisory role in the implementation of the MPA. This might include options, such as offering Mauritius a "privileged partnership" where Mauritius could play an advisory role in the management of the MPA, which does not impact on the sovereignty position. While we are not obliged to offer Mauritius this, it might help to bring them along with us on the issue. We expect the new High Commissioner to have opportunities to take stock of Mauritian thinking in his introductory meetings.
>
> 11. There is a slim chance that Mauritius may raise the issue of their historical fishing rights in the Territory. During negotiations over the excision of the Chagos Archipelago between Mauritius and the UK in 1965, the UK gave an undertaking that HMG would use their good offices with the US government to ensure that certain facilities including fishing rights in Chagos would remain available "as far as was practicable". Over the years, these rights have come to mean free fishing licences to Mauritian-flagged vessels upon application. In our exchanges on the MPA to date the Mauritians have never raised the question of fishing rights. This may be because they see it as inconsistent with their sovereignty claim. Mauritius has shown interest only in trying to secure a percentage of the fishing licence money generated by the Territory's fisheries. They do not accept our figures which show that the fishery operates at a substantial loss. Very few Mauritian-flagged vessels have fished in the Territory's Fishing (Conservation and Management) Zone. Only a couple of Mauritian-flagged vessels are run by Chagossians and their "rights" are being taken up in the Judicial Review into the MPA case being brought by Clifford Chance against the Secretary of State.[201]

157. On 9 September 2010, the new British High Commissioner in Mauritius, Mr Nicholas Leake, met with the then President of Mauritius, the Rt. Hon. Sir Anerood Jugnauth KCMG QC GCSK PC, [202] Prime Minister Ramgoolam, and Foreign Minister Boolell while presenting his credentials. The High Commissioner's account of that conversation is as follows:

> [. . .] The talks were wide-ranging, and other bilateral points will be reported separately to Africa Directorate. However, they all took the opportunity to raise Chagos/BIOT, which remains an irritant following the decision to establish a Marine Protection Area (MPA) in BIOT.
>
> 2. [President] Jugnauth said that he understood that the UK position was that sovereignty would be ceded to Mauritius once Diego Garcia was no longer needed for military purposes. But Mauritius had always understood that this meant the Cold War. The Cold War was now over, so was Diego Garcia still needed for military purposes? And if so, would there not always be a reason why the island was still needed? Jugnauth later added that the UK should just hand back the Territory; Mauritius had no problem with the US continuing to use the base, but they should pay rent to Mauritius.

---

201 Submission dated 1 September 2010 from Joanne Yeadon, Head of BIOT & Pitcairn Section, to Colin Roberts, Director, Overseas Territories Directorate, UK Foreign and Commonwealth Office, the Private Secretary to Henry Bellingham and the Private Secretary to the Foreign Secretary, "British Indian Ocean Territory (BIOT): Marine Protected Area (MPA): Implementation and Financing" (**Annex MR-164**).

202 President of Mauritius, October 2003 to March 2012. Prime Minister of Mauritius, June 1982 to September 1995, September 2000 to October 2003, and December 2014 to the present.

3. Prime Minister Ramgoolam said that he appreciated you seeing him at Carlton Gardens on his recent visit to London. He rehearsed his disappointment following his CHOGM meeting with Gordon Brown, where he felt he had been promised that the MPA would be put on hold. But he was in "more sorrow than anger" mode. I said that we did not want to raise any hopes of a change of policy. The UK recognised the Mauritian position on sovereignty, and we trusted that the Mauritians understood ours. But, aside from sovereignty, there were a number of issues which could be discussed, and we hoped for a resumption of bilateral talks. The excellent and important relationship between the two countries should allow constructive discussions. You would be writing to set out the position. Ramgoolam said he would wait for the letter before considering his next move, but if there was no progress he would "have to do something".

4. Foreign Minister Boolell was grateful that Mr Bellingham had met him in Kampala at the recent [AU] summit. On BIOT, he said that the MPA consultation had marred the relationship, but if there was a will we could make progress. Mauritius was keen to restart bilateral talks, but 2014 was just around the corner and this was an important date under the UK/US agreement. They would like more clarity on this – the Government was under increasing pressure "from African Union friends" to take action ahead of that date. Boolell also mentioned Mauritius' responsibilities under the Pelindaba Treaty (which says that there should be no nuclear weapons on the territory of AU members).

5. Boolell recognised that the US base was here to stay, but Mauritius wanted to exercise its "legitimate rights" over the territory. They wanted to be part of any discussions, and were unhappy that the US refused to engage with them and kept telling them to discuss all BIOT issues with us. Boolell drew attention to the Chagossian case in the ECHR, and said that this was a rare case where the Mauritian government and opposition were united. He also hinted at "mobilising world opinion", an ICJ case, and seeking "compensation for lost revenue" since independence.[203]

* * *

[203] United Kingdom record of meeting between British High Commission in Port Louis and President, Prime Minister and Foreign Minister of Mauritius on 9 September 2010 (**Annex UKCM-119**).

this page intentionally blank

CHAPTER IV - RELIEF REQUESTED

158. Mauritius' final submissions are as follows:

> On the basis of the facts and legal arguments presented in its Memorial, Reply, and during the oral hearings, Mauritius respectfully requests the Arbitral Tribunal to adjudge and declare, in accordance with the provisions of the 1982 United Nations Convention on the Law of the Sea ("the Convention"), in respect of the Chagos Archipelago, that:
>
> (1) the United Kingdom is not entitled to declare an "MPA" or other maritime zones because it is not the "coastal State" within the meaning of *inter alia* Articles 2, 55, 56 and 76 of the Convention; and/or
>
> (2) having regard to the commitments that it has made to Mauritius in relation to the Chagos Archipelago, the United Kingdom is not entitled unilaterally to declare an "MPA" or other maritime zones because Mauritius has rights as a "coastal State" within the meaning of *inter alia* Articles 56(1)(b)(iii) and 76(8) of the Convention; and/or
>
> (3) the United Kingdom shall take no steps that may prevent the Commission on the Limits of the Continental Shelf from making recommendations to Mauritius in respect of any full submission that Mauritius may make to the Commission regarding the Chagos Archipelago under Article 76 of the Convention;
>
> (4) The United Kingdom's purported "MPA" is incompatible with the substantive and procedural obligations of the United Kingdom under the Convention, including *inter alia* Articles 2, 55, 56, 63, 64, 194 and 300, as well as Article 7 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995.

159. The United Kingdom's final submissions are as follows:

> For the reasons set out in the Counter-Memorial, the Rejoinder and these oral pleadings, the United Kingdom of Great Britain and Northern Ireland respectfully requests the Tribunal:
>
> (i) to find that it is without jurisdiction over each of the claims of Mauritius;
>
> (ii) in the alternative, to dismiss the claims of Mauritius.
>
> In addition, the United Kingdom of Great Britain and Northern Ireland requests the Tribunal to determine that the costs incurred by the United Kingdom in presenting its case shall be borne by Mauritius, and that Mauritius shall reimburse the United Kingdom for its share of the expenses of the Tribunal.

* * *

this page intentionally blank

CHAPTER V - THE TRIBUNAL'S JURISDICTION

160. The United Kingdom objects to the Tribunal's jurisdiction to consider the claims arising in respect of each of Mauritius' four final submissions. The United Kingdom also contends that Mauritius has failed, in respect of each of its submissions, to meet the procedural requirement in Article 283 to exchange views regarding the settlement of the Parties' dispute. Mauritius, in turn, contends that the Tribunal has jurisdiction to consider each of its claims and that the procedural conditions to exercising this jurisdiction have been met.

161. Set out in brief, the Parties' differing views on the Tribunal's jurisdiction reflect their differing interpretations of the dispute settlement provisions of Part XV of the Convention. Mauritius considers that the United Kingdom bears the burden of establishing that an express exception to the Tribunal's jurisdiction, such as those set out in Articles 297 and 298, is applicable. The United Kingdom, in contrast, considers these proceedings to be an attempt to "stretch the jurisdiction of courts and tribunals under Part XV" beyond permissible boundaries.[204] The United Kingdom believes that the Tribunal must instead focus on the "carefully negotiated preconditions, limitations and exceptions" contained in the Convention[205] and that so doing will lead the Tribunal to uphold the United Kingdom's objections.

162. In approaching the question of its jurisdiction, the Tribunal will first consider its jurisdiction with respect to Mauritius' First and Second Submissions. Although addressed by the United Kingdom collectively, the Tribunal considers it appropriate to address Mauritius' First and Second Submissions separately and in turn. The Tribunal will then go on to consider its jurisdiction with respect to Mauritius' Fourth Submission and the question of the compatibility of the MPA with the Convention. Thereafter, the Tribunal will address its jurisdiction with respect to Mauritius' Third Submission concerning submission to the CLCS. Finally, the Tribunal will proceed to examine whether Mauritius has met the requirements of Article 283 with respect to those submissions over which the Tribunal would otherwise have jurisdiction.

A. THE TRIBUNAL'S JURISDICTION OVER MAURITIUS' FIRST SUBMISSION

163. In its First Submission, Mauritius requests the Tribunal to adjudge and declare that –

---

204 Final Transcript, 647:3-6.

205 Final Transcript, 651:20-22.

(1) the United Kingdom is not entitled to declare an "MPA" or other maritime zones because it is not the "coastal State" within the meaning of *inter alia* Articles 2, 55, 56 and 76 of the Convention; and/or

[. . .]

164. The United Kingdom maintains that the Tribunal lacks jurisdiction over Mauritius' First Submission, which it characterizes as Mauritius' "sovereignty claim". According to the United Kingdom, sovereignty over the Chagos Archipelago constitutes "the real issue in the case"[206] and is a matter that falls outside the dispute settlement provisions of the Convention. Mauritius, in contrast, submits that "there are no grounds for determining that any aspect of the dispute is beyond the Tribunal's jurisdiction, based on an ordinary interpretation of the Convention."[207]

1. The Parties' Arguments

165. The Parties' arguments in respect of this objection divide broadly into those concerning the scope of jurisdiction under Articles 286 and 288 of the Convention, the relevance of Article 293 concerning the applicable law, the background understanding of the drafters of the Convention with respect to jurisdiction over land sovereignty issues, and the implications of accepting or rejecting jurisdiction in the present proceedings. Each issue is addressed in turn in the sections that follow.

(a) The Tribunal's Jurisdiction over Mauritius' First Submission

i. Articles 286 and 288 and the Scope of Compulsory Jurisdiction under the Convention

166. Articles 286 and 288 of the Convention condition recourse to, and the jurisdiction of, a court or tribunal pursuant to the compulsory procedures entailing binding decisions set out in section 2 of Part XV of the Convention.

167. Article 288 provides for the Tribunal's jurisdiction in the following terms:

Article 288
Jurisdiction

1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

---

206 The United Kingdom's Counter-Memorial, paras. 4.3-4.9.

207 Mauritius' Reply, para. 7.6.

> 2. A court or tribunal referred to in article 287 shall also have jurisdiction over any dispute concerning the interpretation or application of an international agreement related to the purposes of this Convention, which is submitted to it in accordance with the agreement.
>
> [. . .]

168. Article 286 links the Tribunal's compulsory jurisdiction with the non-binding mechanisms for the settlement of disputes, set out in section 1 of Part XV, as follows:

> *Article 286*
> *Application of procedures under this section*
>
> 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.

The United Kingdom's Position

169. Within Part XV, the United Kingdom notes, Articles 286 and 288 of the Convention permit recourse to compulsory settlement, but are subject to "carefully negotiated preconditions, limitations and exceptions."[208] Article 286 applies only where "no settlement has been reached by recourse to section 1" and only subject to the limitations and exceptions specified in section 3. The United Kingdom emphasizes that "the obligation to accept compulsory procedures entailing binding decisions applies only to disputes 'concerning the interpretation or application of this Convention'."[209] That this provision was intended to restrain the Tribunal's jurisdiction is, in the United Kingdom's view, implicit from Article 288(2). That provision extends jurisdiction over related agreements that expressly refer disputes to Part XV of the Convention, but only to the extent that such an agreement is "related to the purposes of this Convention".[210] Because the possibility of jurisdiction over expressly related agreements is constrained, jurisdiction over disputes which fall to be decided under agreements unrelated to the Convention or under customary international law must also be constrained. According to the United Kingdom, the same conclusion follows from the context of the carefully constructed exclusions to jurisdiction set out in Article 297.[211] As a result of the ordinary meaning of Article 288, the United Kingdom submits that "[d]isputes concerning matters that are wholly exterior to

---

208 Final Transcript, 651:20-22.

209 Final Transcript, 654:3-5.

210 Final Transcript, 676:20-23.

211 Final Transcript, 677:7-15.

the Convention do not fall within Article 288(1), and that result cannot be avoided by presenting matters as a dispute over who is the coastal State."[212]

170. The United Kingdom objects to the Tribunal's jurisdiction on the grounds that questions of sovereignty lie "at the heart of the current claim"[213] and that it is "self-evident . . . that a dispute concerning sovereignty over land territory is not a dispute concerning the interpretation or application of the law of the sea convention".[214]

171. "Part XV of the Convention," the United Kingdom recalls, "is not a General Act for the Pacific Settlement of International Disputes."[215] While some courts and tribunals applying the Convention may have exercised a broader jurisdiction, they have done so only in cases where their jurisdiction arose (as in *Peru v. Chile* before the International Court of Justice (the "**ICJ**") (*Maritime Dispute (Peru v. Chile), Judgment of 27 January 2014*)) from other instruments such as the Pact of Bogotá that provide for the settlement of disputes in terms that are notably broader than those of the Convention itself.[216] Where jurisdiction arises under Part XV, the United Kingdom emphasizes, it –

> is confined to disputes concerning the interpretation or application of UNCLOS. It concerns UNCLOS and UNCLOS alone. It does not, unless expressly extended, concern other treaties, even other treaties on the law of the sea. Nor does it cover customary international law, even the customary international law of the sea such as is applicable between parties and non-parties or between non-parties.[217]

172. With respect to the characterization of the Parties' dispute, the United Kingdom recalls that the issue of sovereignty over the Chagos Archipelago is a longstanding point of contention. The formulation of the dispute as a matter arising under the Convention, however, is of recent origin and, according to the United Kingdom, arose only with the commencement of these proceedings.[218] It is telling, the United Kingdom argues, that the relief sought by Mauritius "has been formulated not in terms of a declaration of breach of UNCLOS, which is what one would expect to see if this were truly an UNCLOS claim."[219] Despite presenting its claim as one over the interpretation of the term "coastal State", the United Kingdom observes, Mauritius' written

---

212 Final Transcript, 666:14-16.

213 Final Transcript, 666:17-19.

214 Final Transcript, 654:16-17.

215 Final Transcript, 659:2-3.

216 Final Transcript, 674:21 to 675:11.

217 Final Transcript, 659:6-10.

218 Final Transcript, 662:18-20.

219 Final Transcript, 664:18-21.

pleadings do not contain "a single sentence on the correct interpretation of the term".[220] Indeed, "the principal declaration sought by Mauritius is that the UK is not the coastal State."[221] Along the way to granting such relief, the United Kingdom notes, Mauritius invites the Tribunal to apply the law of self-determination to events in 1965 and to declare that Mauritius has retained sovereignty over the Chagos Archipelago. In the United Kingdom's view, Mauritius is requesting the Tribunal to permit "an artificial re-characterization of the long-standing sovereignty dispute as a 'who is the coastal State' dispute."[222]

173. While other courts and tribunals exercising jurisdiction under the Convention have addressed some issues beyond the strict confines of the Convention itself, in the United Kingdom's view none have done so to the extent now suggested by Mauritius. The United Kingdom distinguishes both *Guyana v. Suriname* (*Award of 17 September 2007, PCA Award Series*, p. 1, RIAA, Vol. XXX, p. 1) and *MV Saiga (No. 2)* (*(Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999*, p. 10) on the grounds that in each case "some incidental issue arose in relation to what was plainly a dispute as to the interpretation or application of UNCLOS."[223] Here, in contrast, sovereignty is the principal issue and if the Tribunal were to decide that issue in Mauritius' favour, "[t]here would be no UNCLOS case left . . . to decide".[224] In short, the United Kingdom concludes, "the characterization of this long-established sovereignty claim as an UNCLOS claim, or as ancillary or incidental to a claim that could correctly be brought under UNCLOS, is untenable."[225]

174. According to the United Kingdom, this result is unaffected by the debate surrounding jurisdiction over mixed disputes involving the determination of maritime boundaries in areas where sovereignty over land features is also disputed. The present case does not arise in the context of a maritime boundary delimitation, the United Kingdom notes, and the arguments advanced in favour of jurisdiction over mixed disputes (discussed in greater detail in the context of Article 298(1)(a)(i) below) are specific to that context and can be left for other tribunals. The United Kingdom summarizes its objection as follows:

> We do not, of course, contend for the existence of any implicit exclusion of all land sovereignty matters from article 288(1), [. . .]. We say that Mauritius' 'we are the coastal State' claim is predicated on the determination of a long-standing dispute over a

220 Final Transcript, 1171:9-14.

221 Final Transcript, 664:21-22.

222 Final Transcript, 660:19-20.

223 Final Transcript, 668:9-13.

224 Final Transcript, 667:2-5.

225 Final Transcript, 660:13-16.

> sovereignty that it wishes to be decided by reference to sources exterior to the Convention and, as such, on the ordinary meaning of article 288(1), the dispute is not one concerning the interpretation or application of the Convention.[226]

Mauritius' Position

175. Mauritius submits that "all aspects of this dispute . . . are firmly within the jurisdiction of the Tribunal."[227]

176. Mauritius is not, it emphasizes, attempting to force a sovereignty dispute into the confines of the Convention. Instead, it is "inviting the Tribunal to determine whether or not the UK is a 'coastal State' within the meaning of the Convention, so that it is entitled to create the 'MPA' it has purported to establish."[228] According to Mauritius, it "is not asking the Tribunal to widen or to extend its jurisdiction by looking at matters other than those 'concerning the interpretation and application of the Convention' under Article 288(1)."[229] As Mauritius understands the issue:

> Whether a state qualifies as "the coastal state" under the Convention (or "a coastal state," and we note the Convention uses both formulations) in respect of a particular state of affairs is a question arising under the Convention, and it can only be resolved by reference to the Convention itself and by general international law applicable in accordance with the Convention.[230]

177. In Mauritius' view, "[t]he starting point is not the *a priori* question of whether Mauritius does or does not have sovereignty . . . . The correct starting point is whether or not this part of Mauritius' claim concerns the interpretation or application of the Convention."[231] Mauritius considers that it obviously does. Having then raised a question relating to the interpretation and application of the Convention, Mauritius submits that the relevant question is "what other questions of public international law may be sufficiently closely connected to that dispute that they are questions the Tribunal can *and must* consider."[232] Where such issues do arise, Article 293 then permits the Tribunal to apply the other sources of international law necessary to resolve them.[233]

---

226 Final Transcript, 1168:18-24.

227 Final Transcript, 429:15-16.

228 Final Transcript, 430:1-3.

229 Final Transcript, 434:4-6.

230 Final Transcript, 435:8-12.

231 Final Transcript, 1002:1-3.

232 Final Transcript, 438:13-15.

233 Final Transcript, 438:8-12.

178. According to Mauritius, "[c]ompulsory procedures entailing binding decisions are available in every dispute concerning the interpretation or application of the Convention, unless an exception applies."[234] Since neither the automatic exceptions to jurisdiction in Article 297 of the Convention, nor the optional ones in Article 298, are applicable, Mauritius submits that the United Kingdom is asking the Tribunal to find "that any dispute which may be construed as necessarily involving a question of sovereignty is inherently beyond the jurisdiction of a Part XV Tribunal despite the fact that there is nothing in the Convention that says that."[235]

179. Reviewing the drafting history of the Convention and the implications of Article 298(1)(a) (discussed in detail below), Mauritius submits that there is no basis for such an exception –

> the idea of sovereignty was within the contemplation of the negotiators; they thought about it, they talked about it. Despite this, no consensus was reached on an explicit exclusion. If they truly did not wish a Tribunal such as this to deal with the words that are before you, such an express exclusion [. . .] could have been drafted and would have been included.[236]

Nor does Mauritius consider jurisdiction over land sovereignty issues to be relevant only in the context of maritime boundary delimitations.

ii. The Relevance of Article 293 to the Jurisdiction of the Tribunal

180. Article 293 of the Convention provides as follows:

> *Article 293*
> *Applicable law*
>
> 1. A court or tribunal having jurisdiction under this section shall apply this Convention and other rules of international law not incompatible with this Convention.
>
> 2. Paragraph l does not prejudice the power of the court or tribunal having jurisdiction under this section to decide a case *ex aequo et bono*, if the parties so agree.

181. While the Parties are largely in agreement that Article 293 does not, of itself, constitute a basis of jurisdiction, they differ regarding the implications of this provision.

Mauritius' Position

182. Mauritius submits that Article 293 of the Convention establishes that "issues 'closely linked or ancillary' to questions arising directly under the Convention are also questions 'concern[ing] the interpretation or application of the Convention.'"[237] Mauritius "is not," it emphasizes, "asking

---

234 Final Transcript, 441:17-19.

235 Final Transcript, 442:15-18.

236 Final Transcript, 1017:23 to 1018:3.

237 Final Transcript, 446:2-4.

this Tribunal to extend its jurisdiction by reference to rules of international law other than the Convention."[238] Instead, Mauritius argues, "in compulsory jurisdiction cases, the Tribunal may have to decide matters of general international law that are not part of the law of the sea, and Article 293(1) allows for this."[239] Mauritius summarizes the logical sequence as follows:

> All the Convention asks us to consider first is whether there's a dispute falling within the interpretation and application of the Convention (Article 288) and it then directs, if [the Tribunal is] satisfied that that is the case, [the Tribunal] "*shall* apply this Convention and other rules of international law not incompatible with this Convention" (Article 293).[240]

183. According to Mauritius, "ITLOS and Annex VII Tribunals have, on numerous occasions, indicated where other rules of international law are to be applied."[241] In this respect, Mauritius points to the application of the UN Charter provisions on the use of force in *Guyana v. Suriname* (*Award of 17 September 2007, PCA Award Series*, pp. 166-171, RIAA, Vol. XXX, p. 1 at p. 119, para. 425 *et seq*.) and of the determination of the permissibility of force as a matter of general international law in *M/V "Saiga" (No. 2) ((Saint Vincent and the Grenadines v. Guinea), Judgment, ITLOS Reports 1999*, p. 10 at p. 63, para. 159). [242] Mauritius also points to the considerations of human rights law at issue in *Arctic Sunrise* (*(Kingdom of the Netherlands v. Russian Federation), Provisional Measures, Order of 22 November 2013, ITLOS Reports 2013*, p. 230 at para. 33).[243]

The United Kingdom's Position

184. According to the United Kingdom, Article 293 "cannot be invoked to support an expanded vision of the jurisdiction of a court or tribunal acting under section 2 of Part XV."[244]

185. In the United Kingdom's view:

> The purpose of the reference to "other rules of international law not incompatible with this Convention" is to dispel any doubt that, in interpreting and applying the provisions of the Convention, a Part XV court [or] tribunal may have recourse to such secondary rules as the law of treaties, State responsibility, diplomatic protection et cetera, and may apply other

238 Final Transcript, 434:1-2.

239 Final Transcript, 435:13-15, *quoting* A.E. Boyle, "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction" (1997) 46 *International and Comparative Law Quarterly* at p. 49 (**Annex MR-103**).

240 Final Transcript, 438:8-12.

241 Final Transcript, 438:15-17.

242 Final Transcript, 439:3-8.

243 Final Transcript, 439:11-21.

244 Final Transcript, 659:14-15.

> rules of international law when directed to do so expressly by a provision of the Convention.[245]

It is "most certainly not to empower a Part XV court or tribunal to decide disputes which have arisen in fields of international law that lie outside the provisions of the Convention."[246]

186. This distinction, the United Kingdom submits, was clearly established by the Order of 24 June 2003 in the *MOX Plant Case* (*(Ireland v. United Kingdom), Order of 24 June 2003, PCA Award Series*, p. 47 at p. 52, para. 19),[247] and is supported by the approach of the ICJ in the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*(Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43 at p. 104, para. 147) with respect to the comparable articles 36 and 38 of the ICJ Statute.[248] It was also the approach of the *Eurotunnel* Tribunal with respect to the applicable law provisions of the contract at issue in those proceedings (*Eurotunnel (Channel Tunnel Group and France-Manche v. UK and France), Partial Award of 30 January 2007, PCA Award Series p. 61*, 132 ILR p. 1 at p.54, para. 152).[249]

iii. The Relevance of Article 298(1)(a)(i)

187. The Parties disagree as to whether the effect of a declaration under Article 298(1)(a)(i) in excluding a dispute concerning sovereignty over land territory from compulsory conciliation implies *a contrario* that such a dispute would be subject to compulsory dispute resolution in the absence of such a declaration.

188. Article 298 of the Convention provides in relevant part:

> 1. When signing, ratifying or acceding to this Convention or at any time thereafter, a State may, without prejudice to the obligations arising under section 1, declare in writing that it does not accept any one or more of the procedures provided for in section 2 with respect to one or more of the following categories of disputes:
>
> (a)(i) disputes concerning the interpretation or application of articles 15, 74 and 83 relating to sea boundary delimitations, or those involving historic bays or titles, provided that a State having made such a declaration shall, when such a dispute arises subsequent to the entry into force of this Convention and where no agreement within a reasonable period of time is reached in negotiations between the parties, at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and

---

245 Final Transcript, 656:8-12.

246 Final Transcript, 656:16-18.

247 The United Kingdom's Counter-Memorial, para. 4.22.

248 The United Kingdom's Counter-Memorial, paras. 4.25-4.28.

249 The United Kingdom's Counter-Memorial, paras. 4.23-4.24.

> provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

Mauritius' Position

189. According to Mauritius, "there is no *exclusion* in the Convention of jurisdiction over mixed disputes either in the narrow sense of those arising in maritime delimitation cases or the broader sense of questions of public international law over which a Part XV Tribunal may properly exercise incidental or ancillary jurisdiction."[250]

190. Mauritius submits that the United Kingdom seeks to impose an artificial distinction and limit jurisdiction to the context of maritime boundaries. "The United Kingdom is wrong," Mauritius suggests, "to argue that the inference from the academic writings and from Article 298(1)(a)(i) itself is that sovereignty questions could only arise under Part XV where they are 'mixed' with a *delimitation* dispute."[251] While "[d]elimitation is simply the most obvious case in which [a mixed dispute] could arise", [252] Mauritius considers that the reasoning supporting such jurisdiction applies equally to other issues that "cannot be determined in isolation without reference to territory." [253] Nevertheless, Mauritius recalls the dispute between the Parties concerning Mauritius' submissions to the CLCS in respect of the Chagos Archipelago and argues that "we do now have a situation of maritime boundaries in this case because the delineation issue, we say, is a maritime boundary issue."[254] In Mauritius' view, there is simply no reason for delimitation and delineation to be treated differently with respect to jurisdiction.[255]

191. According to Mauritius, this interpretation follows from the inclusion in the Convention of Article 298(1)(a)(i): "If, indeed, mixed disputes were not otherwise covered by the Convention's jurisdiction, there would have been no need for the specific exclusion in the last clause of Article 298(1)(a)(i)."[256] It also follows from the negotiating records of the Convention, insofar as, according to Mauritius, "an express exclusion [of jurisdiction over land sovereignty] was proposed and it was rejected" during the Third United Nations Conference on the Law of

250 Final Transcript, 450:9-12.

251 Final Transcript, 449:23-25.

252 Final Transcript, 450:2-3.

253 Final Transcript, 445:6-7.

254 Final Transcript, 445:20-21.

255 Final Transcript, 449:25 to 450:3.

256 Final Transcript, 450:23-24.

the Sea (the "**Conference**").[257] The Report of the President of the Conference of 23 August 1980, Mauritius notes, records that a proposal was made to make "the exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from the compulsory dispute settlement procedures and from compulsory submission to conciliation procedures"[258] part of the automatic exclusions from jurisdiction (now set out in Article 297), but that this was rejected.[259] Taken as a whole, Mauritius argues:

> The *travaux* plainly point to one conclusion. The issue of sovereignty over land was addressed, and a majority wanted a compulsory dispute settlement system capable of touching on such questions. A minority did not. All the minority got was the opt-out in Article 298(1)(a)(i), and that became part of the package deal.[260]

192. Mauritius discounts the academic commentaries assembled by the United Kingdom to suggest that land sovereignty must be outside the Tribunal's jurisdiction. According to Mauritius, of the authorities offered by the United Kingdom:

> Many, [. . .] merely assert that Part XV cannot cover issues of territorial sovereignty: they offer no footnote and no explanation and no reasoning, beyond—at most—a bald reference to the words of Article 298(1)(a)(i), unaccompanied by any further textual analysis. [. . .] Another three attempt some explanation of their views but offer no reasoning at all beyond a sentence or two (that is Churchill, Oxman and Thomas). Closely read, at least two of the authors cited do not actually seem to rule out the possibility of jurisdiction in at least some sovereignty disputes (Torres Bernárdez and Smith). In fact quite a few of the authors cited use language along the lines of the Convention *seeming*, or *appearing* to, or *probably*, excluding such disputes, but they don't actually offer a firm conclusion. One author (Adede) makes the historical point that the President of the Conference in 1977 said, *in his view*, territorial disputes would not fall within Part XV and another, Yee, simply repeats that observation.[261]

193. Mauritius summarises its position as follows:

> The result of a proper *a contrario* understanding of Article 298(1)(a)(i) is not that all sovereignty disputes are automatically included under the Convention, it is that such disputes *are not automatically excluded*. Not every question relating to land will fall within the Convention, only those which must necessarily be dealt with in order to resolve a dispute that is within the Convention. The question is, as Professor Treves has put it, "whether the dispute, […] as a whole, can be seen as being about the interpretation or application of the Convention."[262]

---

257 Final Transcript, 452:10-11.

258 Third United Nations Conference on the Law of the Sea, Official Records Vol. XIV, Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes, 23 August 1980, A/CONF.62/L.59, at para. 6 (**Annex MR-81**).

259 Final Transcript, 452:10 to 453:2.

260 Final Transcript, 1020:18-21.

261 Final Transcript, 456:6-19.

262 Final Transcript, 450:14-20, *quoting* T. Treves, "What have the United Nations Convention and the International Tribunal for the Law of the Sea to offer as regards maritime delimitation disputes?" in R. Lagoni and D. Vignes (eds.), *Maritime Delimitation* (2006), p. 77.

The United Kingdom's Position

194. The United Kingdom acknowledges that there is an extensive debate in the academic literature as to whether issues of land sovereignty may be decided through compulsory dispute settlement under the Convention when they arise incidentally to a maritime boundary delimitation. As the present proceedings do not involve the delimitation of a maritime boundary, the United Kingdom is of the view that the Tribunal "need not and should not enter into the debate on mixed disputes to decide this case."[263] To the extent the question is relevant, however, the United Kingdom endorses the view that land sovereignty disputes were excluded from jurisdiction under the Convention and cites numerous authorities in support of this view.[264]

195. In the United Kingdom's view, "the proviso to Article 298(1)(a)(i) merely clarifies that the general exclusion of unsettled territorial sovereignty disputes from compulsory dispute settlement also applies in the context where such a dispute would fall for consideration . . . in the context of mandatory conciliation".[265] But whatever one makes of the *a contrario* argument, the United Kingdom submits, it does not assist Mauritius in the present case. Article 298(1)(a)(i) "is concerned only with disputes over maritime delimitation and historic bays or titles."[266] For the United Kingdom, it therefore follows that any *a contrario* reading of the

---

263 The United Kingdom's Rejoinder, para. 4.42.

264 The United Kingdom's Rejoinder, para. 4.42, *citing* A.O. Adede, *The System for Settlement of Disputes under the United Nations Convention on the Law of the Sea*, pp. 132, 159, para. 7.4; Churchill, "The Role of the International Court of Justice in Maritime Boundary Delimitation", in Elferink and Rothwell, *Oceans Management in the 21st Century: Institutional Frameworks and Responses* (2004) p. 136; Elferink, "The Islands in the South China Sea: How Does Their Presence Limit the Extent of the High Seas and the Area and the Maritime Zones of the Mainland Coasts?" (2001) 32 *Ocean Development & International Law* 169, 172; Guillaume, *La Cour internationale de Justice à l'aube du XXIème siècle. Le Regard d'un juge* (2003), pp. 300-301; L.B. Sohn and K. Gustafson, *The Law of the Sea in a Nutshell* (1984) 24; P.C. Irwin, "Settlement of Maritime Boundary Disputes: An Analysis of the Law of the Sea Negotiations" (1980) 8 ODIL 105, 114-15, 138-39; K. Kittichaisaree, *The Law of the Sea and Maritime Boundary Delimitation in South-East Asia* (OUP 1987) 140; B.H. Oxman, "The Third United Nations Conference on the Law of the Sea: The Ninth Session" (1981) 75 AJIL 211, 233 fn. 109; M.C. Pinto, "Maritime Boundary Issues and Their Resolution", in N. Ando et al (eds), *Liber Amicorum Judge Shigeru Oda*, p.1115 at p.1130; R.W. Smith, "The Effect of Extended Maritime Jurisdictions", in Koers and Oxman, *The 1982 Convention on the Law of the Sea: Proceedings, Law of the Sea Institute* (1984), at 343; L.B. Sohn, "Peaceful Settlement of Disputes in Ocean Conflicts: Does UNCLOS III Point the Way?" (1983) 46 LCP 195; S. Talmon. "The South China Sea Arbitration: Is there a case to answer?", Bonn Research Papers in International Law, No. 2/2014, 9 February 2014; R.W. Smith and B.L. Thomas, Maritime Briefing, vol. 2(4), "Island Disputes and the Law of the Sea: An Examination of Sovereignty and Delimitation Disputes" (1998); S. Torres Bernárdez, "Provisional measures and Interventions in Maritime Delimitation Disputes", in Lagoni and Vignes, *Maritime Delimitation* (2006); Weckel, report on the Juno Trader case, 2005 R.G.D.I.P. 230; S. Yee, "Conciliation and the 1982 UN Convention on the Law of the Sea", ODIL, 44, 315 at 324.

265 Final Transcript, 693:15-20.

266 Final Transcript, 681:17-19.

provision is similarly limited to maritime boundary delimitation. Rather than infer, as Mauritius asks the Tribunal to do, that "because jurisdiction can be excluded pursuant to a declaration in context 'A', it must therefore be included in context 'B'," the United Kingdom submits that "[t]he more obvious conclusion is that [jurisdiction] was not included in context 'B' in the first place."[267] Moreover, the United Kingdom argues, Mauritius' interpretation is illogical:

> It posits certain States being utterly unwilling to agree to determine territorial disputes where these arose in the context of maritime delimitation claims, and insisting on the terms of the Article 298 opt-out (which excludes sovereignty disputes even from conciliation), but at the same time those very same States being willing to agree to the compulsory determination of such disputes in the far broader context of claims made wherever the Convention refers to a coastal state.[268]

Were this the case, the United Kingdom submits, "there would be an opt-out for 'who is the coastal State' disputes".[269]

196. Turning to the negotiating record of Article 298(1)(a)(i), the United Kingdom emphasizes that all of the statements identified by Mauritius as allegedly supporting jurisdiction over land sovereignty disputes were made in the context of Negotiating Group 7 and "in each case, the delegate relied on had been making a statement on land sovereignty issues in the specific context of maritime delimitation disputes."[270] Simply put, the United Kingdom argues –

> The debates do not reflect <u>any</u> consideration of <u>any</u> kind of the possibility that a justiciable dispute as to land sovereignty could be raised in the context of [. . .] who was the, or indeed a, coastal State. The supposed majority does not exist, because no one was considering what Mauritius is now proposing.[271]

Instead, "the negotiating history does no more than confirm that there is no foundation whatsoever for the radical and unwarranted jurisdiction that Mauritius contends for in this case."[272]

(b) The Implications of Finding Jurisdiction over Mauritius' First Submission

The United Kingdom's Position

197. The United Kingdom advances a cautionary argument against finding jurisdiction over Mauritius' First Submission. In the United Kingdom's view, the risks involved in disregarding

---

267 Final Transcript, 682:10-13.

268 Final Transcript, 682:14-19.

269 Final Transcript, 682:21-23.

270 Final Transcript, 1186:20 to 1187:1.

271 Final Transcript, 1191:21-24 (emphasis in original).

272 The United Kingdom's Rejoinder, para. 4.43.

limits to jurisdiction were recalled by Judge Koroma in the context of comparable provisions in *Georgia v. Russia* –

> a link must exist between the substantive provisions of the treaty invoked and the dispute. This limitation is vital. Without it, States could use the compromissory clause as a vehicle for forcing an unrelated dispute with another State before the Court.
>
> (*Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, Separate Opinion of Judge Koroma, I.C.J. Reports 2011*, p. 183 at p. 185, para. 7.)

198. Here, the United Kingdom submits that the open-ended approach to jurisdiction advocated by Mauritius risks opening the door to a wide range of latent sovereignty disputes among States worldwide, brought on the pretext that one State or another is not the "coastal State" with respect to the territory in question. For the United Kingdom, there is a "grave danger in abuse of Part XV represented by Mauritius' arguments in the present case," and "[t]he arguments of Mauritius' lawyers risk undermining the system of Part XV" as States would be dissuaded from acceding to the Convention or accepting the jurisdiction of other courts and tribunals.[273]

199. While Mauritius contends that its case is *sui generis* and limited by the colonial history of the Chagos Archipelago, the United Kingdom submits that –

> [t]here is no wording in Articles 288(1) or 298(1) to suggest that they somehow apply differently in different circumstances. No references to the impacts of undertakings or jurisdiction with respect to former colonies. So if Mauritius is correct in its interpretation of Article 288(1), then, as long as the claimant State can plausibly assert that the respondent State is exercising the rights or duties of a coastal State, that claimant State will be able to bring a claim challenging the territorial sovereignty of the respondent State.[274]

Mauritius' Position

200. Mauritius rejects the United Kingdom's concerns about the consequences of finding jurisdiction in this case. Mauritius describes an evolutionary process in the application of compulsory dispute settlement under the Convention –

> with the passage of time, as dispute settlement under the 1982 Convention and Part XV has become increasingly established and settled, as the International Tribunal for the Law of the Sea and Annex VII Tribunals have been confronted with a range of issues and questions that may not have been at the forefront of the minds of the drafters of the Convention, or indeed in their minds at all, sensible solutions have been found, and the law has evolved. Those solutions have been practical and they have been effective. It is true that they may have taken the interpretation of the Convention to a place where some of the early writings

---

273 Final Transcript, 648:10-13.

274 Final Transcript, 673:1-6.

> that the United Kingdom likes to rely upon may not have foreseen and may not like. But it cannot be said that disaster has followed.[275]

201. The result of that process, according to Mauritius, is not a threat to the system, but the effective application of the Convention to resolve disputes –

> the reality is the very opposite of what the United Kingdom argues: far from undermining the whole Convention, if [the Tribunal] take[s] jurisdiction over this case, [it] will strengthen the dispute settlement structure of the Convention; to decline jurisdiction will be to exacerbate the dispute, to prolong it unnecessarily, and to signal that Part XV serves to perpetuate a colonial era dispute such as this one.[276]

202. In any event, however, Mauritius contends that the circumstances of the Chagos Archipelago are unique:

> The United Kingdom has consistently described Mauritius as having rights in reversion of the islands. It has described itself as a mere "temporary freeholder." This fact alone places this dispute in a category of one. No other case like it anywhere, and the United Kingdom has not been able to find one for us.[277]

According to Mauritius, this "is the key to this case. It allows you to open the door that leads to the particular facts of this unique dispute."[278] However, "to admit one dispute touching upon such matters is not to admit them all," and "not all such disputes will necessarily come within the jurisdiction of a Part XV court or tribunal."[279] In Mauritius' view, the Tribunal should concern itself "with the facts of this case and this dispute and this case and this dispute only and no other."[280]

2. The Tribunal's Decision

203. Mauritius' First Submission asks the Tribunal to interpret and apply the term "coastal State" as it is used in the Convention. This term is not defined in the Convention, although its usage in the text makes evident that it was intended to denote a State having a sea coast, as distinct from a land-locked State. Nowhere, however, does the Convention provide guidance on the identification of the "coastal State" in cases where sovereignty over the land territory fronting a coast is disputed. Nor is provision made for circumstances of war or secession in which a coast might effectively be occupied by authorities exercising *de facto* governmental powers, or other complex permutations of territorial sovereignty, such as condominium governments. In each of

275 Final Transcript, 428:6-14.

276 Final Transcript, 430:14-19.

277 Final Transcript, 431:11-14.

278 Final Transcript, 462:16-17.

279 Final Transcript, 461:21 to 462:1.

280 Final Transcript, 462:1-2.

these cases, the identity of the coastal State for the purposes of the Convention would be a matter to be determined through the application of rules of international law lying outside the international law of the sea. Whether the Tribunal, or other courts and tribunals convened pursuant to Part XV of the Convention, may apply such exterior sources of law and address such matters raises a question of the scope of jurisdiction under the Convention. On this point, the United Kingdom objects to Mauritius' First Submission.

204. The Tribunal's subject matter jurisdiction is set out in Article 288(1) of the Convention, which provides as follows:

> 1. A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

205. Although expressed in general terms, Article 288(1) is then limited by the provisions of section 3 of Part XV, which restrict the compulsory settlement of disputes with respect to certain subject matters. Within section 3, Article 297 sets out a series of limitations and exceptions to compulsory settlement that apply automatically and which will be discussed in the Tribunal's consideration of Mauritius' Fourth Submission (see paragraphs 283–323 below). Article 298 permits States, by declaration, to exclude certain additional matters from compulsory settlement.

206. Neither Party has suggested that any of the automatic exceptions set out in Article 297 bears upon the Tribunal's jurisdiction with respect to Mauritius' First Submission. Nor has either Party made any relevant declaration pursuant to Article 298. The question of the Tribunal's jurisdiction therefore hinges entirely on whether the issues raised in Mauritius' First Submission represent a dispute "concerning the interpretation or application" of the Convention. In the Tribunal's view, this question consists of two parts: first, what is the nature of the dispute encompassed in Mauritius' First Submission? Second, to the extent that the Tribunal finds the Parties' dispute to be, at its core, a matter of territorial sovereignty, to what extent does Article 288(1) permit a tribunal to determine issues of disputed land sovereignty as a necessary precondition to a determination of rights and duties in the adjacent sea?

(a) The Nature of the Dispute in Mauritius' First Submission

207. As set out above (see paragraph 172), the United Kingdom considers Mauritius' First Submission to be "an artificial re-characterisation of the long-standing sovereignty dispute as a

'who is the coastal State' dispute."[281] Mauritius, in turn, (see paragraphs 176–177 above) considers that it is merely asking the Tribunal to interpret the term "coastal State" as it is used repeatedly in the text of the Convention itself.

208. Ultimately, it is for the Tribunal itself "while giving particular attention to the formulation of the dispute chosen by the Applicant, to determine on an objective basis the dispute dividing the parties, by examining the position of both parties" (*Fisheries Jurisdiction (Spain v. Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, p. 432 at p. 448, para. 30) and in the process "to isolate the real issue in the case and to identify the object of the claim" (*Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 457 at p. 466, para. 30).

209. In the Tribunal's view, the record (see paragraphs 101–107 above) clearly indicates that a dispute between the Parties exists with respect to sovereignty over the Chagos Archipelago. Since at least 1980, Mauritius has asserted its sovereignty over the Chagos Archipelago in a variety of fora, including in bilateral communications with the United Kingdom and in statements to the United Nations. Mauritius has also challenged the circumstances by which the Archipelago was detached; questioned the validity of the Mauritius Council of Ministers' approval of that decision; enshrined a claim to sovereignty over the Archipelago in its Constitution and legislation; and declared its own exclusive economic zone in the surrounding waters. Finally, the pleadings in these proceedings are replete with assertions of Mauritian sovereignty over the Chagos Archipelago.

210. In the Tribunal's view, however, a dispute also exists between the Parties with respect to the manner in which the MPA was declared and the implications of the MPA for the Lancaster House Undertakings, made by the United Kingdom in connection with the detachment of the Archipelago. This dispute is distinct from the matter of sovereignty and will be the subject of further consideration in connection with Mauritius' Fourth Submission.

211. Finally, the Parties clearly differ regarding the identity of the "coastal State". For the purpose of characterizing the Parties' dispute, however, the Tribunal must evaluate where the relative weight of the dispute lies. Is the Parties' dispute primarily a matter of the interpretation and application of the term "coastal State", with the issue of sovereignty forming one aspect of a larger question? Or does the Parties' dispute primarily concern sovereignty, with the United Kingdom's actions as a "coastal State" merely representing a manifestation of that dispute? In the Tribunal's view, this question all but answers itself. There is an extensive record, extending across a range of fora and instruments, documenting the Parties' dispute over sovereignty. In

[281] Final Transcript, 660:19-20.

contrast, prior to the initiation of these proceedings, there is scant evidence that Mauritius was specifically concerned with the United Kingdom's implementation of the Convention on behalf of the BIOT. Moreover, as Mauritius itself has argued its case, the consequences of a finding that the United Kingdom is not the coastal State extend well beyond the question of the validity of the MPA. In the words of Mauritius' counsel, the Tribunal is "entitled" to –

> rule that the United Kingdom is [. . .] not "the coastal State" of the Chagos Archipelago. The skies will not fall if [the Tribunal] so rule[s], although this "Marine Protected Area" will. The Tribunal will do no more than state that Mauritius is the "coastal State" in relation to the Chagos Archipelago and that the Chagos Archipelago forms an integral part of the Republic of Mauritius. The American base will not be affected, as we have shown. The British will leave. The former residents of the Chagos Archipelago who wish to return finally will be free to do so and their exile will come to an end. Contrary to the United Kingdom's submissions, [. . .] those are the consequences that flow from applying the law, from exercising jurisdiction and interpreting and applying the words that sit in the Convention.[282]

These are not the sort of consequences that follow from a narrow dispute regarding the interpretation of the words "coastal State" for the purposes of certain articles of the Convention.

212. Accordingly, the Tribunal concludes that the Parties' dispute with respect to Mauritius' First Submission is properly characterized as relating to land sovereignty over the Chagos Archipelago. The Parties' differing views on the "coastal State" for the purposes of the Convention are simply one aspect of this larger dispute.

(b) The Tribunal's Jurisdiction to Decide Issues of Disputed Land Sovereignty in Connection with Determining Rights and Duties in the Adjacent Sea

213. The Tribunal's conclusion that the Parties' dispute in respect of Mauritius' First Submission is, at its core, a dispute over sovereignty does not definitively answer the question of jurisdiction. There remains the question of the extent to which Article 288(1) accords the Tribunal jurisdiction in respect of a dispute over land sovereignty when, as here, that dispute touches in some ancillary manner on matters regulated by the Convention.

214. In the course of these proceedings, the Parties devoted a great deal of argument to whether jurisdiction over issues of land sovereignty was, or was not, contemplated by the drafters of the Convention. The Parties also debated whether an *a contrario* reading of Article 298(1)(a)(i) supports the view that land sovereignty is generally within the jurisdiction of a Part XV court or tribunal. Article 298(1)(a)(i) permits States to exclude disputes regarding maritime boundaries and historic bays or titles from compulsory settlement, requires submission instead to compulsory conciliation, and provides that "any dispute that necessarily involves the concurrent

[282] Final Transcript, 1030:13-21.

consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission [to conciliation]."

215. In the Tribunal's view, much of this argumentation misses the point. The negotiating records of the Convention provide no explicit answer regarding jurisdiction over territorial sovereignty. The Tribunal considers that the simple explanation for the lack of attention to this question is that none of the Conference participants expected that a long-standing dispute over territorial sovereignty would ever be considered to be a dispute "concerning the interpretation or application of the Convention."

216. The negotiation of the Convention involved extensive debate regarding the extent to which disputes concerning its provisions would be subject to compulsory settlement. The distrust with which some participants at the Conference viewed compulsory settlement is evidenced by the inclusion in the final texts of substantial carve outs, in Article 297, for disputes relating to the exercise of sovereign rights and jurisdiction in the exclusive economic zone. It is also apparent in the option, in Article 298(a)(i), for States to exclude the delimitation of maritime boundaries from dispute settlement, subject only to the requirement of compulsory conciliation. Given the inherent sensitivity of States to questions of territorial sovereignty, the question must be asked: if the drafters of the Convention were sufficiently concerned with the sensitivities involved in delimiting maritime boundaries that they included the option to exclude such disputes from compulsory settlement, is it reasonable to expect that the same States accepted that more fundamental issues of territorial sovereignty could be raised as separate claims under Article 288(1)?

217. In the Tribunal's view, had the drafters intended that such claims could be presented as disputes "concerning the interpretation or application of the Convention", the Convention would have included an opt-out facility for States not wishing their sovereignty claims to be adjudicated, just as one sees in Article 298(1)(a)(i) in relation to maritime delimitation disputes.

218. Mauritius suggests that the opposite conclusion can be reached by reading Article 298(1)(a)(i) *a contrario*: if it was necessary for that Article to expressly state that disputes concerning sovereignty over continental or insular land territory are excluded from compulsory conciliation when a declaration pursuant to the Article is made, then *a fortiori* it must be the case that such disputes fall within the ambit of compulsory settlement when no such declaration is made. The Tribunal is not convinced by this argument. Article 298(1)(a)(i) relates only to the application of the Convention to disputes involving maritime boundaries and historic titles. At most, an *a contrario* reading of the provision supports the proposition that an issue of land sovereignty

might be within the jurisdiction of a Part XV court or tribunal if it were genuinely ancillary to a dispute over a maritime boundary or a claim of historic title.

219. This case, however, is not such a dispute. In the Tribunal's view, to read Article 298(1)(a)(i) as a warrant to assume jurisdiction over matters of land sovereignty on the pretext that the Convention makes use of the term "coastal State" would do violence to the intent of the drafters of the Convention to craft a balanced text and to respect the manifest sensitivity of States to the compulsory settlement of disputes relating to sovereign rights and maritime territory. Such sensitivities arise to an even greater degree in relation to land territory.

220. As a general matter, the Tribunal concludes that, where a dispute concerns the interpretation or application of the Convention, the jurisdiction of a court or tribunal pursuant to Article 288(1) extends to making such findings of fact or ancillary determinations of law as are necessary to resolve the dispute presented to it (*see Certain German Interests in Polish Upper Silesia, Preliminary Objections, Judgment of 25 August 1925, P.C.I.J. Series A, No. 6,* p. 4 at p. 18). Where the "real issue in the case" and the "object of the claim" (*Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 457 at p. 466, para. 30) do not relate to the interpretation or application of the Convention, however, an incidental connection between the dispute and some matter regulated by the Convention is insufficient to bring the dispute, as a whole, within the ambit of Article 288(1).

221. The Tribunal does not categorically exclude that in some instances a minor issue of territorial sovereignty could indeed be ancillary to a dispute concerning the interpretation or application of the Convention. That, however, is not this case, and the Tribunal therefore has no need to rule upon the issue. The Parties' dispute regarding sovereignty over the Chagos Archipelago does not concern the interpretation or application of the Convention. Accordingly, the Tribunal finds itself without jurisdiction to address Mauritius' First Submission.

B. THE TRIBUNAL'S JURISDICTION WITH REGARD TO MAURITIUS' SECOND SUBMISSION

222. In its Second Submission, Mauritius requests the Tribunal to adjudge and declare that –

> [. . .]
>
> (2) having regard to the commitments that it has made to Mauritius in relation to the Chagos Archipelago, the United Kingdom is not entitled unilaterally to declare an "MPA" or other maritime zones because Mauritius has rights as a "coastal State" within the meaning of *inter alia* Articles 56(1)(b)(iii) and 76(8) of the Convention; and/or
>
> [. . .]

1. The Parties' Arguments

The United Kingdom's Position

223. The United Kingdom objects to the Tribunal's jurisdiction to address Mauritius' claim that it has rights as "a" coastal State for the same reasons for which it objects to Mauritius' First Submission that the United Kingdom is not the coastal State.

224. According to the United Kingdom, Mauritius "again is asking the Tribunal to engage in issues of sovereignty, although it is some sort of reversionary rather than actual sovereignty, and it follows from that that the jurisdictional issues are the same."[283] "The only basis", in the United Kingdom's view, "for saying that Mauritius is 'a' coastal State is understood to be that it has what are said to be certain attributes of a coastal State, i.e., some reversionary interest in sovereignty."[284] Accordingly, "the only difference . . . is that [the Tribunal is] not being asked to interpret and apply the laws on self-determination, but instead other sources of alleged international law exterior to the Convention, which sources are said to establish the form of reversionary sovereignty".[285] In the United Kingdom's view, this amounts to a legal construct: "Mauritius wishes [the Tribunal] to interpret and apply the 1965 understandings, in one way or another, and it looks for some hook in the 1982 Convention."[286]

225. In any event, the United Kingdom notes, "there is no suggestion anywhere in UNCLOS that there could be more than one coastal State in the way that Mauritius contends for."[287]

Mauritius' Position

226. Mauritius distinguishes the question of the Tribunal's jurisdiction to find that Mauritius "has the attributes of a coastal State" from the question of jurisdiction to declare that the United Kingdom is not the coastal State.

227. According to Mauritius, in addressing Mauritius' Second Submission, the Tribunal does –

> not have to consider whether Part XV excludes all, or any, disputes related to land sovereignty. These aspects of our claim do not require [the Tribunal] to consider which State is currently exercising sovereignty over the Chagos Archipelago. We are proceeding here on the basis that the Archipelago will be returned to the sovereignty of Mauritius when

283 Final Transcript, 694:11-13.

284 Final Transcript, 1196:21-24.

285 Final Transcript, 1197:1-5.

286 Final Transcript, 1197:20-21.

287 Final Transcript, 694:20-22.

> it is no longer needed for defence purposes and because of the exclusive rights in regard to the living and non-living resources with which Mauritius has already been vested. Our claims of entitlement to be regarded as a coastal State for purposes of Articles 56(1)(b)(iii) and 76(8), because of the attributes of a coastal State which Mauritius acquired as a result of the UK's undertakings, are indisputably matters calling for [the Tribunal's] interpretation and application of those two provisions of the Convention, and the meaning of the words "coastal State" under them and, as such, they plainly fall within [the Tribunal's] jurisdiction under Article 288(1).[288]

Mauritius considers that "[t]here can be no reason . . . why the dispute about how the Convention can be applied in the light of [Mauritius'] rights and [the United Kingdom's] undertakings should be excluded from [the Tribunal's] jurisdiction."[289]

2. The Tribunal's Decision

228. The Parties disagree both as to whether Mauritius' Second Submission presents a distinct issue from the First Submission, which the Tribunal has already considered, and as to whether the Tribunal's jurisdiction extends to Mauritius' Second Submission. In the United Kingdom's view, the issues raised by the two submissions are the same, except that in its Second Submission, Mauritius claims only a form of reversionary sovereignty. According to Mauritius, its Second Submission is distinct and does not require a determination of sovereignty. Instead, Mauritius claims that the Lancaster House Undertakings endowed Mauritius with the attributes of a coastal State for the purposes of the Convention.

229. The Tribunal agrees with Mauritius that the issues presented by its First and Second Submissions are distinct, but is nevertheless of the view that Mauritius' Second Submission must be viewed against the backdrop of the Parties' dispute regarding sovereignty over the Chagos Archipelago. Although in its Second Submission Mauritius asks only for the Tribunal to determine that it has rights as "a coastal State", the Tribunal considers that such a determination would effectively constitute a finding that the United Kingdom is less than fully sovereign over the Chagos Archipelago. As with Mauritius' First Submission, the Tribunal evaluates where the weight of the Parties' dispute lies. In carrying out this task, the Tribunal does not consider that its role is limited to parsing the precise wording chosen by Mauritius in formulating its submission. On the contrary, the Tribunal is entitled, and indeed obliged, to consider the context of the submission and the manner in which it has been presented in order to establish the dispute actually separating the Parties. Again, the Tribunal finds that the Parties' underlying dispute regarding sovereignty over the Archipelago is predominant. The question of the "coastal

---

288 Final Transcript, 1089:23 to 1090:10.

289 Final Transcript, 435:23 to 436:2.

State"—now presented in terms of the "attributes of a coastal State"—remains merely an aspect of this larger dispute.

230. The Tribunal accepts that a dispute exists between the Parties concerning the manner in which the MPA was declared. Nevertheless, the Tribunal is of the view that the true "object of the claim" (*Nuclear Tests (New Zealand v. France), Judgment, I.C.J. Reports 1974*, p. 457 at p. 466, para. 30) in Mauritius' Second Submission is to bolster Mauritius' claim to sovereignty over the Chagos Archipelago. The Tribunal also notes that the relief sought by Mauritius in its First and Second Submissions is the same: a declaration that the United Kingdom was not entitled to declare the MPA. Accordingly, and notwithstanding the difference in presentation, the Tribunal concludes that Mauritius' Second Submission is properly characterized as relating to the same dispute in respect of land sovereignty over the Chagos Archipelago as Mauritius' First Submission. The Tribunal therefore finds itself without jurisdiction to address Mauritius' Second Submission.

C. THE TRIBUNAL'S JURISDICTION WITH REGARD TO MAURITIUS' FOURTH SUBMISSION

231. The United Kingdom objects to the Tribunal's jurisdiction over Mauritius' Fourth Submission and its claims concerning the compatibility of the MPA with the Convention (what the United Kingdom describes as the "non-sovereignty claims"). Mauritius maintains its position that the Tribunal has jurisdiction over these claims.

1. The Parties' Arguments

232. Both Parties approach this question with reference to the mandatory exceptions to compulsory jurisdiction set out in Article 297 of the Convention. Broadly speaking, Mauritius contends that the MPA is an environmental measure and that the jurisdiction of this Tribunal is therefore established by Article 297(1)(c) concerning the protection of the environment. The United Kingdom, in contrast, considers the MPA to be a measure relating to "sovereign rights with respect to living resources" in the exclusive economic zone and argues that jurisdiction is precluded by Article 297(3)(a) concerning fisheries. The United Kingdom also objects, separately, to jurisdiction over Mauritius' claims regarding straddling and highly migratory fish stocks, fisheries access in both the territorial sea and exclusive economic zone, the harvesting of the sedentary species of the continental shelf, marine pollution, and the abuse of rights. The Parties' positions on each of these issues will be set out in turn in the sections that follow.

(a) The Application of Article 297(1)(c) of the Convention

233. Article 297(1) of the Convention provides as follows:

> *Article 297*
> *Limitations on applicability of section 2*
>
> 1. Disputes concerning the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention shall be subject to the procedures provided for in section 2 in the following cases:
>
> (a) when it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation, overflight or the laying of submarine cables and pipelines, or in regard to other internationally lawful uses of the sea specified in article 58;
>
> (b) when it is alleged that a State in exercising the aforementioned freedoms, rights or uses has acted in contravention of this Convention or of laws or regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or
>
> (c) when it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or through a competent international organization or diplomatic conference in accordance with this Convention.

The United Kingdom's Position

234. The United Kingdom submits that "Article 297(1)(c) provides no basis for jurisdiction over the declaration of an MPA or the ban on commercial fishing."[290] According to the United Kingdom –

> the purpose of this provision, like paragraph (1) as a whole, is to protect freedom of navigation, or the other freedoms referred to in Article 58, against misuse by the coastal States of their power to regulate marine pollution. It does not cover environmental disputes in general, and specifically it does not cover this dispute.[291]

235. The United Kingdom looks to the structure of Article 297(1), and notes that it is generally concerned with navigation, overflight, cables, and pipelines. Fishing and the management of living resources are distinct, the United Kingdom argues, and "obviously fall[] outside the context of Article 297(1) read as a whole."[292] Thus, the United Kingdom concludes "even if we

290 Final Transcript, 790:15-16.

291 Final Transcript, 796:14-18.

292 Final Transcript, 797:13-14.

do characterise the MPA and the ban on commercial fishing as having an environmental purpose, this will not be sufficient to bring the present case within Article 297(1)(c)."[293]

236. The United Kingdom emphasizes the requirement in Article 297(1)(c) that a dispute concern "specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State."[294] Where the phrase "international rules and standards" appears in the Convention, the United Kingdom notes, it is consistently to "empower or require coastal States, flag States, or port States to regulate and enforce regulations for the prevention of marine pollution from ships, aircraft, and seabed activities,"[295] and "none of these articles covers anything resembling a marine protected area whose purpose is to manage and conserve living resources in the EEZ".[296]

237. With respect to fisheries, the United Kingdom argues, the Convention's approach is different: "far from endorsing any commitment to international regulation, in Part V it is the laws of the coastal State that prevail."[297] The United Kingdom continues:

> There are no internationally agreed rules and standards on those subjects, none on the conservation and management of marine living resources which could fit within the terminology used in Article 297(1)(c) and the other articles of the Convention to which Mauritius refers do not do so. There is no fisheries equivalent of MARPOL or SOLAS or the London Dumping Convention.[298]

238. Turning to the various articles of the Convention itself invoked by Mauritius, the United Kingdom submits that "the very general wording of articles 55, 56, 63, 64, and 194 also contradicts any suggestion that they could constitute 'specified international rules and standards.'"[299] In the United Kingdom's view:

(a) Article 55 "simply defines the exclusive economic zone";[300]

(b) Article 56 "provides the legal basis for the United Kingdom's right as a coastal State to regulate the exclusive economic zone of BIOT and, in particular to regulate conservation

---

293 Final Transcript, 797:21-23.

294 Final Transcript, 798:4-6.

295 Final Transcript, 798:20-22.

296 Final Transcript, 798:25 to 799:2.

297 Final Transcript, 799:22-23.

298 Final Transcript, 803:5-9.

299 Final Transcript, 800:8-10.

300 Final Transcript, 801:9-11.

and management of living resources, but it specifies no particular international rules and standards for doing so";[301]

(c) Articles 63 and 64 require international cooperation, but neither "identifies specific international rules and standards: at best they encourage States to negotiate such rules and standards"; [302] and

(d) "Article 194 sets out the obligation of States parties to take measures necessary to prevent reduce and control pollution,"[303] but "does not itself constitute or incorporate specified international rules and standards; indeed it makes no reference to them".[304]

239. In sum, the United Kingdom concludes –

> the point of Article 297(1)(c)—and this is entirely consistent with articles 297(1)(a) and (b)—is to protect freedom of navigation, or the other freedoms referred to in Article 58, against misuse by coastal States of their power to regulate marine pollution. And that interpretation is consistent with the two previous sub-paragraphs and it reflects their focus on navigation and pipelines and it reflects the wording of the article itself. But bringing articles 55, 56, 63, 64 and 194 into the ambit of Article 297(1)(c) achieves neither coherence nor contextual consistency with the rest of Article 297(1).[305]

Mauritius' Position

240. Mauritius contends that the Tribunal has jurisdiction to address the compatibility of the MPA with the Convention because Mauritius' claims "concern the contravention of specified international rules or standards for the protection and preservation of the marine environment, matters over which [the Tribunal has] jurisdiction under Article 297(1)."[306]

241. Mauritius rejects the objection that Article 297(1) is limited to the context of navigational rights, overflight, cables and pipelines. Mauritius notes that that "limitation appears only in (1)(a) and (1)(b). It does not appear in (1)(c)."[307] For Mauritius, this is significant, and reflects the intention for Article 297(1)(c) to be of broader application than the preceding provisions. For similar reasons, Mauritius also rejects the United Kingdom's attempt to limit Article 297(1)(c) to the context of marine pollution. In Mauritius' view, "marine pollution may fall within the

---

301 Final Transcript, 801:18-21.

302 Final Transcript, 802:6-8.

303 Final Transcript, 802:8-10.

304 Final Transcript, 802:13-15.

305 Final Transcript, 802:21 to 803:2.

306 Final Transcript, 468:3-5.

307 Final Transcript, 1116:21-22.

general category of environmental protection and preservation, but there is no textual basis on which to conclude that 297(1)(c) is confined solely and exclusively to marine pollution."[308]

242. With respect to whether the identified provisions of the Convention are rules or standards within the meaning of Article 297(1)(c), Mauritius submits simply that "each of the articles alleged to have been contravened by the UK—Article 194 stands out in particular—establish a binding obligation and each relates to the protection or preservation of the marine environment. Nothing more is required."[309]

243. Finally, Mauritius submits that the Tribunal need not be concerned that the MPA deals with both the marine environment and fisheries. According to Mauritius, the interplay between Article 297(1)(c) and Article 297(3) operates as follows:

> 297(1)(c) and 297(3) are both affirmative grants of jurisdiction, though in the case of 297(3) the grant is limited by an exception. The fact that 297(1)(c) and 297(3) are *independent* grants of jurisdiction means that an Applicant need only satisfy one of them. It also means that a dispute that falls within a Tribunal's jurisdiction because it concerns an alleged contravention of an international rule or standard for the protection or preservation of the marine environment, *cannot* be excluded from jurisdiction if it may also be said to involve a coastal State's sovereign rights over the living resources of the EEZ or their exercise. If a dispute falls within 297(1)(c), jurisdiction is established. The exception contained in 297(3) is irrelevant.[310]

(b) The Application of Article 297(3)(a) of the Convention

244. Article 297(3)(a) provides as follows:

> *Article 297*
> *Limitations on applicability of section 2*
>
> [. . .]
>
> 3. (a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.

---

308 Final Transcript, 1117:8-11.

309 Final Transcript, 1118:17-19.

310 Final Transcript, 469:11-18.

The United Kingdom's Position

245. The United Kingdom submits that the MPA is properly characterized as a fisheries measure, noting that "whatever their purpose, the only implementation measures actually adopted so far are the ban on commercial fishing and the new regulations on illegal fishing."[311] As such, it is properly subject to the limitation on jurisdiction expressed in Article 297(3)(a). According to the United Kingdom –

> a dispute relating to conservation and management of fish stocks and other living resources in the exclusive economic zone is excluded from compulsory jurisdiction by Article 297(3)(a) unless the coastal State agrees. This provision [. . .] is fatal for Mauritius' challenge to the ban on commercial fishing within the BIOT MPA. And it is fatal even if the MPA's purpose is characterised as environmental, since the wording of Article 297(3)(a) takes no account of the purpose for which the discretionary powers of the coastal State have been exercised.[312]

246. "Article 297(3)(a)", the United Kingdom argues, "is unambiguous and there is no basis for looking beyond its clear terms."[313] In the United Kingdom's view, Article 297(3)(a) grants jurisdiction over fisheries disputes generally and then excludes jurisdiction over fisheries disputes in the exclusive economic zone. As a result, "high seas fisheries disputes are within compulsory jurisdiction, EEZ living resources, quite deliberately, are not."[314] According to the United Kingdom, this result is "entirely consistent with the UNCLOS negotiating record."[315] Recalling that record, the United Kingdom submits that "the object of this whole provision, particularly 297(3), is to keep coastal State fisheries disputes out of court as far as possible. That's what coastal States wanted, particularly Developing States, when they asked for creation of the exclusive economic zone."[316] As such, the United Kingdom submits, "[i]n advocating an evolutionary and environmental interpretation of Article 297 Mauritius invites you to overturn a clear policy preference of the negotiating States at [the Conference]."[317]

247. For the United Kingdom, Mauritius' attempt to parse the language of Article 297(3)(a) and to distinguish between fishing in the exclusive economic zone and the exercise of sovereign rights in the exclusive economic zone (and to argue that the former is permitted) fails. According to the United Kingdom, "Article 297(3) makes no jurisdictional distinction between an exercise of

311 Final Transcript, 1274:22-23.

312 Final Transcript, 804:2-8.

313 Final Transcript, 806:15-16.

314 Final Transcript, 804:24-25.

315 Final Transcript, 810:23 to 811:1.

316 Final Transcript, 815:22-24.

317 Final Transcript, 812:1-3.

sovereign rights that affects other states and one that does not affect other states",[318] and "[i]t seems self-evident that the grant or denial of a licence to fish in the EEZ involves the exercise of sovereign rights over conservation and management of living resources, . . . and that it will do so even if the rights of other states are thereby terminated."[319]

248. Nor, for the United Kingdom, does it matter if the MPA is characterized as environmental in nature, as "almost any modern fisheries conservation and management measure will serve . . . multiple objectives".[320] "We can characterise the ban on fishing in the MPA as 'environmental,'" the United Kingdom submits, "but it does not follow that it therefore ceases to be about conservation and management of living resources, or that the environmental purpose prevails over the conservation and management purpose for jurisdictional purposes, or that it falls outside the very broad terms of Article 297(3)(a)."[321]

Mauritius' Position

249. "[T]aken as a whole," Mauritius submits, Article "297(3) provides that fisheries disputes are within a tribunal's jurisdiction unless they fall within the categories of disputes that are excluded."[322] Even if the Tribunal does not accept that the MPA is an environmental measure, for which Article 297(1)(c) would apply, this Tribunal has jurisdiction because the exclusions in Article 297(3) "do not apply here."[323]

250. In applying Article 297(3), Mauritius distinguishes between the effect of the provision on the sovereign rights of the coastal State and the rights of third States in the exclusive economic zone. According to Mauritius:

> The dispute is *not* based on the purported sovereign rights of the UK as a coastal State in relation to the living resources in the EEZ. That is not how the dispute should be characterized. As Mauritius has shown in its written pleadings, and emphasized in these oral pleadings, the dispute concerns the *rights of Mauritius*, this includes *its* right to fish in the EEZ of the Chagos Archipelago; *its* right to be consulted about matters that can affect *its* interests; *its* right to have fulfilled the undertaking given by Prime Minister Brown to Prime Minister Ramgoolam. It is *these* rights—the rights of *Mauritius*—that are at issue. For that reason, even if the dispute were to be characterized as a fishing dispute, it would not fall within the exception to jurisdiction located in 297(3). That exception, as the text makes unmistakably clear, pertains only to disputes relating to the rights of a *coastal* State;

318 Final Transcript, 1278:14-16.

319 Final Transcript, 1278:9-12.

320 Final Transcript, 809:17-18.

321 Final Transcript, 809:12-16.

322 Final Transcript, 477:16-17.

323 Final Transcript, 477:18.

> it does *not* concern disputes relating to the rights of *other* States in the EEZ arising under rules of international law.[324]

251. In Mauritius' view, this division mirrors the distinction in Article 56 between the rights of the coastal State and the rights of other States, and there is, accordingly, "a correlation between Article 56 and 297."[325] Within Article 56, Mauritius submits:

> Subparagraph (1)(a) concerns a coastal State's "sovereign rights," including sovereign rights for the purpose of conserving and managing living resources. Jurisdiction in the EEZ, on the other hand, is addressed in subparagraph (1)(b), including specifically "jurisdiction" concerning "the protection and preservation of the marine environment," as set out in subparagraph (1)(b)(iii).
>
> Article 297(3)'s exclusion mentions only sovereign rights. It does not mention jurisdiction. This must have been deliberate. When the drafters of 297 intended a jurisdictional clause to cover both "jurisdiction" and "sovereign rights," they did so expressly. [. . .] This, we submit, is a clear indication that the drafters intended only disputes over "sovereign rights" under Article 56(1)(a) to be covered by the exclusion. Disputes relating to "jurisdiction" under 56(b)(iii) were not. The latter category of disputes thus falls within the general grant of jurisdiction over fisheries disputes, not the exclusion.[326]

252. Moreover, according to Mauritius, the exclusion in Article 297(3) does not apply to procedural obligations such as those that Mauritius has alleged in respect of the obligation to consult in Articles 63 and 64 of the Convention and Article 7 of the 1995 Fish Stocks Agreement. In support of this position, Mauritius relies on the award of the tribunal in *Barbados/Trinidad and Tobago* (*Award of 11 April 2006, PCA Award Series*, p. 1, RIAA, Vol. XXVII, p. 147) and the separate opinion in *Southern Bluefin Tuna* (*(New Zealand v. Japan, Australia v. Japan), Award of 4 August 2000, Separate Opinion Of Justice Sir Kenneth Keith*, RIAA, Vol. XXIII, p. 49), both of which, according to Mauritius, proceeded to consider Articles 63 and 64 on the grounds that there was no bar to jurisdiction.[327]

(c) Jurisdiction with respect to Straddling and Highly Migratory Fish Stocks

253. In its final submissions, Mauritius claims that the MPA is incompatible with Articles 63 and 64 of the Convention, as well as Article 7 of the 1995 Fish Stocks Agreement.

254. Article 63 provides as follows:

---

324 Final Transcript, 477:19 to 478:4.

325 Final Transcript, 1119:8.

326 Final Transcript, 1121:14 to 1122:7.

327 Final Transcript, 478:5-13.

Article 63
Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

1. Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area.

255. Article 64 provides as follows:

Article 64
Highly migratory species

1. The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall cooperate to establish such an organization and participate in its work.

2. The provisions of paragraph 1 apply in addition to the other provisions of this Part.

256. Article 7 of the 1995 Fish Stocks Agreement provides as follows:

Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

   (a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

   (b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish

stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

> 8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

The United Kingdom's Position

257. The United Kingdom objects to the Tribunal's jurisdiction over Mauritius' claims in relation to straddling and highly migratory fish stocks on four grounds:

- First, the United Kingdom argues that none of the relevant provisions specify "international rules or standards", such that "Article 297(1)(c) . . . cannot provide a jurisdictional foundation for them."[328]

- Second, according to the United Kingdom, Article 297(3)(a) bars jurisdiction over measures relating to straddling and highly migratory stocks in the exclusive economic zone. On this basis, the United Kingdom notes, the tribunal in *Barbados/Trinidad and Tobago* "found that disputes about straddling fish stocks in adjacent EEZs were outside their jurisdiction."[329]

- Third, "Mauritius has the burden of proving . . . that Mauritian vessels fish in high seas areas adjacent to the BIOT MPA or in the same region," absent which "it has no standing to invoke a dispute".[330] According to the United Kingdom, Mauritius has offered evidence only of fishing within BIOT waters.[331]

- Finally, insofar as Mauritius' claim relates to a failure to cooperate with the Indian Ocean Tuna Commission (the "**IOTC**"), the United Kingdom notes that the Agreement for the Establishment of the Indian Ocean Tuna Commission[332] (the "**IOTC Agreement**") includes its own procedure for the settlement of disputes involving a conciliation commission, followed by recourse to the Convention or to the ICJ. According to the United Kingdom, Mauritius' failure to initiate a conciliation commission precludes jurisdiction as Article 282 of the Convention gives priority to jurisdiction under other agreements providing for the binding resolution of disputes. Alternatively, the United

328 Final Transcript, 816:20-23.

329 Final Transcript, 817:7-9.

330 Final Transcript, 818:14-17.

331 Final Transcript, 818:17-18.

332 Agreement for the Establishment of the Indian Ocean Tuna Commission, 25 November 1993, 1927 UNTS 330.

> Kingdom submits that jurisdiction would also be precluded by Article 281 (applicable where an agreement between the Parties excludes any further procedure) following the reasoning of the Tribunal in the *Southern Bluefin Tuna* arbitration.[333]

Mauritius' Position

258. Mauritius submits that it does have standing to assert claims in relation to straddling and highly migratory fish stocks:

> The UK does not deny that the relevant stocks occur within the EEZ of both the Chagos Archipelago (assuming *quod non* the UK is the coastal State) and Mauritius, for purposes of 63(1). Mauritius is also a "State fishing for stocks" in an area adjacent to the Chagos Archipelago's EEZ in the sense of 63(2).[334]

Mauritius relies, in this respect, on the records of the IOTC Scientific Committee regarding the issuance of Mauritian tuna licenses, and submits that there is no authority for the United Kingdom's suggestion that such fishing is located too far away from the Chagos Archipelago.[335]

259. At the same time, Mauritius rejects the proposition that the dispute resolution provisions of the IOTC Agreement pose any bar to this Tribunal's jurisdiction. First, Mauritius notes, it "has not made any claims under the IOTC Agreement; all of its claims are based upon breaches of UNCLOS or the 1995 Fish Stocks Agreement."[336] Equally important, however, Mauritius emphasizes, the IOTC Agreement does not provide for the mandatory submission of disputes to a binding procedure: "Disputes are initially referred to conciliation, which Article XXIII takes pains to say is 'not binding in character.' If conciliation does not settle the dispute, the Parties 'may'—but are not required to—refer the dispute to the ICJ."[337] On its face, Mauritius argues, the criteria for exclusion in Article 282 are not met. As for Article 281, Mauritius endorses the separate opinion of Judge Keith in *Southern Bluefin Tuna*, to the effect that "[t]he requirement is that the Parties have agreed to exclude any further procedure for the settlement of the dispute concerning UNCLOS. . . . They require opting out. They do not require that the Parties positively agree to the binding procedure by opting in."[338]

---

333 Final Transcript, 818:19 to 819:24.

334 Final Transcript, 335:17-20.

335 Final Transcript, 335:20 to 336:10.

336 Final Transcript, 475:13-15.

337 Final Transcript, 475:20-22.

338 Final Transcript, 476:5-8.

260. With respect to the application of Article 297(3)(a) to straddling stocks and highly migratory species,[339] Mauritius raises three arguments:

(a) First, "297(1)(c) and 297(3) are independent grounds for exercising jurisdiction" and the dispute is properly characterized as "the UK's contravention of specified international rules or standards for the protection and preservation of the marine environment".[340]

(b) Second, "[t]he dispute is *not* based on the purported sovereign rights of the UK as a coastal State in relation to the living resources in the EEZ"; instead "the dispute concerns the *rights of Mauritius*."[341]

(c) Third, relying on Judge Keith's separate opinion in *Southern Bluefin Tuna*, "[p]rocedural obligations of consultation and cooperation under [Article 63, Article 64, or Article 7 of the 1995 Agreement] fall outside the 297(3) exclusion."[342]

(d) Jurisdiction over Mauritius' Claims relating to Access to Fish Stocks in the Territorial Sea and Mauritian Rights in the Exclusive Economic Zone

261. In its final submissions, Mauritius claims that the MPA is incompatible with Articles 2(3) and 56(2) of the Convention, insofar as the Lancaster House Undertakings give Mauritius rights in the territorial sea and exclusive economic zone of the Chagos Archipelago.

262. Article 2(3) provides as follows:

> *Article 2*
> *Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil*
>
> [. . .]
>
> 3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

263. Article 56(2) provides as follows:

> *Article 56*
> *Rights, jurisdiction and duties of the coastal State in the exclusive economic zone*
>
> [. . .]

339 *See also* Mauritius' arguments concerning Article 297(3)(a) at paragraphs 249-252 above.

340 Final Transcript, 476:13-17.

341 Final Transcript, 477:19-25.

342 Final Transcript, 478:7-8.

> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
>
> [. . .]

The United Kingdom's Position

264. The United Kingdom objects to the jurisdiction of the Tribunal in respect of Mauritius' claimed rights to fish in the territorial sea of the Chagos Archipelago on the grounds that "a dispute concerning the status and interpretation of a fisheries access agreement is not a dispute concerning interpretation and application of UNCLOS unless there is a provision for dispute settlement meeting the terms of Article 288(2) of UNCLOS."[343] No such provision exists. In the United Kingdom's view, this bar cannot be evaded by incorporating the undertaking giving Mauritius fishing rights into Article 2(3) itself. For the United Kingdom, "whether the alleged agreement is viewed separately from Article 2(3) or as part of Article 2(3), there must still be provision for dispute settlement in accordance with Article 288(2) in order for that dispute about a fisheries access agreement to fall within Part XV jurisdiction."[344]

265. Similarly, the United Kingdom argues with respect to Article 56(2) that "an agreement on access to EEZ stocks is . . . subject to compulsory jurisdiction only if it so provides in accordance with Article 288(2)."[345] Any other interpretation would be contrary to State practice in the area of fisheries access agreements.[346]

266. In sum, the United Kingdom concludes:

> Mauritius and the United Kingdom never agreed to any mechanism to settle disputes with respect to Mauritian fishing in the territorial sea or in the waters out to 200 nm, and UNCLOS Part XV cannot now be invoked to solve that omission or the legal consequences that flow from it.[347]

Mauritius' Position

267. Mauritius submits that a dispute over Mauritian fishing rights in the territorial sea exists by virtue of the subjection in Article 2(3) of sovereignty over the territorial sea to other rules of international law. Mauritius contends that by extinguishing the Lancaster House Undertakings,

---

343 Final Transcript, 820:13-16.

344 Final Transcript, 822:3-6.

345 Final Transcript, 820:24 to 821:2.

346 Final Transcript, 821:6-8.

347 Final Transcript, 823:6-9.

the United Kingdom acted in contravention of such other rules of international law. According to Mauritius, the Tribunal's jurisdiction is then "plainly established" by the simple fact that "none of the exceptions to jurisdiction that the drafters of the Convention adopted in Articles 297 and 298 are applicable such as to exclude the Tribunal's jurisdiction in relation to a dispute under Article 2(3)."[348]

268. Mauritius rejects the suggestion that, in respect of the territorial sea, it has not raised a dispute concerning the interpretation or application of the Convention, but only of the Lancaster House Undertakings. Among the disputes directly relating the Convention, Mauritius identifies the following:

> Does Article 2(3) impose upon the UK an obligation to respect 'other rules of international law' in exercising its purported sovereignty over the Territorial Sea around the Chagos Archipelago? Do those 'rules of international law' encompass the obligation to respect, for example, recognized fishing rights, or the obligation to respect legally binding undertakings? Has the UK breached Article 2(3) by failing to respect those rules of international law?[349]

Mauritius considers the link to the interpretation and application of the Convention to be self-evident and notes that the Parties are in agreement on the permissibility of applying other rules of international law where—as in Article 2(3)—the Convention provides an express *renvoi*.[350]

269. Mauritius similarly rejects the idea that Article 288(2) limits the Tribunal's jurisdiction. According to Mauritius:

> Article 288(2) applies only to cases submitted pursuant to the provisions of a dispute settlement clause of an international agreement other than the Convention itself. Mauritius' claims were not submitted in accordance with the dispute settlement provisions of any other agreement. They were submitted by Mauritius in accordance with the dispute settlement provisions of Part XV of the Convention itself, invoking the Tribunal's jurisdiction expressly under Article 288(1), because they arise directly under various substantive articles of the Convention, including Article 2(3), whose interpretation or application is clearly called for.[351]

(e) Jurisdiction regarding Mauritius' Claims relating to the Continental Shelf and Sedentary Species

270. Mauritius raised claims that the MPA breached Article 78 of the Convention in its pleadings but did not include such a claim in its final submissions.

271. Article 78 provides as follows:

---

348 Final Transcript, 291:19-21.

349 Final Transcript, 481:4-9.

350 Final Transcript, 482:5-21.

351 Final Transcript, 484:6-13.

Article 78
Legal status of the superjacent waters and air space and the rights and freedoms of other States

1. The rights of the coastal State over the continental shelf do not affect the legal status of the superjacent waters or of the air space above those waters.

2. The exercise of the rights of the coastal State over the continental shelf must not infringe or result in any unjustifiable interference with navigation and other rights and freedoms of other States as provided for in this Convention.

The United Kingdom's Position

272. The United Kingdom objects to the Tribunal's jurisdiction over any claim regarding an alleged right to seabed minerals and sedentary species on the grounds that this "requires interpretation of the understanding reached in 1965, an issue that falls outside the scope of [the Tribunal's] jurisdiction under Article 288 of the Convention".[352] Additionally, the United Kingdom submits that there is no evidence that Mauritian nationals have ever harvested sedentary species.

Mauritius' Position

273. According to Mauritius, "[t]here can be no doubt about the jurisdiction of this Tribunal."[353] "Nothing in Article 297," Mauritius submits, "excludes from your jurisdiction the dispute over the right to harvest sedentary species on the Continental Shelf. The 297(3) exclusion applies only to the EEZ, it does not apply to the Continental Shelf."[354]

274. Additionally, Mauritius argues, "it was immaterial that Mauritius did not exploit sedentary species in 1965, since the undertaking was intended to 'safeguard' Mauritius' *future* uses of the sea. It was *not* the intention that Mauritius would be forever constrained by its 1965 fishing practices."[355]

(f) Jurisdiction regarding Mauritius' Claims relating to the Protection of the Marine Environment

275. In its final submissions, Mauritius claims that the MPA is incompatible with Article 194 of the Convention, which provides in relevant part as follows:

352 Final Transcript, 824:1-3.

353 Final Transcript, 478:15-16.

354 Final Transcript, 478:16-18.

355 Final Transcript, 341:20-22.

Article 194
Measures to prevent, reduce and control pollution of the marine environment

> 1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
>
> [. . .]
>
> 4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.
>
> [. . .]

The United Kingdom's Position

276. The United Kingdom objects to any claim regarding Article 194 on the grounds that "[a]t present the MPA involves no new laws or policies on marine pollution."[356] In any event, the United Kingdom argues, "although Article 194 is undoubtedly concerned with protection and preservation of the marine environment, it does not constitute the 'specified international rules and standards' whose contravention comes within [the Tribunal's] jurisdiction under Article 297(1)(c)".[357]

Mauritius' Position

277. According to Mauritius, the United Kingdom "concedes that Article 194 is a provision relevant to the protection and preservation of the marine environment," that would fall under Article 297(1)(c).[358] The only objection to jurisdiction left to it is to claim that no dispute exists.[359]

278. Mauritius contends that this is wrong on the facts as the Parties disagree as to whether the MPA is an environmental or a fisheries measure, and that therefore "there is plainly a dispute over the interpretation or application of Article 194 over which [the Tribunal] may exercise jurisdiction."[360] Mauritius summarizes its position as follows:

---

356 Final Transcript, 824:23.

357 Final Transcript, 825:5-7.

358 Final Transcript, 471:6-7.

359 Final Transcript, 471:14-20.

360 Final Transcript, 474:4-5.

> The United Kingdom does not argue it is excluded by 297. Its only argument is that the UK has not yet enacted new laws or regulations on marine pollution. The UK seems to be saying there will be jurisdiction, but *not yet*. [. . .] Article 194(1) obligates States to "endeavour to harmonize their policies" in connection with marine pollution. This is an obligation that, self-evidently, attaches *prior* to the enactment of such rules since it is concerned with the development of regulatory policies. The UK avers that the BIOT administration is drafting these laws, so the dispute is ripe.[361]

(g) Jurisdiction regarding Mauritius' Claims relating to the Abuse of Rights

279. In its final submissions, Mauritius claims that the MPA is incompatible with Article 300 of the Convention, which provides as follows:

> *Article 300*
> *Good faith and abuse of rights*
>
> States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

The United Kingdom's Position

280. According to the United Kingdom, the Parties agree that –

> this Tribunal would have jurisdiction over its abuse of rights claim only to the extent that it already has jurisdiction over a dispute concerning other provisions of the Convention. So, if Article 297(1)(c) does not give you jurisdiction over the MPA declaration or the fishing ban, or if Article 297(3)(a) excludes jurisdiction, then there is likewise no jurisdiction over the related article 300 claim.[362]

281. The United Kingdom submits, however, that "[t]he core of Mauritius' case on abuse of rights is the denial of fishing rights, and the Convention has its own special regime for abuse of rights claims in that context—that's Article 297(3)(b) . . . [which] mandates compulsory conciliation as the remedy for abuse of coastal State rights over fishing."[363] Mauritius has not requested conciliation and the United Kingdom considers its Article 300 claim to have been foreclosed by this separate regime.

Mauritius' Position

282. According to Mauritius:

> Article 300 establishes an independent obligation under the Convention and, to that extent, it is an independent basis of the claim. What the Convention requires, as construed by the

---

361 Final Transcript, 1125:3-11.

362 Final Transcript, 825:12-16.

363 Final Transcript, 825:19-23.

> tribunal in the *Virginia* case, is that the abuse be linked with the exercise of one of the substantive rights provided in the Convention.[364]

2. The Tribunal's Decision

283. The Tribunal considers that the question of its jurisdiction over Mauritius' Fourth Submission—concerning the compatibility of the MPA with the Convention—hinges on the characterization of the Parties' dispute and on the interpretation and application of Article 297.

284. As set out above, Mauritius contends that the MPA is a measure "for the protection and preservation over the marine environment" and bases the Tribunal's jurisdiction on Article 297(1)(c) of the Convention. The United Kingdom, in turn, contends that the MPA is an exercise of "its sovereign rights with respect to the living resources of the exclusive economic zone" and argues that the Tribunal's jurisdiction is precluded by Article 297(3)(a). The Parties thus differ sharply in their interpretation of the factual record and their characterization of the MPA.

285. As set out above (see paragraph 208), it is for the Tribunal to characterize the dispute dividing the Parties. In so doing, the Tribunal considers that it is essential to evaluate both the scope of the MPA, as the measure complained of, and the scope of the rights that Mauritius alleges have been violated.

(a) The Scope and Character of the MPA

286. Turning first to the characterization of the MPA, the Tribunal does not accept that the MPA is solely a measure relating to fisheries. While in these proceedings the United Kingdom has sought, at times, to characterize the MPA as relating only to fisheries, noting its suspension of commercial fishing licences, the United Kingdom has justified the measure in far broader terms. In the Public Consultation preceding the decision to create the MPA, the United Kingdom FCO answered the question of "what would be the added value of creating a marine protected area?" as follows:

> There is sufficient scientific information to make a convincing case for designating most of the Territory as a marine protected area (MPA), to include not only protection for fish-stocks but also to strengthen conservation of the reefs and land areas.
>
> [. . .]

364 Final Transcript, 1126:2-5.

> There is high value to scientific/environmental experts in having a minimally perturbed scientific reference site, both for Earth system science studies and for regional conservation management.
>
> [. . .]
>
> MPA designation for BIOT would safeguard around half the high quality coral reefs in the Indian Ocean whilst substantially increasing the total global coverage of MPAs. If all the BIOT area were a no-take MPA, it would be the world's largest site with that status, more than doubling global coverage with full protection.
>
> [. . .][365]

287. In the BIOT Proclamation No. 1, establishing the MPA, the United Kingdom described it as follows:

> 1. There is established for the British Indian Ocean Territory a marine reserve to be known as the Marine Protected Area, within the Environment (Protection and Preservation) Zone which was proclaimed on 17 September 2003.
>
> 2. Within the said Marine Protected Area, Her Majesty will exercise sovereign rights and jurisdiction enjoyed under international law, including the United Nations Convention on the Law of the Sea, with regard to the protection and preservation of the environment of the Marine Protected Area. The detailed legislation and regulations governing the said Marine Protected Area and the Territory will be addressed in future legislation of the Territory.
>
> [. . .][366]

288. The FCO Press Release of 1 April 2010, announcing the creation of the MPA, described it in similarly expansive terms:

> The MPA will cover some quarter of a million square miles and its establishment will double the global coverage of the world's oceans under protection. Its creation is a major step forward for protecting the oceans, not just around BIOT itself, but also throughout the world.
>
> This measure is a further demonstration of how the UK takes its international environmental responsibilities seriously.
>
> The territory offers great scope for research in all fields of oceanography, biodiversity and many aspects of climate change, which are core research issues for UK science.[367]

289. In these proceedings the United Kingdom has sought to justify the MPA by submitting scientific writings describing its purpose as follows:

> the Chagos/BIOT MPA was not primarily initiated as a fisheries management tool, rather to conserve the unique and rich biodiversity of this region, both in the coastal and pelagic realm. The relatively pristine nature of the coral reefs of Chagos/BIOT is particularly

---

365 UK Foreign and Commonwealth Office, Consultation on Whether to Establish a Marine Protected Area in the British Indian Ocean Territory, November 2009 (**Annex MM-152**).

366 British Indian Ocean Territory Proclamation No. 1 of 2010 (**Annex MM-166**).

367 UK Foreign and Commonwealth Office Press Release, 1 April 2010, "New Protection for marine life" (**Annex MM-165**).

> important considering the 2008 Status of the World's coral reefs report reporting 19% of the original global coral reef area has already been lost through direct human impacts, with a further 15% seriously threatened within 10-20 years, and another 20% under threat in 20-40 years. These predictions do not take into account the accelerating problem of climate change on the oceans. There remains a critically urgent need for more effective management that conserves remaining coral reefs, particularly those in areas of low anthropogenic pressure and thus likely to be most resilient to climate change impacts.[368]

290. Finally, before this Tribunal, the Attorney-General of the United Kingdom defended the MPA on the basis of its broad environmental benefits:

> We are committed to furthering biodiversity of the oceans, and we believe that one significant way of doing this is through the establishment of marine protected areas.
>
> [. . .]
>
> The BIOT MPA is a regionally and internationally critical step in beginning to address the risk of irreversible damage to the oceans. It has substantially increased the global coverage of MPAs. [That] [t]he scientific case for the BIOT MPA is robust actually hasn't been challenged in this case at all. The waters around British Indian Ocean Territory are some of the most pristine in the Indian Ocean, indeed on the planet, and have a genuinely world-wide importance: scientists agree it is an exceptional place and merits protection.[369]

291. Having argued for the necessity and importance of the MPA by reference to environmental concerns that extend well beyond the management of fisheries, it is not now open to the United Kingdom to limit the jurisdiction of this Tribunal with the argument that the MPA is merely a fisheries measure. The Tribunal is entitled to hold the United Kingdom to the manner in which it has characterized the MPA in these proceedings and in numerous public pronouncements. The Tribunal also notes that the initiation of this arbitration, only nine months after the declaration of the MPA, may well have delayed the introduction of further implementing measures. In any event, the UK's declared object and purpose of the MPA are certainly relevant to Mauritius, a country with a reversionary interest in the area.

292. The Tribunal now turns to the rights that Mauritius' alleges to have been violated.

(b) The Scope and Character of Mauritius' Rights

293. Mauritius contends that the MPA is incompatible with the United Kingdom's obligations under Articles 2, 55, 56, 63, 64, 194, and 300 of the Convention, as well as Article 7 of the 1995 Fish Stocks Agreement.[370] Among these provisions, Articles 2(3) and 56(2), regarding the exercise

---

368 H. Koldewey, D. Curnick, S. Harding, L. Harrison, M. Gollock, 'Potential benefits to fisheries and biodiversity of the Chagos Archipelago/British Indian Ocean Territory as a no-take marine reserve', 60 *Marine Pollution Bulletin* 1906 (2010) (**Annex UKR-63**) (references omitted).

369 Final Transcript, 45:4-6, 48:14-19.

370 As set out above (see paragraphs 270–274), Mauritius raised arguments relating to Article 78 of the Convention and sedentary species, but did not claim a violation of this provision in its final submissions.

of sovereignty or sovereign rights over the territorial sea and exclusive economic zone, respectively, make reference to "other rules of international law" or an obligation to "have due regard to the rights and duties of other States". These provisions require the Tribunal to consider Mauritius' legal rights as they otherwise arise as a matter of international law, as well as Mauritius' rights arising under the Convention. Articles 63, 64, and 194, in contrast, create obligations on the United Kingdom, arising entirely within the Convention itself, to consult with other States regarding certain fisheries measures and regarding the harmonization of measures in respect of marine pollution. Article 55 describes the exclusive economic zone. Article 300 requires that the United Kingdom not exercise its rights in a manner that would constitute an abuse of rights.

294. For the purposes of Articles 2(3) and 56(2), the Tribunal considers the rights at issue to be those originating in the Lancaster House Undertakings made by the United Kingdom to Mauritius on 23 September 1965, in connection with the detachment of the Chagos Archipelago. As set out in detail above (see paragraphs 74–79), following that meeting Sir Seewoosagur Ramgoolam wrote to the Colonial Office, supplementing the undertakings set out in the draft record. Following the inclusion of these additions, the final minutes of the meeting record the undertakings as follows:

> (i) negotiations for a defence agreement between Britain and Mauritius;
>
> (ii) in the event of independence an understanding between the two governments that they would consult together in the event of a difficult internal security situation arising in Mauritius;
>
> (iii) compensation totalling up to £3m. should be paid to the Mauritius Government over and above direct compensation to landowners and the cost of resettling others affected in the Chagos Islands;
>
> (iv) the British Government would use their good offices with the United States Government in support of Mauritius' request for concessions over sugar imports and the supply of wheat and other commodities;
>
> (v) that the British Government would do their best to persuade the American Government to use labour and materials from Mauritius for construction work in the islands;
>
> (vi) the British Government would use their good offices with the U.S. Government to ensure that the following facilities in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable:
>
> (a) Navigational and Meteorological facilities;
>
> (b) Fishing Rights;

The Tribunal will consider its jurisdiction only with respect to those provisions of the Convention that Mauritius has alleged to have been breached by the declaration of the MPA.

(c) Use of Air Strip for emergency landing and for refuelling civil planes without disembarkation of passengers.

(vii) that if the need for the facilities on the islands disappeared the islands should be returned to Mauritius;

(viii) that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Mauritius Government.[371]

295. These undertakings were then conveyed to the Mauritius Council of Ministers, who were asked to indicate their agreement to the detachment of the Chagos Archipelago and did so on 5 November 1965, subject to the understanding that –

(1) statement in paragraph 6 of your despatch "H.M.G. have taken careful note of points (vii) and (viii)" means H.M.G. have in fact agreed to them.

(2) As regards (vii) undertaking to Legislative Assembly excludes

(a) sale or transfer by H.M.G. to third party or

(b) any payment or financial obligation by Mauritius as condition of return.

(3) In (viii) "on or near" means within area within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.[372]

296. Mauritius contends that these undertakings were binding as from their acceptance by the Council of Ministers and became so as a matter of international law upon the independence of Mauritius. Mauritius further contends that in declaring the MPA, the United Kingdom failed to exercise its jurisdiction subject to these undertakings (Article 2) and failed to give due regard to them (Article 56). For the purposes of determining its jurisdiction, however, the Tribunal's concern is with the scope and character of the rights that Mauritius alleges to have been violated. The existence and binding nature of these alleged rights are matters for the merits that the Tribunal will address subsequently (see paragraphs 417–456 below). For present purposes, the Tribunal needs only to satisfy itself that the rights asserted by Mauritius are such as to justify the provisional conclusion that they may have been binding as a matter of international law and relevant to the application of Articles 2 and 56 (*Interhandel Case, Judgment of March 21st 1959: I.C.J. Reports 1959*, p. 6 at p. 24; *see also Ambatielos case (merits: obligation to arbitrate), Judgment of May 19th, 1953: I.C.J. Reports 1953*, p. 10 at p. 18). Having reviewed the role of the undertakings in the Mauritian Ministers' agreement to the detachment of the Archipelago, the Tribunal finds that this test is satisfied.

371 Record of a Meeting held in Lancaster House at 2.30 p.m. on Thursday 23rd September [1965], Mauritius Defence Matters, CO 1036/1253 at paras. 22-23 (**Annex MM-19**).

372 Mauritius Telegram No. 247 to the Colonial Office, 5 November 1965, FO 371/184529 (**Annex MM-25**).

297. Among the undertakings made by the United Kingdom, the Tribunal notes that (vi)(b), relating to fishing rights; (vii), relating to the return of the Archipelago when no longer needed for defence purposes; and (viii), relating to the benefit of oil and mineral resources, are potentially implicated by the declaration of the MPA. The United Kingdom's undertaking with respect to fishing rights is clearly related to living resources and—insofar as it applies to the exclusive economic zone—falls under the exclusion from jurisdiction set out in Article 297(3)(a). In this respect, the Tribunal does not accept Mauritius' argument that a distinction can be made between disputes regarding the sovereign rights of the coastal State with respect to living resources, and disputes regarding the rights of other States in the exclusive economic zone (with only the former excluded from compulsory settlement). In nearly any imaginable situation, a dispute will exist precisely because the coastal State's conception of its sovereign rights conflicts with the other party's understanding of its own rights. In short, the two are intertwined, and a dispute regarding Mauritius' claimed fishing rights in the exclusive economic zone cannot be separated from the exercise of the United Kingdom's sovereign rights with respect to living resources.

298. The United Kingdom's remaining undertakings, however, are evidently broader. In the Tribunal's view, the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius' interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned. In this respect, the question of whether the Archipelago will or will not be covered by an MPA in the potentially extended period prior to its return significantly affects the nature of what Mauritius will eventually receive and the uses Mauritius will be able to make of it. The Tribunal does not accept the United Kingdom's argument that the MPA is irrelevant to the return of the Archipelago merely because the applicable regulations could potentially be undone. As the record of diplomatic correspondence in these proceedings amply demonstrates, the creation of the MPA was a significant political decision. If it were to remain and be developed over the course of many years, it could well become impractical or impolitic for Mauritius to adopt a radically different course. In short, the MPA's very existence bears upon the choices that Mauritius will have open to it when the Archipelago is eventually returned. In a like manner, the Tribunal considers that the benefit of the minerals and oil in the surrounding waters, which Mauritius will receive when the Archipelago is returned, may be significantly affected by the MPA, in particular in light of the expansive objective of environmental protection declared by the United Kingdom.

299. Turning now to Mauritius' rights to consultation and coordination pursuant to Articles 63, 64, and 194 of the Convention and Article 7 of the 1995 Fish Stocks Agreement, the Tribunal notes that the rights Mauritius claims to have been violated are not dependent on undertakings by the United Kingdom, but arise directly from the Convention itself. Articles 63 and 64 of the Convention, and Article 7 of the 1995 Fish Stocks Agreement, apply wherever the nationals of another State fish for straddling or highly-migratory fish stocks. Meanwhile, Article 194(1) imposes an obligation to "endeavour to harmonize" policies on pollution of the marine environment whenever joint action is "appropriate".

300. The Tribunal accepts that Articles 63 and 64 (as well as the 1995 Fish Stocks Agreement) are, on their face, measures in respect of fisheries and in their application in the exclusive economic zone are subject to the exclusion in Article 297(3)(a) (*see Arbitration between Barbados and the Republic of Trinidad and Tobago, Award of 11 April 2006, PCA Award Series*, p. 121, RIAA, Vol. XXVII, p. 147 at p. 226, para. 283). As set out above, the Tribunal does not accept that a distinction can be made between disputes in the exclusive economic zone over sovereign rights and those over the rights of another State (see paragraph 297). The Tribunal also finds no basis, in either *Barbados/Trinidad and Tobago* or *Southern Bluefin Tuna* (including the Separate Opinion) for the proposition that the exclusion in Article 297(3) does not apply to procedural obligations. In *Barbados/Trinidad and Tobago*, that tribunal expressly held that it had it no jurisdiction to establish a right of access for Barbadian fisherman in Trinidadian waters precisely because Article 297(3) applied. That tribunal went on to address the straddling flying fish stocks and Article 63 of the Convention only to the extent of "draw[ing] attention to certain matters that are necessarily entailed by the boundary line that [the Tribunal] has drawn" and of recording certain commitments made by Trinidad and Tobago during the hearing (*Award of 11 April 2006, PCA Award Series*, pp. 122-124, RIAA, Vol. XXVII, p. 147 at pp. 226-228, paras. 284-293). *Southern Bluefin Tuna*, in turn, involved a dispute over catch allowances for highly migratory species applicable "principally in the high seas" (*(New Zealand v. Japan, Australia v. Japan), Award of 4 August 2000*, RIAA, Vol. XXIII, p. 1 at p. 8, para. 21). Neither the Award nor the Separate Opinion make any suggestion that the jurisdictional exclusion in the exclusive economic zone pursuant to Article 297(3) was potentially applicable, nor is Japan recorded as having raised any objection on this basis.

301. Finally, the Tribunal is aware of the view, advanced in certain academic settings, that Article 297(3) should be construed narrowly in its application to Article 63 and Article 64 and to the 1995 Fish Stocks Agreement on the grounds that the entire purpose of the special regime for these species is to enable populations to be managed as a unified whole, and that this object and

purpose is potentially frustrated by providing distinct dispute resolution regimes for such species in the exclusive economic zone and in the high seas. However desirable this purpose may be as a matter of policy, the Tribunal can see no textual basis for such a construction in either the Convention or the 1995 Fish Stocks Agreement. The latter agreement afforded ample opportunity to remedy any ambiguity of drafting in the earlier Convention, but nevertheless expressly provides that "Article 297, paragraph 3, of the Convention applies also to this Agreement" (Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (with annexes), Art. 31, 4 August 1995, 2167 UNTS p. 3).

302. Article 194, however, is not so limited. The Tribunal notes that the United Kingdom's objection with respect to this final provision is merely that no dispute exists as the obligation would apply only in the event the MPA were to include new regulations on marine pollution. This, however, is a defence on the merits, and not a bar to the Tribunal's jurisdiction.

303. Finally, Mauritius has invoked Articles 55 and 300. Article 55 is principally concerned with the definition of the exclusive economic zone and, in the Tribunal's view, adds nothing to the scope of the rights that Mauritius has already asserted pursuant to Article 56 and the Lancaster House Undertakings. With respect to Article 300 and the abuse of rights, the Tribunal agrees with the Parties that a claim pursuant to Article 300 is necessarily linked to the alleged violation of another provision of the Convention. As such, the nature of Mauritius' rights pursuant to this provision coincides with the nature of the other provisions allegedly violated.

*

304. The Tribunal therefore concludes that neither the MPA nor the rights asserted by Mauritius are limited to the living resources of the exclusive economic zone. The Tribunal finds that the dispute between the Parties in relation to the compatibility of the MPA with the Convention relates more broadly to the preservation of the marine environment and to the legal regime applicable to the Archipelago and its surrounding waters when it is eventually returned to Mauritius. The Tribunal's consideration of Mauritius' Fourth Submission cannot therefore be excluded entirely by the exception from jurisdiction set out Article 297(3)(a). This is particularly the case in light of the extensive focus by the United Kingdom on the protection of coral, a sedentary species expressly excluded from the regime for the exclusive economic zone by Article 68 of the Convention and therefore beyond any possible application of Article 297(3)(a). The Tribunal also emphasizes that all of the rights of a coastal State, inherent in the

United Kingdom's undertaking to return the Archipelago to Mauritius, are potentially implicated and entitled to due regard pursuant to Article 56(2). In the Tribunal's view, the Parties' dispute cannot, as a whole, be dismissed as a fisheries matter.

305. Having thus addressed the objection to jurisdiction made by the United Kingdom on the basis of Article 297(3)(a), the Tribunal now turns to the relationship between its jurisdiction and Article 297(1)(c).

(c) Article 297(1)(c) and the Tribunal's Jurisdiction

306. In the sections that follow, the Tribunal will first examine the relationship between Article 288(1) and Article 297(1) and will determine which provision founds the Tribunal's jurisdiction in the present case. The Tribunal will then go on to consider the applicability of Article 297(1)(c) to the MPA.

i. The relationship between Article 288(1) and Article 297(1)(c)

307. Within the structure of the Part XV dispute settlement provisions of the Convention, Article 288(1) (contained in section 2 of Part XV) grants the Tribunal jurisdiction generally with respect to "any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part." Article 297, although captioned "Limitations on applicability of section 2", then goes on to grant the Tribunal jurisdiction specifically over certain categories of disputes relating to sovereign rights, marine scientific research, and fisheries, providing that disputes relating to these matters "shall be subject to the procedures provided for in section 2" or "shall be settled in accordance with section 2". Articles 297(2) and 297(3) also impose express limitations on the jurisdiction the Tribunal may exercise with respect to marine scientific research or to fisheries. Article 297(1), however, is phrased entirely in affirmative terms and includes no exceptions to the jurisdiction the Tribunal may exercise.

308. Article 297(1) does not state that disputes concerning the exercise of sovereign rights and jurisdiction are *only* subject to compulsory settlement in the enumerated cases. And, as a matter of textual construction, the Tribunal does not consider that such a limitation can be implied. If Article 297(1) were understood to mean that a Tribunal would have jurisdiction over the exercise of sovereign rights and jurisdiction only in the specified cases, there would have been no need for Article 297(3) to expressly exclude disputes over the living resources of the exclusive economic zone: such disputes would be excluded already, by virtue of their non-inclusion in the list of cases set out in Article 297(1). Similarly, if Article 297(1) were

understood to include an implied "only" and to present an exclusive list of the cases over which the Tribunal could exercise jurisdiction, it would then conflict with the jurisdiction over marine scientific research recognized in Article 297(2), which in some cases will involve sovereign rights in the exclusive economic zone. Textually, therefore, Article 297(1) reaffirms, but does not limit, the Tribunal's jurisdiction pursuant to Article 288(1). In light, however, of the apparent ambiguity of including a jurisdiction-affirming provision in an article otherwise devoted to limitations on the exercise of compulsory dispute settlement, the Tribunal considers it useful to delve deeper into the history of this provision.

309. The Tribunal recalls that the negotiations over the provision that ultimately became Article 297 of the Convention were marked by differences over the scope of compulsory dispute settlement in the exclusive economic zone. Many coastal States sought to limit or exclude compulsory settlement in order to protect their newly won jurisdiction from the expense and burden of potentially frequent challenge. Others considered comprehensive provisions for compulsory dispute settlement to be essential to the preservation of the rights of other States in the expansive areas being incorporated into the exclusive economic zone.[373] In attempting to balance these competing interests, the text of what became Article 297 underwent a series of substantial revisions that dramatically changed its structure and content.

310. In the 1976 draft of the Convention, the Tribunal notes, what became Article 297 *did* provide that compulsory dispute resolution would only apply to the three cases now set out in Article 297(1).[374] Following textual revisions in the course of that year, the provision read as follows:

> 1. Disputes relating to the exercise by a coastal State of sovereign rights, exclusive rights or exclusive jurisdiction recognized by the present Convention shall be subject to the procedures specified in section 2 only in the following cases:
>
> (a) When it is claimed that a coastal State has acted in contravention of the provisions of the present Convention in regard to the freedom of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea related to navigation or communication; or
>
> (b) When it is claimed that any State, in exercising the aforementioned freedoms, has acted in contravention of the provisions of the present Convention or of laws or regulations enacted by the coastal State in conformity with the

---

373 See the summary of the debate on this provision in S. Rosenne & L. Sohn, eds., *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V at pp. 92-94 (M. Norquist, gen. ed., 1989).

374 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume V (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fourth Session)*, Informal Single Negotiating Text, Part IV, Art. 18, UN Doc. A/CONF.62/WP.9/Rev.1 (6 May 1976).

present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is claimed that a coastal State has acted in contravention of specified international standards or criteria for the preservation of the marine environment or for the conduct of marine scientific research, which are applicable to the coastal State and which have been established by the present Convention or by a competent international authority acting in accordance with the present Convention; or

(d) When it is claimed that a coastal State has manifestly failed to comply with specified conditions established by the present Convention relating to the exercise of its rights or performance of its duties in respect of living resources, provided that in no case shall the sovereign rights of the coastal State be called in question.

2. Any dispute excluded by paragraph 1 may be submitted to the procedure specified in section 2 only with the express consent of the coastal State concerned.

3. Any disagreement between the parties to a dispute as to the applicability of this article shall be decided in accordance with paragraph 3 of article 10 [now 288].[375]

At that time, no express exception was included with respect to either marine scientific research or fisheries.

311. In the 1977 draft of the Convention, this provision was substantially modified. Reflecting the concern with the abuse of legal process and the possibility of frequent, frivolous challenges to the jurisdiction of the coastal State, the 1977 draft provided that any dispute involving the exercise of sovereign rights or jurisdiction would be subject to certain mandatory procedural safeguards. Compulsory dispute settlement was no longer expressly restricted to the three cases now set out in Article 297(1); instead, jurisdiction in the three cases was made conditional on the fulfilment of the procedural safeguards. New exclusions were also introduced with respect to marine scientific research and fisheries. Finally, the draft Article provided in paragraph (5) that any dispute excluded from the other paragraphs could be submitted to compulsory settlement "only by agreement of the parties to such dispute". As restructured, the draft Article read as follows:

1. Without prejudice to the obligations arising under section 1, disputes relating to the exercise by a coastal State of sovereign rights or jurisdiction provided for in the present Convention shall only be subject to the procedures specified in the present Convention when the following conditions have been complied with:

(a) that in any dispute to which the provisions of this article apply, the court or tribunal shall not call upon the other party or parties to respond until the party

375 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VI (Summary Records, Plenary, General Committee, First, Second and Third Committees, as well as Documents of the Conference, Fifth Session)*, Revised Single Negotiating Text, Part IV, Art. 17, UN Doc. A/CONF.62/WP.9/Rev.2 (23 November 1976).

which has submitted the dispute has established *prima facie* that the claim is well founded;

(b) that such court or tribunal shall not entertain any application which in its opinion constitutes an abuse of legal process or is frivolous or vexatious; and

(c) that such court or tribunal shall immediately notify the other party to the dispute that the dispute has been submitted and such party shall be entitled, if it so desires, to present objections to the entertainment of the application.

2. Subject to the fulfillment of the conditions specified in paragraph 1, such court or tribunal shall have jurisdiction to deal with the following cases:

(a) When it is alleged that a coastal State has acted in contravention of the provisions of the present Convention in regard to the freedoms and rights of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea specified in article 58; or

(b) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of the present Convention or of laws or regulations established by the coastal State in conformity with the present Convention and other rules of international law not incompatible with the present Convention; or

(c) When it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by the present Convention or by a competent international organization or diplomatic conference acting in accordance with the present Convention.

3. No dispute relating to the interpretation or application of the provisions of the present Convention with regard to marine scientific research shall be brought before such court or tribunal unless the conditions specified in paragraph 1 have been fulfilled; provided that:

(a) when it is alleged that there has been a failure to comply with the provision of articles 247 [now 246] and 254 [now 253], in no case shall the exercise of a right or discretion in accordance with article 247, or a decision taken in accordance with article 254, be called in question; and

(b) the court or tribunal shall not substitute its discretion for that of the coastal State.

4. No dispute relating to the interpretation or application of the provisions of the present Convention with regard to the living resources of the sea shall be brought before such court or tribunal unless the conditions specified in paragraph 1 have been fulfilled; provided that:

(a) when it is alleged that there has been a failure to discharge obligations arising under articles 61, 62, 69 and 70, in no case shall the exercise of a discretion in accordance with articles 61 and 62 be called in question; and

(b) the court or tribunal shall not substitute its discretion for that of the coastal State; and

(c) in no case shall the sovereign rights of a coastal State be called in question.

5. Any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute.[376]

312. In the 1979 draft, this provision was restructured yet again, and the procedural safeguards that had been a condition to the exercise of jurisdiction over the cases now set out in Article 297(1) were broken off as separate articles, eventually to become Article 294 (Preliminary Proceedings) and Article 300 (Abuse of Rights) of the final Convention. The revised draft Article on limitations to compulsory dispute settlement still provided in its final paragraph, however, that "any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute." In its 1979 form, the provision that became Article 297 thus read as follows:

1. Notwithstanding the provisions of article 286, disputes relating to the interpretation or application of this Convention with regard to the exercise by a coastal State if [*sic*] its sovereign rights or jurisdiction provided for in this Convention, shall be subject to the procedures specified in this section in the following cases.

   (a) When it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea specified in article 58; or

   (b) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of this Convention or of laws or regulations established by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or

   (c) When it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or by a competent international organization or diplomatic conference acting in accordance with this Convention.

2. No dispute relating to the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be brought before such court or tribunal unless the conditions specified in article __ have been fulfilled; provided that:

   (a) when it is alleged that there has been a failure to comply with the provision of articles 246 and 253, in no case shall the exercise of a right or discretion in accordance with article 246, or a decision taken in accordance with article 253, be called in question; and

   (b) the court or tribunal shall not substitute its discretion for that of the coastal State.

3. (a) Unless otherwise agreed or decided by the parties concerned, disputes relating to the interpretation or application of the provisions of this

376 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text, Art. 296, UN Doc. A/CONF.62/WP.10 (15 July 1977).

Convention with regard to fisheries shall be settled in accordance with this section, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management regulations.

(b) Where no settlement has been reached by recourse to the provisions of section 1, a dispute shall, notwithstanding article 284, paragraph 3, be submitted to the conciliation procedure provided for in annex IV, at the request of any party to the dispute, when it is alleged that:

(i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;

(ii) a coastal State has arbitrarily refused to determine, upon the request of another State, the allowable catch and its capacity to harvest the living resources with respect to stocks which that other State is interested in fishing;

(iii) a coastal State has arbitrarily refused to allocate to any State, under the provisions of articles 68, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.

(c) In any case the conciliation commission shall not substitute its discretion for that of the coastal State.

(d) The report of the conciliation commission shall be communicated to the appropriate global, regional or sub-regional intergovernmental organizations.

(e) In negotiating agreements pursuant to articles 69 and 70 the parties, unless they otherwise agree, shall include a clause on measures which the parties shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how the parties should proceed if a disagreement nevertheless arises.

4. Without prejudice to the provisions of paragraph 3, any dispute excluded by the previous paragraphs may be submitted to the procedures specified in section 2 only by agreement of the parties to such dispute.[377]

313. In the 1980 revisions of the draft negotiating text, the provision underwent a final, major revision when the text in respect of marine scientific research was substantially re-written and the procedure for the compulsory conciliation of disputes relating to marine scientific research and fisheries was introduced.[378] The provision was moved to the newly created section 3 and

377 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text Revision 1, Art. 296, UN Doc. A/CONF.62/WP.10/Rev.1 (28 April 1979).

378 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text Revision 2, Art. 296, UN Doc. A/CONF.62/WP.10/Rev.2 (11 April 1980).

renumbered as draft Article 297. At the same time, the ultimate paragraph restricting jurisdiction over any dispute "excluded by the previous paragraphs" was deleted.[379] As redrafted, the nearly final 1980 text of Article 297 read as follows:

> 1. Disputes relating to the interpretation or application of this Convention with regard to the exercise by a coastal State of its sovereign rights or jurisdiction provided for in this Convention, shall be subject to the procedures specified in section 2 in the following cases:
>
> (a) When it is alleged that a coastal State has acted in contravention of the provisions of this Convention in regard to the freedoms and rights of navigation or overflight or of the laying of submarine cables and pipelines and other internationally lawful uses of the sea specified in article 58; or
>
> (b) When it is alleged that any State in exercising the aforementioned freedoms, rights or uses has acted in contravention of the provisions of this Convention or of laws or regulations established by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention; or
>
> (c) When it is alleged that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment which are applicable to the coastal State and which have been established by this Convention or by a competent international organization or diplomatic conference acting in accordance with this Convention.
>
> 2. (a) Disputes relating to the interpretation or application of the provisions of this Convention with regard to marine scientific research shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement any dispute arising out of:
>
> (i) the exercise by the coastal State of a right or discretion in accordance with article 246; or
>
> (ii) a decision by the coastal State to order suspension or cessation of a research project in accordance with article 253.
>
> (b) Disputes arising from an allegation by the researching State that with respect to a specific project the coastal State is not exercising its rights under articles 246 and 253 in a manner compatible with the provisions of this Convention shall be submitted, at the request of either party, to the conciliation procedure specified in section 2 of annex V, provided that the conciliation commission shall not call in question the exercise by the coastal State of its discretion to designate specific areas as referred to in paragraph 6 of article 246 or of its discretion to withhold consent in accordance with paragraph 5 of article 246.
>
> 3. (a) Disputes relating to the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable

379 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text Revision 3, Art. 297, UN Doc. A/CONF.62/WP.10/Rev.3 (22 September 1980).

> catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management regulations;
>
> (b) Where no settlement has been reached by recourse to the provisions of section 1, a dispute shall be submitted to the conciliation procedure specified in section 2 of annex V, at the request of any party to the dispute, when it is alleged that:
>
> (i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;
>
> (ii) a coastal State has arbitrarily refused to determine, upon the request of another State, the allowable catch and its capacity to harvest the living resources with respect to stocks which that other State is interested in fishing;
>
> (iii) a coastal State has arbitrarily refused to allocate to any State, under the provisions of articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.
>
> (c) In any case the conciliation commission shall not substitute its discretion for that of the coastal State;
>
> (d) The report of the conciliation commission shall be communicated to the appropriate international organizations;
>
> (e) In negotiating agreements pursuant to articles 69 and 70 the parties, unless they otherwise agree, shall include a clause on measures which the parties shall take in order to minimize the possibility of a disagreement concerning the interpretation or application of the agreement, and on how the parties should proceed if a disagreement nevertheless arises.[380]

314. The Tribunal considers this extended recitation of the history of Article 297 to be warranted for the light it sheds on the intent of a provision that, as drafted, remains far from clear. In the Tribunal's view, two propositions follow from the long evolution of Article 297. First, a limitation on the submission to compulsory settlement of disputes involving the exercise by a coastal State of its sovereign rights or jurisdiction in cases other than those set out in Article 297(1) was contemplated—originally in the exclusive formulation of that provision in 1976, and then in the catch-all final paragraph of the 1977 and 1979 draft Articles—but was omitted from the final text. The evolution and eventual disappearance of this restriction is noted in the Commentary, which observes that "the restrictive word 'only,' which appeared in earlier drafts of article 297, paragraph 1, and was moved to the abuse of legal process paragraph in 1977, was

[380] *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text Revision 3, Art. 297, UN Doc. A/CONF.62/WP.10/Rev.3 (22 September 1980).

omitted in the final text of article 297, paragraph 1."[381] The Commentary further posits the change was linked to the addition of express limitations for fisheries and marine scientific research.[382]

315. Second, the placement of the jurisdiction affirming Article 297(1) within an Article devoted to limitations on the compulsory settlement of disputes is explained by the procedural safeguards that were briefly introduced into the Article and which ultimately became Article 294. Article 297(1) thus imposes a "limitation" on the compulsory settlement of disputes in the enumerated cases insofar as Article 294 permits a party to seek a preliminary determination, in advance of other procedures, that the application constitutes an abuse of legal process or is *prima facie* unfounded. Article 297(1) is thus not without effect within the jurisdictional structure of the Convention.

316. The Tribunal also notes that, in certain respects, Article 297(1) expands the jurisdiction of a Tribunal over the enumerated cases beyond that which would follow from the application of Article 288(1) alone. In addition to describing disputes relating to the interpretation and application of the Convention itself, each of the three specified cases in Article 297(1) includes a *renvoi* to sources of law beyond the Convention itself:

(a) Article 297(1)(a) establishes jurisdiction "in regard to other internationally lawful uses of the sea specified in article 58" and Article 58, in turn, provides that "other pertinent rules of international law" apply to the conduct of third States in the exclusive economic zone.

(b) Article 297(1)(b) establishes jurisdiction over the exercise of freedoms, rights, and uses of the sea "in contravention of . . . the laws and regulations adopted by the coastal State in conformity with this Convention and other rules of international law not incompatible with this Convention".

(c) Article 297(1)(c) establishes jurisdiction over acts "in contravention of specified international rules and standards for the protection and preservation of the marine environment", including those established "through a competent international organization or diplomatic conference".

Article 297(1) thus expressly expands the Tribunal's jurisdiction to certain disputes involving the contravention of legal instruments beyond the four corners of the Convention itself and

381 S. Rosenne & L. Sohn, eds., *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V at p. 104 (M. Norquist, gen. ed., 1989).

382 *Ibid*.

ensures that such disputes will not be dismissed as being insufficiently related to the interpretation and application of the Convention.

317. The Tribunal considers that the drafting history confirms the conclusion it reached from the textual construction of Article 297. Article 297(1) reaffirms a tribunal's jurisdiction over the enumerated cases and (through Article 294) imposes additional safeguards; it does not restrict a tribunal from considering disputes concerning the exercise of sovereign rights and jurisdiction in other cases. Where a dispute concerns "the interpretation or application" of the Convention, and provided that none of the express exceptions to jurisdiction set out in Article 297(2) and 297(3) are applicable, jurisdiction for the compulsory settlement of the dispute flows from Article 288(1). It is not necessary that the Parties' dispute also fall within one of the cases specified in Article 297(1).

318. In the present case, Mauritius has directly alleged that the MPA violates certain articles of the Convention. Accordingly, having determined that the exclusion of disputes relating to the living resources of the exclusive economic zone in Article 297(3)(a) does not prevent the Tribunal from considering Mauritius' Fourth Submission, and considering that a dispute over the MPA's alleged violation of specific articles of the Convention is a dispute concerning the interpretation or application of the Convention, the Tribunal determines that its jurisdiction is established by Article 288(1).

ii. Article 297(1)(c) and the MPA

319. As set out the preceding section, the Tribunal considers that its jurisdiction is established by Article 288(1), except with respect to those portions of the Fourth Submission that the Tribunal considered subject to Article 297(3). For the sake of completeness, however, the Tribunal notes that it is also of the view that the dispute concerning Mauritius' Fourth Submission falls within the class of disputes identified in Article 297(1)(c). Properly characterized, the Tribunal considers that the Parties' dispute in respect of the MPA relates to the preservation of the marine environment and that Mauritius has alleged a violation of international rules and standards in this area. Article 297(1)(c) expressly reaffirms the application of compulsory settlement to such disputes.

320. In reaching this conclusion, the Tribunal rejects the suggestion that either Article 297(1)(c) or Part XII of the Convention (relating to the protection and preservation of the marine environment) are limited to measures aimed at controlling marine pollution. While the control of pollution is certainly an important aspect of environmental protection, it is by no means the

only one. Far from equating the preservation of the marine environment with pollution control, the Tribunal notes that Article 194(5) expressly provides that –

> The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Notably, in the Tribunal's view, this provision offers a far better fit with the MPA as presented by the United Kingdom than its characterization as a fisheries measure.

321. Neither can the Tribunal accept the proposition that Article 297(1)(c) was intended to refer only to external conventions such as MARPOL, SOLAS, or the London Convention. Although the Tribunal considers that Article 297(1) sets out a further grant of jurisdiction over disputes relating the contravention of the standards elaborated in such conventions (see paragraph 316 above), it remains the case that Article 297(1)(c) also expressly refers to "rules and standards . . . established by this Convention."

322. Finally, the Tribunal is unconvinced that the reference to "international rules and standards" in Article 297(1)(c) was intended to refer only to substantive rules and standards, and cannot therefore include the obligation to consult with or give due regard to the rights of other States. As a general matter, the Tribunal has little difficulty with the concept of procedural constraints on State action, and notes that such procedural rules exist elsewhere in international environmental law, for instance in the general international law requirement to carry out an environmental impact assessment in advance of large scale construction projects (see *Indus Waters Kishenganga Arbitration (Pakistan v. India), Partial Award of 18 February 2013, PCA Award Series*, p. 81 at pp. 291-292, para. 450; *Pulp Mills on the River Uruguay (Argentina v. Uruguay), Judgment, I.C.J. Reports 2010*, p. 14 at p. 83, para. 205). Such procedural rules may, indeed, be of equal or even greater importance than the substantive standards existing in international law. In the Tribunal's view, the obligation to consult with and have regard for the rights of other States, set out in multiple provisions of the Convention, is precisely such a procedural rule and its alleged contravention is squarely within the terms of Article 297(1)(c).

* * *

323. For the foregoing reasons, the Tribunal concludes that it has jurisdiction pursuant to Article 288(1), and Article 297(1)(c), to consider Mauritius' Fourth Submission and the compatibility of the MPA with the following provisions of the Convention:

(a) Article 2(3) insofar as it relates to Mauritius' fishing rights in the territorial sea or to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;

(b) Article 56(2), insofar as it relates to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;

(c) Article 194; and

(d) Article 300, insofar as it relates to the abuse of rights in connection with a violation of one of the foregoing articles.

D. THE TRIBUNAL'S JURISDICTION OVER MAURITIUS' THIRD SUBMISSION

324. In its final submissions, Mauritius requests the Tribunal to declare that –

> the United Kingdom shall take no steps that may prevent the Commission on the Limits of the Continental Shelf from making recommendations to Mauritius in respect of any full submission that Mauritius may make to the Commission regarding the Chagos Archipelago under Article 76 of the Convention;

325. Article 76 of the Convention defines the continental shelf and provides in relevant part as follows:

> *Article 76*
> *Definition of the continental shelf*
>
> [. . .]
>
> 8. Information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured shall be submitted by the coastal State to the Commission on the Limits of the Continental Shelf set up under Annex II on the basis of equitable geographical representation. The Commission shall make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf. The limits of the shelf established by a coastal State on the basis of these recommendations shall be final and binding.
>
> [. . .]

1. The Parties' Arguments

Mauritius' Position

326. Mauritius submits that a dispute concerning the interpretation or application of Article 76(8) of the Convention "is a dispute which is plainly within the jurisdiction of this tribunal."[383]

327. According to Mauritius, there is "a dispute between the Parties as to whether or not Mauritius has standing under that article to submit information to the CLCS in respect of the Chagos Archipelago area. The resolution of that dispute requires that the Tribunal interpret or apply Article 76(8)."[384] Alternatively, Mauritius submits that –

> Another way to look at it is that there is a dispute as to whether the filing by Mauritius was effective, whether or not the clock has stopped, and whether or not Mauritius can make a full submission. There is thus a dispute as to whether the conditions exist for the CLCS to give effect to its role under Article 76(8) and Annex 2 in relation to Mauritius and the Chagos Archipelago. This is not an exhaustive list. But it is more than sufficient, [. . .] to establish [. . .] jurisdiction in regard to the issues raised under Article 76(8).[385]

328. Mauritius concludes that "[d]isputes concerning rights in the Continental Shelf, including the Extended Continental Shelf, are not subject to any of the exclusions of section 3 of Part XV. *A fortiori* the Tribunal has jurisdiction to resolve the aspects of this dispute that concern Article 76(8)."[386]

The United Kingdom's Position

329. The United Kingdom objects to the Tribunal's jurisdiction on the grounds that –

> there can be no basis whatsoever for Mauritius' new final submission (3), [. . .]. Even if this new claim were within the scope of the Notification and Statement of Claim, which [. . .] it is not, there is no way that Mauritius can show that it has complied with the requirements of section 1 of Part XV, in particular, article 283.[387]

330. The United Kingdom argues further as follows:

> The dispute that Mauritius brought up [. . .] over delineation is just a reiteration of the same underlying sovereignty dispute [. . .]. Mauritius is just saying that there is a dispute as to Article 76(8) because it is the coastal State entitled to submit information under that article. That just adds another provision to the current dispute. It makes no difference whatsoever to the jurisdictional hurdles that Mauritius faces, and likewise does not impact on the fact

383 Final Transcript, 35:5.

384 Final Transcript, 485:15-18.

385 Final Transcript, 485:19-24.

386 Final Transcript, 486:1-3.

387 Final Transcript, 1258:10-14.

> that Mauritius' form of mixed dispute has nothing whatsoever to do with maritime delimitation.[388]

2. The Tribunal's Decision

331. The Tribunal notes that Mauritius' Third Submission did not feature in the *Notification and Statement of Claim*. At the hearings, Mauritius explained[389] that it had added this submission in response to the following statement in the United Kingdom's *Rejoinder*:

> In accordance with the terms of article 76(7), only the coastal State may delineate the outer limits of the continental shelf. In accordance with article 76(8), only the coastal State may submit information to the CLCS on the limits of the shelf beyond 200 nautical miles. Mauritius is not the coastal State in respect of BIOT and as such it has no standing before the CLCS with respect to BIOT.[390]

332. In assessing its jurisdiction, the Tribunal considers that it must first determine whether there is a dispute between the Parties regarding the issue addressed by Mauritius' Third Submission. In order to do that, it is necessary to examine the history of the position taken by each Party regarding that issue, both before and after the commencement of arbitration proceedings on 20 December 2010.

333. The question of a submission to the CLCS was discussed at the Mauritius–United Kingdom Joint Meeting on 14 January 2009. There were no official minutes of that meeting but each side kept its own record and there was a Joint Communiqué issued at the end of the meeting, all of which have been put before the Tribunal. The Mauritius record deals with the prospective CLCS submission in the following terms.[391] The matter was raised by Mr Doug Wilson, an FCO legal adviser who was a member of the United Kingdom team. Mauritius records him as having said the following:

> Art. 76 UNCLOS provides that a state make an application to the UN for Continental Shelf beyond 200 miles zone. UK has no interest to applying to the UN for extension. There is very little prospect for oil and gas. So reference to paragraph 22 of the 1965 letter would not be an issue.
>
> We wanted to open a possibility to produce a joint submission to claim an extended Continental Shelf. That would require extensive scientific research and employment of qualified scientists. We can look forward for joint submissions.

---

388 Final Transcript, 672:4-11.

389 Final Transcript, 926:20-25; 1088:19 to 1089:16.

390 The United Kingdom's Rejoinder, para. 8.39.

391 Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, "Meeting of Officials on the Chagos Archipelago/British Indian Ocean Territory held at the Foreign and Commonwealth Office, London, Wednesday 14 January 2009, 10 a.m.", 23 January 2009 at pp. 23-26 (**Annex MR-129**).

334. Mr Suresh C. Seeballuck, the head of the Mauritian delegation, replied as follows:

> With regard to Continental Shelf, we have a deadline of 13 May 2009 to make our submission. The deadline is there. We welcome your suggestion for a joint submission and possibly we have to work in earnest to achieve it. We have, on the basis of research, some basic data. We are prepared to exchange same with the UK side for the joint submission.

335. Mr Wilson clarified that all that was needed by 13 May 2009 was "an outline submission". In this respect, the Tribunal recalls that Article 4 of Annex II to the Convention established the procedure that –

> Where a coastal State intends to establish, in accordance with article 76, the outer limits of its continental shelf beyond 200 nautical miles, it shall submit particulars of such limits to the Commission along with supporting scientific and technical data as soon as possible but in any case within 10 years of the entry into force of this Convention for that State.

In practice, it emerged that developing States would, in many instances, have difficulty in assembling the scientific and technical data required to meet the ten year deadline. On 29 May 2001, the Meeting of States Parties to the Convention took the decision that –

> (a) In the case of a State Party for which the Convention entered into force before 13 May 1999, it is understood that the ten-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999;
>
> (b) The general issue of the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention be kept under review.[392]

On 20 June 2008, with the revised deadline approaching, the Meeting of States Parties took the following further decision that preliminary outline submissions would suffice to toll the ten year deadline:

> (a) It is understood that the time period referred to in article 4 of annex II to the Convention and the decision contained in SPLOS/72, paragraph (a), may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf;
>
> (b) Pending the receipt of the submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, preliminary information submitted in accordance with subparagraph (a) above shall not be considered by the Commission;
>
> (c) Preliminary information submitted by a coastal State in accordance with subparagraph (a) is without prejudice to the submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and

---

392 United Nations Convention on the Law of the Sea, Meeting of States Parties, *Decision regarding the date of commencement of the ten-year period for making submissions to the Commission on the Limits of the Continental Shelf set out in article 4 of Annex II to the United Nations Convention on the Law of the Sea*, UN Doc. SPLOS/72 (29 May 2001).

the Scientific and Technical Guidelines of the Commission, and the consideration of the submission by the Commission;

(d) The Secretary-General shall inform the Commission and notify member States of the receipt of preliminary information in accordance with subparagraph (a), and make such information publicly available, including on the website of the Commission;

[. . .][393]

336. In the course of the Joint Meeting, Mr Roberts, the BIOT Administrator, then added:

> We have no expectation of deriving any benefit from what we will get. It will flow to Mauritius when the territory will be ceded to you. It is one of the reasons why we have not invested resources to collect data. We recognize the underlying structure of this discussion. You may wish to take action and we will provide political support.

337. After a brief discussion, Mr Seeballuck reiterated "our willingness to join the UK on the joint submission notwithstanding our sovereignty position".

338. The United Kingdom record of the talks is very similar. The United Kingdom record summed up the discussion of the possible CLCS submission in the following terms:

> The UK opened up the possibility of co-operating with the Mauritians, under a sovereignty umbrella, on an extended continental shelf agreement (ie., a joint submission to the Commission on the Limits of the Continental Shelf). We had no interest ourselves in seabed mineral extraction. That would be for Mauritius when we have ceded BIOT. There would be no exploration or exploitation until then. It would require much expensive scientific and research work to collect and analyse data but it could be done if both sides agreed that a joint submission was appropriate.
>
> The Mauritian delegation welcomed the UK statement about a joint submission but was concerned that the deadline was 30 May 2009 so much work would need to be done. They already had some basic data that could help. Mauritian agreement to a joint submission would, however, be conditional upon an equitable exploitation of resources whenever they may occur.
>
> The UK delegation clarified that all that was needed by May was an outline submission. The UK delegation reiterated that the UK had no expectation of deriving commercial or economic benefit from anything discovered on the continental shelf. Our understanding was that this would flow to Mauritius once the territory had been ceded. This was one of the reasons why the UK had not invested resources in collecting data. What we were talking about was legal and political co-operation to secure the continental shelf on the premise that it is scientifically possible to do this.
>
> The Mauritians questioned why the UK was insisting on its position on sovereignty but prepared to accept a joint submission to the Continental Shelf? We explained that the Mauritians should not see our position as a sign of weakness or obligation. We wanted to

---

393 United Nations Convention on the Law of the Sea, Meeting of States Parties, *Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)*, UN Doc. SPLOS/183 (20 June 2008).

> be helpful where we could within the limits set out on sovereignty and treaty obligations. Our offers were on specific subjects we thought would be useful. [394]

339. The Joint Communiqué issued at the end of the talks made only a brief reference to the discussions having included the topic of the continental shelf. The Communiqué did, however, make clear that the talks had been held under a "sovereignty umbrella":

> Both Governments agreed that:
>
> nothing in the conduct or content of the present meeting shall be interpreted as:
>
> (a) A change in the position of the United Kingdom with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago;
>
> (b) A change in the position of Mauritius with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago;
>
> (c) Recognition of or support for the position of the United Kingdom or Mauritius with regard to sovereignty over the British Indian Ocean Territory/Chagos Archipelago;
>
> (d) No act or activity carried out by the United Kingdom, Mauritius or third parties as a consequence and in implementation of anything agreed to in the present meeting or in any similar subsequent meetings shall constitute a basis for affirming, supporting, or denying the position of the United Kingdom or Mauritius regarding sovereignty of the British Indian Ocean Territory/Chagos Archipelago.[395]

340. In May 2009, Mauritius filed preliminary information with the CLCS.[396] Paragraph 6 of that document was entitled "unresolved land and maritime disputes" and stated that –

> The Republic of Mauritius states that the Chagos Archipelago is and has always formed part of its territory. The Republic of Mauritius wishes to inform the Commission, however, that a dispute exists between the Republic of Mauritius and the United Kingdom over the Chagos Archipelago. Discussions are ongoing between the two governments on this matter. The last bilateral talks were held in London, United Kingdom, in January 2009.

341. The second round of Mauritius–United Kingdom talks took place in Port Louis on 21 July 2009. The Mauritius record of those talks (contained in a briefing document provided for the Mauritian Cabinet) described the discussion of the extended continental shelf in the following terms:

> The British side proposed that Mauritius and the UK should make a joint submission to the United Nations Commission on the Limits of the Continental Shelf (CLCS) for an extended continental shelf around the Chagos Archipelago. The Mauritian side remarked that at the first round of talks, the UK did not show much interest in submitting a claim for an extension of the continental shelf. In the circumstances, Mauritius decided to make a unilateral submission to be within the deadline of 13 May 2009.

---

394 Record of the meeting of 14 January 2009 prepared by the Overseas Territories Directorate dated 15 January 2009 at s. 6(2) (**Annex UKCM-94**)(**Annex MR-128**).

395 Joint communiqué of meeting of 14 January 2009 (**Annex UKCM-93**)(**Annex MM-137**).

396 Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183 (**Annex MM-144**).

> After discussions, it was agreed that although we have already made our submission within the deadline of 13 May 2009, there is scope for Mauritius and UK to work together towards a coordinated submission and that a technical committee would be set up with officials from both sides to look into the modalities of this coordinated approach.[397]

342. The United Kingdom record contained the following passage:

> The UK delegation suggested that Mauritius and the UK could work together within the UN process to secure a claim perhaps by a coordinated submission. This could be of benefit to Mauritius because otherwise the submission would effectively be put on ice because of the sovereignty dispute. All benefits of an [extended Continental Shelf] would ultimately fall to Mauritius when BIOT was no longer required for defence purposes. Mauritius welcomed the suggestion that the UK and Mauritian teams could work together on this. The Mauritian delegation explained the reasons behind their preliminary note which flagged up their intention to lodge a submission over this area by 2012 was to ensure that they were not prejudiced by failing to meet the May 2009 deadline. The UK delegation commented that this time-frame for preparation of the submission seemed realistic. The UK delegation also explained that we were not proposing UK funding extensive analysis and surveys but could facilitate access to the technical sources and help with the legal process. It was agreed that the best way forward would be a coordinated submission under a sovereignty umbrella and that technical experts from both sides should get together. Comment: there was a need, as in the January talks, to reiterate the fact that the UK had no intention of benefiting from an [extended Continental Shelf]. Any exploitation would be for the benefit of Mauritius. Our proposal was to get an [extended Continental Shelf] established. We would then talk about the basis on which exploitation could begin. We could not define a date when BIOT will no longer be needed for defence purposes but this was one way of ensuring that the [extended Continental Shelf] could be established in principle pending the area being eventually ceded to Mauritius.[398]

343. The Joint Communiqué issued after the talks stated:

> Both delegations were of the view that it would be desirable to have a coordinated submission for an extended continental shelf in the Chagos Archipelago/British Indian Ocean Territory region to the UN Commission on the Limits of the Continental Shelf, in order not to prejudice the interest of Mauritius in that area and to facilitate its consideration by the Commission. It was agreed that a joint technical team would be set up with officials from both sides to look into possibilities and modalities of such a coordinated approach, with a view to informing the next round of talks.[399]

344. As recorded above (see paragraphs 146–147), the further rounds of talks envisaged at the second round in July 2009 never took place. Nor has the joint technical team been set up.

345. Mauritius' *Notification and Statement of Claim* referred to the issue of submissions to the CLCS only to the extent of stating that "[i]n 2009, Mauritius submitted to the United Nations Commission on the Limits of the Continental Shelf a preliminary claim to an extended

---

397 Information Paper by the Prime Minister of Mauritius, Second Meeting at Senior Officials' Level between Mauritius and UK on the Chagos Archipelago, CAB(2009) 624, 12 August 2009 (**Annex MR-144**).

398 Overseas Territories Directorate record of discussion in Port Louis on 21 July 2009 dated 24 July 2009 (**Annex UKCM-101**)(**Annex MR-143**).

399 Joint Communiqué, Second round of bilateral talks between Mauritius and the UK on the Chagos Archipelago, 21 July 2009, Port Louis, Mauritius (**Annex MM-148**)(**Annex MR-142**).

continental shelf in areas beyond 200 miles from the archipelagic baselines of the Chagos Islands."[400] In its *Memorial*, Mauritius referred to the preliminary information which it had submitted to the CLCS and the absence of protest by the United Kingdom and argued that "the absence of protest on the part of the UK appears to be a clear recognition that Mauritius has sovereign rights in relation to the continental shelf".[401] The United Kingdom responded, in its *Counter-Memorial*, by contending that this argument was unfounded insofar as everything had been done under the sovereignty umbrella agreed upon at the first round of talks and that the CLCS Rules of Procedure expressly dealt with submissions in respect of an extended continental shelf where there was a land or maritime dispute. The United Kingdom also highlighted the fact that Mauritius had stated in its submission of preliminary information that a dispute with the United Kingdom existed in respect of the Chagos Archipelago.[402]

346. In its *Reply*, Mauritius maintained that the fact that there had been no United Kingdom submission to the CLCS, together with the absence of protest by the United Kingdom regarding Mauritius' preliminary information, suggested an acknowledgment that Mauritius possessed rights in respect of the continental shelf around the Chagos Archipelago.[403] Mauritius contrasted the absence of protest by the United Kingdom in this case with its protest regarding the submission made by Argentina in respect of the Falkland Islands/Islas Malvinas.[404] The United Kingdom countered, in its *Rejoinder*, that Mauritius "cannot alter the status of the BIOT continental shelf by making its own submission to the CLCS with respect to BIOT".[405] It was in this context that the United Kingdom made the comment quoted in paragraph 331 above, which Mauritius claimed at the hearings gave rise to an additional dispute between the Parties.[406] Mauritius expressed its grave concern that what it considered to be a new position taken by the United Kingdom risked permanently precluding Mauritius from enjoying the benefits of an extended continental shelf.[407]

347. In response, the United Kingdom denied that there was any such dispute. It maintained that it had raised the argument set out in its *Rejoinder* (and the earlier argument in its *Counter-*

---

400 Mauritius' Notice of Arbitration, para. 3.

401 Mauritius' Memorial, para. 6.32.

402 The United Kingdom's Counter-Memorial, paras. 7.51-7.58.

403 Mauritius' Reply, para. 6.90.

404 Mauritius' Reply, para. 6.90 n. 684.

405 The United Kingdom's Rejoinder, para. 8.39.

406 Final Transcript, 33:18 to 40:7; 275:1 to 282:2.

407 Final Transcript, 921:15 to 922:16; 1075:15 to 1085:1 to 1090:10.

Memorial) merely in order to respond to the attempt by Mauritius to invoke the filing of preliminary information and the absence of a protest by the United Kingdom as support for its claim with regard to the issues raised in Mauritius' first two submissions.[408] The United Kingdom contended that it had offered at the two rounds of bilateral talks to make a joint submission under a sovereignty umbrella, in order to avoid any risk that Mauritius would be deprived of the chance to secure an extended continental shelf and that the United Kingdom itself had no intention of securing any benefit from the establishment of an extended continental shelf. Counsel for the United Kingdom told the Tribunal:

> Mauritius mischaracterises the statement in paragraph 8.39, ignoring both context and content. First, it is a single sentence forming part of a legal argument made by one party to another in the course of arbitral proceedings. As Mauritius rightly points out, the United Kingdom has not protested to the United Nations. Second, it was a statement that Mauritius itself had provoked, by its arguments in these arbitral proceedings. The UK was reacting, in the context of these legal proceedings, to Mauritius' argument that "[t]he absence of protest on the part of the UK appears to be a clear recognition that Mauritius has sovereign rights in relation to the continental shelf."
>
> On content, Mauritius places an absolute interpretation on the statement in the Rejoinder. It means, they say, that the submission of the *Preliminary Information* is a nullity; that the clock has not been stopped and cannot now be stopped. That is not the position. In any event, as the Agent said yesterday, we now hear that Mauritius may be in the position to make a full submission later this year. If so, we look forward to discussing with Mauritius how this might be taken forward. If a State puts in an objection to another State's submission to the CLCS, that is not the end of the matter. Objections can always be lifted. In fact, the practice in the CLCS suggests that an objection can be the start of a dialogue, part of an ongoing diplomatic process between the States concerned. Moreover, the CLCS's backlog is so great that many years are likely to elapse before the Commission would be ready to proceed to consider a new submission and the situation then might be very different. During that period it would be incumbent on the United Kingdom and Mauritius to discuss how to take the matter forward, as the Agent indicated yesterday.[409]

348. The Tribunal has reviewed this record in detail, because it considers that it was a necessary step in determining whether a separate dispute between the Parties has come into existence regarding the subject-matter of Mauritius' Third Submission. It is not suggested that there was a dispute between Mauritius and the United Kingdom regarding the question of submissions to the CLCS prior to the filing of the *Notification and Statement of Claim*. On the contrary, the record of the two rounds of bilateral talks confirms that no such dispute existed at that time. Rather, Mauritius maintains that such a dispute was created by the language used by the United Kingdom in its *Rejoinder* (in the passage quoted above). The Tribunal considers that that passage has to be seen in the light of the exchange of legal arguments between the Parties. The United Kingdom was responding to an argument by Mauritius regarding whether Mauritius was the (or, at least, a) coastal State in respect of the Chagos Archipelago. That argument was advanced in the context

408 Final Transcript 502:19 to 503:11.

409 Final Transcript 734:20-735:17.

of a dispute over which the Tribunal has already held that it lacks jurisdiction. The United Kingdom was not raising an objection before the CLCS. In the course of the hearings, the United Kingdom made clear that the offer of co-operation, under a sovereignty umbrella, regarding the full submission to the CLCS, which the United Kingdom had already extended at the July 2009 bilateral talks after Mauritius had filed preliminary information with the CLCS, was still open. The Tribunal considers, therefore, that there is no risk of Mauritius losing the possibility of seeking an extended continental shelf by reason of the expiry of the 13 May 2009 deadline.

349. In view of the willingness of the United Kingdom that the submission to the CLCS proceed under a sovereignty umbrella—a willingness which the United Kingdom expressed in both rounds of the bilateral talks and repeated in the course of the oral proceedings in the present case—and of Mauritius' acceptance of such an approach in the bilateral talks, the Tribunal considers that there is no dispute between the Parties regarding this issue.

350. Accordingly, the Tribunal considers that it is not required to rule on whether it has jurisdiction over Mauritius' third submission, nor upon the merits of that submission.

E. WHETHER THE PARTIES "EXCHANGED VIEWS" PURSUANT TO ARTICLE 283

351. The United Kingdom further objects to the jurisdiction of the Tribunal on the grounds that, prior to initiating this arbitration, Mauritius failed to engage in the exchange of views required by Article 283(1). In the United Kingdom's view, such an exchange is a precondition to jurisdiction under the Convention that was not met with respect to any of Mauritius' claims.[410]

352. Article 283 of the Convention provides as follows:

> *Article 283*
> *Obligation to exchange views*
>
> 1. When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties to the dispute shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.
>
> 2. The parties shall also proceed expeditiously to an exchange of views where a procedure for the settlement of such a dispute has been terminated without a settlement or where a settlement has been reached and the circumstances require consultation regarding the manner of implementing the settlement.

410 Final Transcript, 737:3-6.

353. Mauritius submits that the requirements of Article 283(1) are plainly met as it "repeatedly raised" the subject matter of all claims in these proceedings[411] "over several decades, in bilateral and multilateral contexts".[412] In any event, Mauritius emphasizes, the requirements of Article 283 are "not onerous", and a Party is not required to continue negotiations indefinitely.

354. As the Tribunal has already decided that it has jurisdiction only with respect to Mauritius' Fourth Submission, it will examine the application of Article 283 only with respect to that portion of the Parties' dispute.

1. The Parties' Arguments

(a) The Interpretation of Article 283

The United Kingdom's Position

355. According to the United Kingdom –

> Article 283, in practical terms, requires as a first step communication by one party, received by the other party which results in a shared understanding as to what the dispute or disputes are and likewise that they are under the 1982 Convention. This is implicit from the requirement that the parties exchange views over its peaceful settlement or negotiation: they must have a shared understanding about what they are talking about in order to exchange views on it.[413]

356. This requirement, the United Kingdom submits, is not part of customary international law,[414] but arose instead from the particular context of the negotiations at the Third UN Conference on the Law of the Sea. It was intended both to ensure that States would not be taken by surprise by the introduction of binding dispute settlement procedures, and "to allow a State to rectify any possible wrongdoing or violation of the [Convention] prior to the initiation of an interstate dispute."[415] While this requirement may be unusual, the United Kingdom considers it to have been an essential part of the overall bargain in the Convention, as "[t]he requirement for prior attempts to settle disputes without recourse to compulsory procedures was seen as a central element in the negotiations that led to the acceptance of Part XV by the Conference."[416] Compulsory jurisdiction under Article 286, the United Kingdom submits, is thus contingent

411 Mauritius' Reply, para. 4.3.

412 Final Transcript, 398:5-8.

413 The United Kingdom's Rejoinder, para. 6.10.

414 Final Transcript, 744:3-6.

415 Final Transcript, 745:19-20.

416 Final Transcript, 742:13-16.

upon compliance with the provisions for settlement through non-binding means, including Article 283.

357. Although the United Kingdom considers Article 283 to be distinct from compromissory clauses requiring prior attempts at negotiation,[417] it submits that international jurisprudence reinforces the importance of such conditions to jurisdiction. The United Kingdom notes, in particular, the ICJ's observation in *Georgia v. Russia* that such provisions are important to give notice to the Respondent, to encourage the parties to settle their dispute, and to limit the scope of States' consent to dispute settlement (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at p. 124, para. 131). The United Kingdom also recalls the ICJ's emphasis that "[w]hen that consent is expressed in a compromissory clause in an international agreement, any conditions to which such consent is subject must be regarded as constituting the limits thereon" (*Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2006*, p. 6 at p. 39, para. 88).

358. With respect to the specific steps required by Article 283, the United Kingdom submits that –

- There must be a "dispute" between the States Parties to the Convention;
- The dispute must concern "the interpretation or application of the Convention";
- And the parties to the dispute must have "proceeded expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means".[418]

359. While the United Kingdom does not consider that such exchanges must be lengthy, it does submit that the exchange must be sufficiently clear as to put the respondent on notice and to give it "the opportunity to redress the issues and to even modify its behaviour."[419] Moreover, "[s]ince the exchange of views must concern the modalities of settlement of disputes," the United Kingdom considers that the requirement cannot be met "without identifying the specific treaty and provisions concerned, since the range of settlement means available will depend upon the provisions at issue."[420]

---

417 Final Transcript, 739:14-19.

418 Final Transcript, 748:17-20.

419 Final Transcript, 1266:16.

420 Final Transcript, 739:15-19.

Mauritius' Position

360. Mauritius submits that –

> the requirements of Article 283 are not particularly onerous. They form a threshold jurisdictional requirement to ensure that parties are not taken by surprise by the initiation of proceedings, but they do not require lengthy exchanges, they do not require reference to specific treaties or provisions, and the State's judgment as to when to terminate exchanges will be accorded considerable respect. This is an area where the law is concerned with substance, not with form.[421]

361. According to Mauritius, each of these propositions is supported in prior international jurisprudence. First, *Mavrommatis Palestine Concessions* provides that "[n]egotiations do not of necessity always presuppose a more or less lengthy series of notes and dispatches; it may suffice that a discussion should have commenced, and this discussion may have been very short" (*Mavrommatis Palestine Concessions, Jurisdiction, Judgment of 30 August 1924, PCIJ Series A, No. 2*, p. 6 at p. 13). Second, *Guyana v. Suriname* (*Award of 17 September 2007, PCA Award Series*, 158-159, RIAA, Vol. XXX, p. 1 at p. 113-114, paras. 407-410) and *Land Reclamation by Singapore in and around the Straits of Johor* (*(Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10) (in the context of Article 283), and *Georgia v. Russia* (generally) stand for the proposition that "it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State"[422] (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at p. 84, para. 30). Finally, *Land Reclamation* and *Mavrommatis* both support the view that a State is "not obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted" (*Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at para. 47) and further that "States *themselves* are 'in the best position to judge as to political reasons which may prevent the settlement of a given dispute' [*Mavrommatis Palestine Concessions, Jurisdiction, Judgment of 30 August 1924, PCIJ Series A, No. 2*, p. 6 at p. 15]".[423]

362. According to Mauritius, the United Kingdom seeks to read into Article 283 requirements that are nowhere to be found in the accumulated case law. When it insists that an exchange of views must make specific reference to the Convention, Mauritius argues, the United Kingdom

---

421 Final Transcript, 402:1-6.

422 Final Transcript, 400:16-18.

423 Final Transcript, 401:15-20.

"ignore[s] the clear words of the International Court in *Georgia v. Russia*".[424] And in limiting what it considers to be relevant exchanges to a narrow window of time, Mauritius considers the United Kingdom to have adopted an overly formalistic approach and neglected to examine the record as a whole.[425]

363. In sum, Mauritius concludes, the jurisprudence on the application of Article 283 indicates that it imposes a hurdle of only "very modest height" that can be "stepped over lightly," "[s]o long as the applicant can produce some evidence of relevant exchanges."[426]

(b) The Application of Article 283 to Mauritius' Fourth Submission

The United Kingdom's Position

364. The United Kingdom submits that Mauritius has not met the requirements of Article 283 in respect of its Fourth Submission, relating to the compatibility of the MPA with the Convention and the alleged breach of undertakings made by the United Kingdom. According to the United Kingdom, "there is nowhere any Statement from Mauritius that challenges the legality of MPA on the basis of UNCLOS provisions x, y, and z, and then concludes with an invitation to discuss some form of exchange of views. And there is nothing in this record that could be treated as somehow of equivalent effect."[427]

365. Turning to the correspondence advanced by Mauritius, the United Kingdom considers that "all the documents that Mauritius relies on to establish the existence of a dispute and an exchange of views for the purposes of its breach of UNCLOS strand [of argument] concern fishing rights, which is also the principal element in [relation to the claimed breach of undertakings]."[428] With respect to correspondence prior to 2009, the United Kingdom argues that insofar as "these communications pre-date the MPA proposal, and even the ideas of Pew and the Chagos Conservation Trust for large-scale marine park in the BIOT, a dispute about the MPA proposal or the MPA could not have been raised."[429]

---

424 Final Transcript, 949:22-23.

425 Final Transcript, 950:8 to 951:2.

426 Final Transcript, 949:9-18.

427 Final Transcript, 771:20-23.

428 Final Transcript, 772:6-8.

429 The United Kingdom's Rejoinder, para. 6.35.

366. Moreover, according to the United Kingdom, whenever "Mauritius responded to the various restrictions on its ability to fish over the years, it did not object on the grounds that the UK was acting in breach of UNCLOS but cast its case in terms of its sovereignty claim, which . . . was not with reference to UNCLOS."[430] Reviewing Mauritius' correspondence piece by piece, the United Kingdom concludes that it "all com[es] down to the sovereignty issue"[431] and submits that "Mauritius is unable to point to any exchange of views in relation to a claim of alleged breaches of UNCLOS."[432]

Mauritius' Position

367. Mauritius divides the relevant correspondence between that pre-dating and that post-dating Mauritius learning of the MPA proposal in February 2009. Before February 2009, Mauritius argues, correspondence is relevant because it shows "Mauritius continuously asserting its rights over the Archipelago, including the fishing rights which would be brought to an end by the decision to impose a no-take MPA."[433] Mauritius recalls what it describes as a "huge number of occasions on which Mauritius asserted its specific rights in the Archipelago,"[434] including fishing rights, and concludes that "UK officials . . . were well aware of the fact that Mauritius had raised these specific rights".[435]

368. After February 2009, Mauritius points to a series of exchanges that it considers make clear its diplomatic protest against the infringement of its rights in the Chagos Archipelago. In particular, Mauritius recalls:

(a) The Joint Communiqué[436] of the July 2009 talks between the two governments, which according to Mauritius indicates that "the Mauritian delegation made it quite clear that the proposed MPA would have to accommodate its rights in the Chagos Archipelago";[437]

(b) Mauritius' Note Verbale of 23 November 2009, which provided as follows:

---

430 Final Transcript, 772:16-19.

431 Final Transcript, 779:23.

432 Final Transcript, 784:11-12.

433 Final Transcript, 406:7-9.

434 Final Transcript, 406:18-19.

435 Final Transcript, 408:1-2.

436 Joint Communiqué of Meeting on 21 July 2009 (**Annex UKCM-100**)

437 Final Transcript, 409:8-9.

> The Government of Mauritius considers that an MPA project in the Chagos Archipelago should not be incompatible with the sovereignty of the Republic of Mauritius over the Chagos Archipelago and should address the issues of resettlement, access to the fisheries resources, and the economic development of the islands in a manner which would not prejudice an eventual enjoyment of sovereignty. A total ban on fisheries exploitation and omission of those issues from any MPA project would not be compatible with the long-term resolution of, or progress in the talks, on the sovereignty issue.[438]

(c) A letter dated 30 December 2009 from the Mauritius Minister of Foreign Affairs, which provided as follows:

> Moreover, the issues of resettlement in the Chagos Archipelago, access to the fisheries resources and the economic development of the islands in a manner that would not prejudice the effective exercise by Mauritius of its sovereignty over the Chagos Archipelago are matters of high priority to the Government of Mauritius. The exclusion of such important issues in any discussion relating to the proposed establishment of a Marine Protected Area would not be compatible with resolution of the issue of sovereignty over the Chagos Archipelago and progress in the ongoing talks between Mauritius and the United Kingdom.[439]

(d) A letter dated 19 February 2010 from the Secretary to Cabinet and Head of the Civil Service, which provided as follows:

> I further wish to inform you that the Government of Mauritius insists that any proposal for the protection of the marine environment in the Chagos Archipelago area needs to be compatible with and meaningfully take on board the position of Mauritius on the sovereignty over the Chagos Archipelago and address the issues of resettlement and access by Mauritians to fisheries resources in that area.[440]

369. In sum, Mauritius concludes, it "made it clear that, in its view, [the MPA] would violate its substantive and procedural rights—rights which Mauritius had asserted for many years, of which the UK was fully aware, and which in many cases were self-evidently incompatible with a no-take MPA."[441]

(c) The Utility of Further Exchanges

370. In addition to disagreeing as to whether the requirements of Article 283 were met, the Parties differ as to whether it would have been futile to continue negotiations.

---

438 Note Verbale dated 23 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/10 (**Annex MM-155**).

439 Letter dated 30 December 2009 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-157**).

440 Letter dated 19 February 2010 from the Secretary to Cabinet and Head of the Civil Service, Mauritius to the British High Commissioner, Port Louis (**Annex MM-162**).

441 Final Transcript, 415:14-17.

The United Kingdom's Position

371. The United Kingdom dismisses Mauritius' arguments about the supposed futility of further talks as "pure assertion."[442] On the contrary, the United Kingdom submits, "Mauritius, according to its own pleadings, had not even sought to communicate with the United Kingdom about the MPA for over eight months between 2 April 2010 and 20 December 2010 when it submitted its Notification and Statement of Claim."[443]

372. To the extent that Mauritius alleges that further exchanges were futile on the basis of the United Kingdom's failure to honour a purported undertaking by then British Prime Minister Gordon Brown to suspend the Public Consultation, the United Kingdom denies that any undertaking was made. In any event, however, the United Kingdom denies that "a failure to withdraw the public consultation could possibly make it 'clear' that any further exchanges in relation to the dispute notified in Mauritius' application would be 'futile and without purpose'."[444]

373. According to the United Kingdom, it –

> does not dispute the well-established principle that a party is not obliged to continue with an exchange of views when the possibilities of settlement have been exhausted. Its contention is that Mauritius cannot even establish that it raised the UNCLOS claims which it now raises, let alone that an exchange of views had taken place and that the possibilities of a settlement had been exhausted.[445]

Mauritius' Position

374. Mauritius maintains that the British Prime Minister Gordon Brown made a commitment, in November 2009, to put the MPA on hold that was "expressed in the clearest possible terms."[446] Notwithstanding this commitment the United Kingdom declared the MPA on 1 April 2010.

375. Mauritius identifies communications between April and November 2010[447] by which it conveyed "strong opposition" to the MPA[448] and raised the inadequacy of the United

---

442 The United Kingdom's Counter-Memorial, para. 5.46.

443 The United Kingdom's Counter-Memorial, para. 5.46.

444 The United Kingdom's Counter-Memorial, para. 5.48.

445 The United Kingdom's Counter-Memorial, para. 5.50.

446 Mauritius' Reply, paras. 4.46-4.47.

447 Mauritius' Reply, paras. 4.57-4.61.

448 Mauritius' Reply, para. 4.57.

Kingdom's consultation process[449] and the failure of the United Kingdom to honour the assurance by former Prime Minister Gordon Brown.[450]

376. In Mauritius' view, the "violation of the commitment given at the highest level" made it plain that "no diplomatic solution was possible" and accordingly, continuing exchanges on the issue would have been futile.[451] Moreover, Mauritius submits that it was entirely reasonable to consider that further exchanges after initiation of these proceedings would have been futile in view of the circumstances.[452]

2. The Tribunal's Decision

377. As set out above, the Parties disagree both as to the interpretation of Article 283 and as to its application to Mauritius' Fourth Submission. Mauritius' account of its compliance with Article 283 ranges widely through the history of the Parties' diplomatic exchanges regarding the proposed MPA. The United Kingdom, in contrast, points to the absence of a specific communication setting out a particular dispute by reference to the Convention and either proposing an approach for its resolution, or inviting an exchange of views.

378. In the Tribunal's view, much of the argument on this issue has tended to confuse two related, but distinct concepts. Article 283 requires the Parties to "proceed expeditiously to an exchange of views regarding [the] settlement [of the dispute] by negotiation or other peaceful means." Article 283 thus requires the Parties to exchange views regarding the means for resolving their dispute; it does not require the Parties to in fact engage in negotiations or other forms of peaceful dispute resolution. As a matter of textual construction, the Tribunal considers that Article 283 cannot be understood as an obligation to negotiate the substance of the dispute. Read in that manner, Article 283(1) would, redundantly, require that parties "negotiate regarding the settlement of the dispute by negotiation". The Tribunal also notes that Article 283(2) requires a further exchange of views upon the failure of a dispute settlement procedure. If an exchange of views were taken to involve substantive negotiations, this would literally require that, upon the failure of negotiations, the parties must engage in negotiations: such a construction cannot be correct. Finally, the drafters of this provision saw fit to include an exhortation that the parties proceed "expeditiously" to an exchange of views. Given the clear

449 Mauritius' Reply, para. 4.59.

450 Mauritius' Reply, para. 4.61.

451 Mauritius' Reply, para. 4.63.

452 Final Transcript, 951:21 to 952:3.

and understandable preference among the participants at the Third UN Conference on the Law of the Sea that disputes be resolved by negotiation whenever possible, the Tribunal cannot accept that the final text could have included a provision that would have the effect of rushing, or potentially imposing a time limit on, substantive negotiations. Article 283 is thus a provision particular to the Convention and distinct from a requirement that parties engage in negotiations prior to resorting to arbitration.

379. The Convention includes no express requirement that parties engage in negotiations on the substance of a dispute before resorting to compulsory settlement. To the extent that such a requirement could be considered to be implied from the structure of sections 1 and 2 of Part XV, the Tribunal has no hesitation in concluding that Mauritius has met such a requirement. The Parties discussed the proposed MPA during the bilateral talks in July 2009, in diplomatic correspondence, at CHOGM, and in a number of conversations between Prime Minister Ramgoolam and Foreign Minister Boolell and the British High Commissioner in Mauritius, Mr John Murton. With respect to any obligation to carry out substantive negotiations, the Tribunal considers it to be settled international law that "it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to enable it later to invoke that instrument," but that "the exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter" (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation) Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at p. 85, para. 30; *see also Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392 at pp. 428-429, para. 83). Moreover, States themselves are in the best position to determine where substantive negotiations can productively be continued, and "if finally a point is reached at which one of the Parties definitely declares himself unable, or refuses, to give way, and there can therefore be no doubt that *the dispute cannot be settled by diplomatic negotiation*" (*Mavrommatis Palestine Concessions, Jurisdiction, Judgment of 30 August 1924, PCIJ Series A, No. 2*, p. 6 at p. 13, 15). As set out in the factual record, Mauritius engaged in negotiations with the United Kingdom regarding the steps that would be taken before an MPA might be declared (see paragraphs 128–147 above). Mauritius' decision that substantive negotiations could not continue in parallel with the United Kingdom's Public Consultation, or that negotiations did not warrant pursuing after the MPA was declared on 1 April 2010, did not violate any duty to negotiate in respect of the Parties' dispute.

380. Article 283, however, concerns an exchange of views on the means to settle the dispute, whether by negotiation or other peaceful means. In the Tribunal's view, the most unequivocal example of compliance with this provision is that offered by Australia and New Zealand in the *Southern Bluefin Tuna* arbitration. In identical Notes Verbales dated 15 September 1999, Australia and New Zealand each set out a history of diplomatic communications recording the termination of negotiations, the possible submission of the dispute to mediation, Japan's preference for arbitration under the 1993 Convention for the Conservation of Southern Bluefin Tuna, and Australia and New Zealand's rejection of this option and intent to submit that dispute to arbitration under the Convention (*Southern Bluefin Tuna (New Zealand v. Japan)*, Request for the Prescription of Provisional Measures Submitted by New Zealand at Annex 1, New Zealand's Diplomatic Note 701/14/7/10/3 to Japan dated 15 July 1999, *reproduced in* International Tribunal for the Law of the Sea, *Pleadings, Minutes of Public Sittings and Documents, Vol. 4 (1999)* at p. 14; *Southern Bluefin Tuna (Australia v. Japan)*, Request for the Prescription of Provisional Measures Submitted by Australia at Annex 1, Australia's Diplomatic Note No. LGB 99/258 to Japan dated 15 July 1999, *reproduced in* International Tribunal for the Law of the Sea, *Pleadings, Minutes of Public Sittings and Documents, Vol. 4 (1999)* at p. 82). The United Kingdom points to the absence of a similar record of views exchanged in these proceedings and would have the Tribunal deny jurisdiction on those grounds.

381. The Tribunal, however, is sensitive to the concern expressed by the tribunal in *Barbados/Trinidad and Tobago* that an overly formalistic application of Article 283 does not accord with how diplomatic negotiations are actually carried out (*Award of 11 April 2006, PCA Award Series*, pp. 94-96, RIAA, Vol. XXVII, p. 147 at pp. 206-207, paras. 201-205). In practice, substantive negotiations concerning the parties' dispute are not neatly separated from exchanges of views on the preferred means of settling a dispute, and the idealized form exhibited in *Southern Bluefin Tuna* will rarely occur. Accordingly, it is unsurprising that in the jurisprudence on Article 283 it is frequently not clear as to whether the communications that were considered sufficient for the purposes of Article 283 were substantive or procedural in nature.

382. Nevertheless, Article 283 forms part of the Convention and was intended to ensure that a State would not be taken entirely by surprise by the initiation of compulsory proceedings. It should be applied as such, but without an undue formalism as to the manner and precision with which views were exchanged and understood. In the Tribunal's view, Article 283 requires that a dispute have arisen with sufficient clarity that the Parties were aware of the issues in respect of which they disagreed. In the present case, the Tribunal considers that a dispute regarding the

manner in which the United Kingdom was proceeding with the proposed MPA had arisen at least as of Mauritius' Note Verbale of 23 November 2009. In that communication, Mauritius set out its concern regarding the impact of the MPA on issues of sovereignty, resettlement, and fisheries. Mauritius also stated its view that these issues should be addressed in the bilateral framework between the two governments and that this should be done before the United Kingdom undertook to consult with the public:

> [. . .]
>
> Furthermore, the Ministry of Foreign Affairs, Regional Integration and International Trade would like to state that since there is an on-going bilateral Mauritius-UK mechanism for talks and consultations on issues relating to the Chagos Archipelago and a third round of talks is envisaged early next year, the Government of the Republic of Mauritius believes that it is inappropriate for the consultation on the proposed marine protected area, as far as Mauritius is concerned, to take place outside this bilateral framework.
>
> The Government of Mauritius considers that an MPA project in the Chagos Archipelago should not be incompatible with the sovereignty of the Republic of Mauritius over the Chagos Archipelago and should address the issues of resettlement, access to the fisheries resources, and the economic development of the islands in a manner which would not prejudice an eventual enjoyment of sovereignty. A total ban on fisheries exploitation and omission of those issues from any MPA project would not be compatible with the long-term resolution of, or progress in the talks, on the sovereignty issue.
>
> The stand of the Government of Mauritius is that the existing framework for talks on the Chagos Archipelago and the related environmental issues should not be overtaken or bypassed by the consultation launched by the British Government on the proposed MPA.[453]

383. Once a dispute has arisen, Article 283 then requires that the Parties engage in some exchange of views regarding the means to settle the dispute. As is apparent from Foreign Secretary David Miliband's letter of 15 December 2009, the United Kingdom considered it appropriate to continue with a third round of bilateral talks in parallel with the Public Consultation:

> [. . .]
>
> At our meeting, you mentioned your concerns that the UK should have consulted Mauritius further before launching the consultation exercise. I regret any difficulty this has caused you or your Prime Minister in Port Louis. I hope you will recognize that we have been open about the plans and that the offer of further talks has been on the table since July.
>
> I would like to reassure you again that the public consultation does not in any way prejudice or cut across our bilateral intergovernmental dialogue with Mauritius on the proposed Marine Protected Area. The purpose of the public consultation is to seek the views of the wider interested community, including scientists, NGOs, those with commercial interests and other stakeholders such as the Chagossians. The consultations and our plans for an MPA do not in any way impact on our commitment to cede the territory when it is no longer needed for defence purposes.

---

453 Note Verbale dated 23 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/10 (**Annex MM-155**).

> Our ongoing bilateral talks are an excellent forum for your Government to express its views on the MPA. We welcome the prospect of further discussion in the context of these talks, the next round of which now look likely to happen in January.
>
> As well as the MPA there are, of course, many other issues for bilateral discussion. My officials remain ready to continue the talks and I hope that Mauritius will take up the opportunity to pursue this bilateral dialogue.
>
> [. . .][454]

384. Mauritius, in contrast, considered that the dispute should be resolved through bilateral talks, but that pending such talks the United Kingdom's Public Consultation should be put on hold. This is apparent from Mauritius' account of the conversation at CHOGM (see paragraphs 135–138 above) and, in any event, from Foreign Minister Arvin Boolell's letter of 30 December 2009:

> During our recent meeting in the margins of the Commonwealth Heads of Government Meeting, I had expressed the concerns of the Government of Mauritius about the Marine Protected Area project. I had stated that it was inappropriate for the British authorities to embark on consultations on the matter outside the bilateral Mauritius-United Kingdom mechanism for talks on issues relating to the Chagos Archipelago.
>
> [. . .]
>
> In these circumstances, as I have mentioned, Mauritius is not in a position to hold separate consultations with the team of experts of the UK on the proposal to establish a Marine Protected Area.
>
> You will no doubt be aware that, in the margins of the last CHOGM, our respective Prime Ministers agreed that the Marine Protected Area project be put on hold and that this issue be addressed during the next round of Mauritius-United Kingdom bilateral talks.[455]

385. Although this correspondence also dealt with substantive matters (as would be expected), the Parties' views on the settlement of the dispute by negotiation were clearly exchanged in December 2009. This is all that Article 283 requires. It is not necessary for the Parties to comprehensively canvas the means for the peaceful settlement of disputes set out in either the UN Charter or the Convention, nor was Mauritius "obliged to continue with an exchange of views when it concludes that the possibilities of reaching agreement have been exhausted" (*Land Reclamation in and around the Straits of Johor (Malaysia v. Singapore), Provisional Measures, Order of 8 October 2003, ITLOS Reports 2003*, p. 10 at para. 47). Nor, importantly, does Article 283 require that the exchange of views include the possibility of compulsory settlement or that—before resorting to compulsory settlement—one party caution the other regarding the possibility of litigation or set out the specific claims that it might choose to

---

454 Letter dated 15 December 2009 from the UK Secretary of State for Foreign and Commonwealth Affairs to the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius (**Annex MM-156**).

455 Letter dated 30 December 2009 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs (**Annex MM-157**).

advance. In the present case, both Parties preferred to address their dispute through negotiations, albeit subject to incompatible conditions that ultimately prevented further talks from taking place. The exchange of views took place on this basis. Thereafter, Mauritius determined that the possibility of reaching agreement on the conditions for further negotiations had been exhausted and elected to proceed with compulsory settlement through arbitration. Nothing further was called for.

386. Accordingly, the Tribunal concludes that Mauritius has met the requirement of Article 283 to exchange views regarding the settlement, by negotiation or other peaceful means, of the dispute underpinning Mauritius' Fourth Submission.

* * *

CHAPTER VI - MERITS

387. As set out in the preceding Chapter, the Tribunal has found that it has jurisdiction with respect to Mauritius' Fourth Submission, requesting the Tribunal to adjudge and declare that –

> (4) The United Kingdom's purported "MPA" is incompatible with the substantive and procedural obligations of the United Kingdom under the Convention, including *inter alia* Articles 2, 55, 56, 63, 64, 194 and 300, as well as Article 7 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995.

388. Among the provisions of the Convention invoked by Mauritius in this submission, the Tribunal has held (see paragraph 323 above) that it has jurisdiction with respect to:

(a) Article 2(3) insofar as it relates to Mauritius' fishing rights in the territorial sea or to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;

(b) Article 56(2), insofar as it relates to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;

(c) Article 194; and

(d) Article 300, insofar as it relates to the abuse of rights in connection with a violation of one of the foregoing articles.

389. The Tribunal will now proceed to consider the merits of the claims Mauritius has advanced pursuant to these provisions. The Tribunal will first address the content of Mauritius' rights, both pursuant to the Convention and otherwise, in the territorial sea, exclusive economic zone, and continental shelf areas affected by the MPA. The Tribunal will then address whether the United Kingdom's declaration of the MPA was in breach of its obligations under the aforementioned provisions of the Convention.

A. MAURITIUS' RIGHTS IN THE TERRITORIAL SEA, EXCLUSIVE ECONOMIC ZONE, AND CONTINENTAL SHELF

1. The Parties' Arguments

390. The Tribunal has set out the Lancaster House Undertakings made by the United Kingdom to Mauritius on 23 September 1965 (see paragraphs 74–79 above).

391. Mauritius contends that these undertakings were binding legal commitments and give Mauritius rights as a matter of international law, including fishing rights in the waters of the Chagos Archipelago, mineral and oil rights in the seabed and subsoil, and a right to the return of the Chagos Archipelago to Mauritius when it is no longer needed for defence purposes. The United Kingdom, in contrast, categorically denies that the undertakings could have been legally binding as a matter of British constitutional law and argues that the scope of any such rights would, in any event, be limited.

392. Separately, Mauritius also claims traditional fishing rights in the waters of the Chagos Archipelago. The United Kingdom does not accept that Mauritius has made out a case for the existence of such rights.

(a) The Nature of the United Kingdom's Undertakings and the Existence of a Binding Agreement

Mauritius' Position

393. Mauritius' primary position in these proceedings is that no valid agreement was reached in 1965 at Lancaster House or in the subsequent approval of the detachment of the Chagos Archipelago by the Mauritius Council of Ministers. According to Mauritius, the United Kingdom was in violation of its obligations with respect to self-determination, the linkage between detachment and independence imposed by the United Kingdom put the Mauritius Council of Ministers under duress, and any purported consent "was not given in accordance with the applicable standards for the treatment of a colonizer towards an independence movement."[456]

394. Nevertheless, Mauritius argues, even though there was no valid agreement, "the U.K.'s undertakings to Mauritius, all of which were repeated and expressly renewed by successive British governments over the next four and a half decades after Mauritius became an independent State, still constitute binding legal obligations."[457] According to Mauritius, the binding nature of the undertakings stems not from Mauritius' agreement to detachment, but from the fact that the United Kingdom retained the Archipelago after making them:

> The United Kingdom, on independence, not after independence—on independence—retained the Archipelago. It therefore affirmed the conditions on which it had come to receive the Archipelago, even if the consent given was vitiated.
>
> [. . .]

---

456 Final Transcript, 977:17-19; s*ee generally*, Final Transcript, 231:22 to 255:5; 953:13 to 985:5.

457 Final Transcript, 260:7-9.

> [The 1965 agreement] was not a treaty, nor was it intended as a binding arrangement under British law [. . .]. It was an arrangement made in the context of negotiations for independence which take some time between persons who knew what they were doing in virtue of independence.
>
> [. . .]
>
> At the very second of independence, when the excision was affirmed by the continued presence of the United Kingdom in the Archipelago, the United Kingdom disabled itself from denying the conditions attached to its presence. [. . .] [T]his is a situation in which the colonial authority exercising its power assumed a responsibility which it affirms not after independence, but on independence, the very second of independence, because otherwise it would have to hand the territory back. [. . .] [I]n the circumstances, the United Kingdom is bound by the obligations it assumed while it holds on to the territory [. . .]. [458]

395. In the alternative, Mauritius submits that if "there was a lawful agreement on detachment of the Archipelago, then the consideration for Mauritius' consent must include the undertakings that the United Kingdom expressly gave in exchange for it. They would then be legally binding terms of a lawful agreement under international law."[459]

396. Under either view, Mauritius argues that the applicable test is whether the United Kingdom intended to be bound by the undertakings.[460] In this respect, Mauritius maintains that the contemporaneous documentary evidence –

> shows that, at all times, the United Kingdom intended and considered the undertakings to be legally binding, establishing legal obligations for the U.K. and legal rights for Mauritius. This is reflected in the language and circumstances of the exchanges made at Lancaster House in September 1965 and subsequently, and in the consistent pattern of statements and actions by responsible U.K. representatives and officials, including its Legal Advisers.[461]

Moreover, the specific undertakings were part of the *quid pro quo* or "package of inducements" given in exchange for what the United Kingdom regarded as Mauritius' consent to the detachment of the Chagos Archipelago.[462] In assessing the United Kingdom's understanding of the undertakings, Mauritius argues that the consistent internal opinions held by the United Kingdom's own Legal Advisers "carry special weight" in assessing the United Kingdom's intent.[463] According to Mauritius, there is no evidence that the United Kingdom's Legal Advisers ever held a contrary view prior to April 2010.[464]

---

458 Final Transcript, 981:12-14; 982:10 to 983:4.

459 Final Transcript, 259:24 to 260:2.

460 Final Transcript, 260:9-11.

461 Final Transcript, 258:9-13.

462 Final Transcript, 258:16 to 259:2; 977:14-17.

463 Final Transcript, 260:15-17 to 262:6, *citing* Minute dated 26 February 1971 from A.I. Aust to Mr D. Scott, "BIOT Resettlement: Negotiations with the Mauritius Government" (**Annex MR-73**); Minute dated 1 July 1977 from [name redacted], Legal Advisers to Mr [name redacted], East African Department, UK Foreign and Commonwealth Office, "BIOT: Fishing Rights" (**Annex MR-79**); Minute

397. In any case, Mauritius submits that the subsequent practice of the United Kingdom, in repeatedly renewing and reconfirming all of the undertakings after Mauritius' independence and until the declaration of the MPA, confirmed the United Kingdom's understanding of the undertakings and is itself an independent source of obligation binding on the United Kingdom.[465] According to Mauritius, the United Kingdom, "having on many occasions stated that the undertaking is binding, is now estopped from claiming otherwise in these proceedings."[466] Mauritius goes on to recall the *Argentina-Chile Frontier Case* (*(Argentina v Chile), Award of 9 December 1966*, R.I.A.A. Vol. XVI, p. 109, at p. 164 (1969)) and submits that –

> "there is in international law a principle, which is moreover a principle of substantive law and not just a technical rule of evidence, according to which, 'a State party to an international litigation is bound by its previous acts or attitude when they are in contradiction with its claims in the litigation.'" Accordingly, "inconsistency between claims or allegations put forward by a State, and its previous conduct in connection therewith, is not admissible (*allegans contraria non audiendus est*)."[467]

In the alternative, Mauritius considers that the reaffirmation of the undertakings would "represent the repetition of undertakings under international law which are binding [on the United Kingdom] on the *Nuclear Tests* principle", pursuant to which unilateral declarations may be endowed with binding effect.[468]

398. Finally, Mauritius argues, the legally binding character of the United Kingdom's undertaking with respect to fishing rights is undiminished by the inclusion in the undertaking of words to the effect that the United Kingdom would "use its good offices" to secure fishing rights.[469] According to Mauritius, what the undertaking with respect to fishing rights entailed was –

> a commitment to obtain for Mauritius the broadest possible fishing rights first by making best efforts to get the U.S. to consent to them and then, if successful, to establish and preserve them in the exercise of the U.K.'s own power, and that is exactly how the U.K. interpreted and understood its obligation as the contemporaneous documents show.[470]

---

dated 13 October 1981 from A.D. Watts to [name redacted], "Extension of the Territorial Sea: BIOT" (**Annex MR-83**); Note dated 2 July 2004 by Henry Steel, "Fishing by Mauritian Vessels in BIOT Waters" (**Annex MR-109**); E-mail dated 9 July 2009 from Development Director of MRAG to Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office, and "MRAG Comments on the proposal to designate the BIOT FCMZ as a marine reserve" (**Annex MR-137**).

464 Final Transcript, 262:7-10.

465 Final Transcript, 260:5-9.

466 Mauritius' Reply, para. 6.53.

467 Final Transcript, 262:13-18.

468 Final Transcript, 254:3-6.

469 Final Transcript, 266:22 to 271:19.

470 Final Transcript, 269:5-9.

In practice, which was "consistent and uninterrupted . . . over 45 years", Mauritius argues that this undertaking "came to be understood by both parties as the right to fish in all the BIOT waters, out to 200 miles . . . subject to licences issued freely by the BIOT administration to Mauritian-flagged vessels without charge."[471]

The United Kingdom's Position

399. In the course of these proceedings, the Agent for the United Kingdom set out his government's view of what it refers to as the "1965 understandings" in the following terms:

> We consider all of the understandings reached in 1965 to be important political commitments on both sides, typical of the friendship our two countries shared at the time they were given.
>
> As to the question whether the UK could cede BIOT to a third State, our long-standing position is that the United Kingdom does not recognise the claim by Mauritius to sovereignty over the British Indian Ocean Territory. But, the United Kingdom has previously recognised Mauritius as the only State which has a right to assert a claim of sovereignty when the United Kingdom relinquishes its own sovereignty, and successive Governments have given political undertakings to the Government of Mauritius that the territory will be ceded when it is no longer required for defence purposes.[472]

400. The United Kingdom submits that "in assessing the status of the 1965 understandings, one needs to look not to international law, but to British law, including British constitutional law. And it is clear that under British law the understandings were not legally binding or otherwise intended to have legal effect."[473] In this respect, the United Kingdom submits[474] that –

> It is not possible for overseas territories to conclude an agreement binding under international law with another overseas territory or for one or more overseas territories to conclude such an agreement with the United Kingdom. This is because internationally the Territories are not legal entities separate from each other or from the United Kingdom.[475]

Accordingly, the United Kingdom argues, "arrangements of this sort between, to put it at its most formal, the Crown in right of the United Kingdom and the Crown in right of the Colony of Mauritius, could not be legally binding. They were at most political understandings, not enforceable in the courts."[476]

---

471 Final Transcript, 1051:10-15.

472 Final Transcript, 1163:4-13.

473 Final Transcript, 847:7-10.

474 Final Transcript, 846:18-24.

475 *Ibid*., *citing* I. Hendry & S. Dickson, *British Overseas Territories Law* at 261 (2011).

476 Final Transcript, 847:12-15.

401. In the United Kingdom's view, in the absence of a legally binding agreement at the time the Archipelago was detached, Mauritius' case depends upon establishing that the United Kingdom undertook a binding unilateral commitment. The United Kingdom considers the relevant standard to have been set out in the *Nuclear Tests* proceedings (*(Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 253; *(New Zealand* v. *France), Judgment, I.C.J. Reports 1974*, p. 457) and contends that Mauritius must "mak[e] out a case under *Nuclear Tests*, and . . . as part of requiring that there be an intention to be bound, it has to show clarity as to what the undertaking, the alleged undertaking, actually provides for."[477]

402. With respect to binding intent, the United Kingdom submits that "there never was any intention on the part of the United Kingdom to be bound by reference to what was and always has been a non-binding understanding on fishing rights."[478] According to the United Kingdom, the official record of the meeting of 23 September 1965 "contains a series of understandings, not legally binding obligations".[479] With respect to the matter of "fishing rights", the United Kingdom notes that this reference is preceded by the commitment to "use 'good offices'" with an object "to ensure that the . . . facilities would remain available";[480] and the qualifier "as far as practicable".[481]

403. Essentially, the United Kingdom argues, Mauritius "sought preference with respect to fishing rights to the extent such were granted, and that grant would be pursuant to domestic, not international, law".[482] Moreover, the qualifying words meant there was "no absolute obligation" but what was practicable;[483] and "fishing rights", properly construed, is not an unqualified or unambiguous term.[484]

404. With regard to the position after independence, the United Kingdom maintains that –

> any renewal of the 1965 statements post-independence would bring one back to the agreed record, as to which the criteria established in the ICJ jurisprudence and reflected in the

---

477 Final Transcript, 834:14-16.

478 Final Transcript, 828:15-17.

479 Final Transcript, 828:21-22.

480 Final Transcript, 842:8-9.

481 Final Transcript, 843:3-15.

482 Final Transcript, 842:22-24.

483 Final Transcript, 843:4-7.

484 Final Transcript, 843:16-20.

> 2006 ILC Guiding Principles would not be met, not least because there was never any intention to be bound.[485]

405. The United Kingdom does not accept that any transposition of the understandings to the international plane changes their status as "nonbinding understandings, commitments . . . but political commitments by each side,"[486] and further argues that its own internal comments on the status of these commitments have limited legal significance,[487] on which the Tribunal should be "very wary of placing weight."[488]

406. In the alternative, even accepting the existence of a binding unilateral undertaking on fishing rights, the United Kingdom contends that it is entitled to revoke this undertaking. The United Kingdom relies upon the International Law Commission (the "**ILC**")'s *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations*[489] (the "**ILC Guiding Principles**") for the proposition that international law prohibits only the arbitrary revocation of a unilateral undertaking.[490] In the present circumstances, the United Kingdom submits that revocation would not have been an arbitrary step.[491]

(b) The Scope of Mauritius' Fishing Rights

407. The Parties do not differ with respect to the content of any Mauritian rights to the return of the Chagos Archipelago when it is no longer needed for defence purposes[492] or to the benefit of minerals and oil in its surrounding waters.[493] With respect to fishing rights, however, the Parties part company. The Parties agree that the insertion of the reference to "fishing rights" into the official record at the behest of Sir Seewoosagur Ramgoolam was not a correction of a deficient minute, but a renegotiation of the package.[494] The Parties also agree that the content of this

---

485 Final Transcript, 852:23 to 853:1.

486 Final Transcript, 1253:3-16.

487 Final Transcript, 858:4-6.

488 Final Transcript, 860:4-7.

489 Report of the International Law Commission, Fifty-eighth session, (1 May-9 June and 3 July-11 August 2006), G.A.O.R. Sixty-first session, Supplement No. 10, UN Doc. A/61/10 at p. 366.

490 Final Transcript, 860:11-15.

491 Final Transcript, 860:16-24.

492 Final Transcript, 1047:11-15.

493 Even though Mauritius accepts that "[a]t one time, until 1973, there were two different interpretations of this undertaking," it appears to have subsequently accepted the United Kingdom's position that the benefits from any prospecting activities reverted to Mauritius even though the United Kingdom retained a broad discretion with respect to such prospecting activities: Final Transcript, 1047:16 to 1049:21.

494 Final Transcript, 840:4-9; 1037:9-23; 1286:18-1287:2.

undertaking was not specifically elaborated in the official record of the Lancaster House Meeting.[495] Where they disagree is on the meaning the Tribunal should accord to the reference to "fishing rights" in the United Kingdom's undertaking.

Mauritius' Position

408. Mauritius maintains that the undertaking given with respect to fishing rights was broad and –

> translated into Mauritius' right to have its vessels fish anywhere in the Chagos waters except in the immediate vicinity of Diego Garcia Island, and for any species, subject only to the requirement that they obtain fishing licences, which were issued freely and without charge.[496]

This right stems from the Lancaster House Undertakings, but its content is informed by the Parties' subsequent practice in applying the fishing rights undertaking. Ultimately, Mauritius argues, this right to fish extended to 200 nautical miles, and is "reflected in the contemporaneous documentation, via consistent and uninterrupted subsequent practice over 45 years".[497]

409. According to Mauritius, there is no basis to limit its fishing rights to "preferential treatment" or to link them to the rights of other States.[498] The only reference to "preferential treatment" with respect to fishing rights occurred early in the documentary record at a time when the Mauritian Ministers were still insisting on a long-term lease. As the Lancaster House Undertakings were ultimately developed, however, the discussion shifted to one of fishing "rights".[499] Nor, in Mauritius' view, is the content of the undertaking significantly limited by the reference to the use of "good offices" with the United States. Mauritius explains this issue as follows:

> The entire purpose of detaching the Archipelago was to secure it for the establishment of the U.S. military base. The U.S. might have been concerned that expansive fishing rights for Mauritius or anyone else, for that matter, especially in close proximity to the islands, might compromise the security of the base. The U.K. [. . .] could not ensure Mauritius' fishing rights without first obtaining the consent of the United States. Hence, the undertaking was to use "good offices" with the Americans to ensure fishing rights for Mauritius "as far as practicable." [. . .] The U.K.'s good offices were successful. The Americans agreed to the very broad array of fishing rights to Mauritius that the U.K. proposed [. . .]. After obtaining American consent, the U.K. then took steps directly to

495 Final Transcript, 1051:7-10.

496 Final Transcript, 167:11-13.

497 Final Transcript, 1051:10-12.

498 Final Transcript, 1056:12-15.

499 Final Transcript, 168:11-24.

> ensure all of these fishing rights for Mauritius exercising its powers as administrator of the "BIOT."[500]

Nevertheless, Mauritius argues, the inclusion of this condition does not give the United Kingdom the power to itself constrain Mauritian fishing rights. According to Mauritius,

> It would make absolutely no sense, [. . .] to interpret the 1965 undertaking so as to obligate the U.K. to endeavor to obtain U.S. consent to Mauritian fishing rights as far as practicable but then after this consent was obtained, to allow the U.K. to unilaterally choose not to give effect to those rights or to give effect to them briefly and then immediately abolish them. That surely would have been bad faith, and that surely was not what the U.K. intended when it gave Mauritius its undertaking in regard to ensuring fishing rights as far as practicable.[501]

410. Finally, Mauritius submits that its fishing rights were consistently exercised by Mauritian flagged vessels until the declaration of the MPA and were a matter of great importance.[502] Mauritius also notes that the United Kingdom continued to grant fishing licences to Mauritius even when no other State was permitted to fish.[503]

The United Kingdom's Position

411. According to the United Kingdom, it is clear that the meaning of "fishing rights" in the official record of the Lancaster House Meeting was "preferential fishing rights if granted".[504] In the United Kingdom's view, the phrase is to be understood in the context of the limited fishing practices of the inhabitants of the Chagos Archipelago in 1965.[505]

412. The undertaking was not, the United Kingdom submits, "a perpetual and absolute right to all such fishing rights as could be granted as a matter of international law as it developed".[506] Instead, the United Kingdom argues, "the 1965 statement on fishing rights is hedged about with soft language and qualifications, with fishing rights being described as a form of 'facility.'"[507]

---

500 Final Transcript, 267:21 to 268:21.

501 Final Transcript, 268:23 to 269:4.

502 Final Transcript, 169:5 to 170:5, *citing* Letter dated 13 December 2007 from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (**Annex MM-135**) and Letter dated 1 December 2005 from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom (**Annex MM-132**).

503 Final Transcript, 168:4-10.

504 Final Transcript, 595:18-20; 853:15-17.

505 Final Transcript, 834:4-12.

506 Final Transcript, 853:12-14.

507 Final Transcript, 853:8-9.

Moreover, any subsequent attempt by Mauritius to advance an expansive interpretation of the commitment was consistently rejected by the United Kingdom.[508]

413. The United Kingdom also regards Mauritius' lack of objection when measures impacting fishing in BIOT waters were introduced and duly notified by the United Kingdom as inconsistent with the extensive rights Mauritius now claims.[509] As a matter of fact, the United Kingdom argues that Mauritians have demonstrated "minimal interest" in the exploitation of Mauritius' fishing rights.[510]

(c) Mauritius' Traditional Fishing Rights in the Territorial Sea surrounding the Chagos Archipelago

Mauritius' Position

414. Mauritius submits that it possesses traditional fishing rights in the territorial sea[511] and the exclusive economic zone[512] surrounding the Chagos Archipelago. According to Mauritius, "even if the Chagos Archipelago was lawfully detached from Mauritius . . . , the detachment cannot render void any existing rights of access or use, or other rights related to the exploitation of natural resources."[513]

415. The standard for such rights, Mauritius argues, is merely that they have been exercised "for many years . . . in the waters in question."[514] Moreover, in Mauritius' view, "decades of the UK's own practice" unambiguously confirm Mauritius' long standing rights in the territorial sea[515] and the exclusive economic zone.[516]

---

508 Final Transcript, 604:17 to 606:4.

509 Final Transcript, 606:23 to 605:4.

510 Final Transcript, 613:1 to 614:9.

511 Mauritius' Memorial, paras. 7.19-7.20; Mauritius' Reply, paras. 6.39, 6.59.

512 Mauritius' Memorial, paras. 7.31-7.32.

513 Mauritius' Memorial, para. 7.10.

514 Mauritius' Reply, paras. 6.60-6.61.

515 Mauritius' Reply, paras. 6.56-6.59.

516 Mauritius' Reply, para. 6.80.

The United Kingdom's Position

416. The United Kingdom submits that "Mauritius has no traditional fishing rights"[517] and recalls the extremely limited scope of fishing in 1965 for the domestic purposes of the Chagossians.[518] In any case, the United Kingdom argues that this limited fishing does not come close to any form of historic dependence as commonly understood by traditional fishing.[519]

2. The Tribunal's Decision

(a) The Nature of Mauritius' Rights Pursuant to the 1965 Undertakings

417. Mauritius' claim that the United Kingdom has violated Article 2(3) and 56(2) of the Convention, as those provisions relate to the Lancaster House Undertakings made in connection with the detachment of the Chagos Archipelago, requires the Tribunal to determine the nature of Mauritius' rights pursuant to the undertakings.

418. The Tribunal approaches this task conscious of the findings it has made with respect to the scope of its own jurisdiction. It is common ground between the Parties that there was agreement between the United Kingdom and the Mauritius Council of Ministers in 1965 to the detachment of the Archipelago (the "**1965 Agreement**"). The Parties disagree, however, regarding whether Mauritian consent was freely given, whether any agreement is valid or binding, and even regarding what was agreed. In the course of these proceedings, the validity or otherwise of the 1965 Agreement was a central element of the Parties' submissions on Mauritius' First and Second Submissions, sovereignty, and the identity of the coastal State. The Tribunal has found that it lacks jurisdiction to consider these submissions.

419. At the same time, the legal effect of the 1965 Agreement is also a central element of the Parties' submissions on Mauritius' Fourth Submission, insofar as it involves the Lancaster House Undertakings. The Tribunal finds that its jurisdiction with respect to Mauritius' Fourth Submission (see paragraph 323 above) permits it to interpret the 1965 Agreement to the extent necessary to establish the nature and scope of the United Kingdom's undertakings.

420. The Tribunal will approach the Lancaster House Undertakings by considering how the Parties understood the 1965 Agreement at the time it was concluded. The Tribunal will then go on to

---

517 Final Transcript, 873:23 to 874:1.

518 Final Transcript, 861:4-5.

519 The United Kingdom's Counter-Memorial, para. 8.32; Final Transcript, 861:6-8.

consider the legal status of the 1965 Agreement and the extent to which the Tribunal is called upon to engage with Mauritius' arguments regarding its validity. Finally, the Tribunal will address the legal significance of the United Kingdom's repetition of its undertakings in the years following the independence of Mauritius, as well as the ultimate scope of the undertaking made with respect to fishing rights.

i. The Parties' Intent in 1965

421. Having examined the extensive documentary record provided by the Parties (see paragraphs 69-87 above), the Tribunal considers that the undertakings provided by the United Kingdom at Lancaster House formed part of the *quid pro quo* through which Mauritian agreement to the detachment of the Chagos Archipelago from Mauritius was procured. The Tribunal notes in particular the following facts:

(a) The initial position of the Mauritian Ministers, when the proposal for detachment was first conveyed to them in July 1965 was to object and to propose instead a 99-year lease, on the condition that "provision should be made for safeguarding mineral rights to Mauritius and ensuring preference for Mauritius if fishing or agricultural rights were ever granted".[520]

(b) During the first meeting in London on 13 September 1965, the Mauritian participants pressed the United Kingdom regarding the amount of compensation being proposed and the possibility of securing sugar quotas from the United States in exchange for detachment.[521]

(c) During the second meeting in London on 20 September 1965, the Mauritian participants reiterated their preference for a lease, dismissed the £1 million in compensation then being offered as inadequate, and continued to press the United Kingdom regarding the possibility of additional compensation from the United States. Sir Seewoosagur Ramgoolam also proposed for the first time the condition that the Archipelago revert to Mauritius when no longer needed for defence purposes:

> Sir Seewoosagur Ramgoolam said that [. . .] it should in any case be provided if the islands ceased to be needed for defence purposes they would revert to Mauritius

520 Mauritius Telegram No. 175 to the Colonial Office, 30 July 1965, FO 371/184526 (**Annex MM-13**).

521 Mauritius – Defence Matters: record of a meeting in the Secretary of State's room in the Colonial Office at 10.30 a.m. on Monday 13 September 1965 (**Annex UKR-6**).

> Sir H. Poynton [Permanent Under-Secretary of State for the Colonies] mentioned the precedent of certain U.S. bases in the West Indies, leased in 1940 and no longer needed, which had reverted to the jurisdiction of the Government concerned. [522]

(d) During the Lancaster House Meeting on 23 September 1965, the United Kingdom initially indicated that it could go no further than a defence agreement, consultations in the event of an internal security situation, good offices with the United States with respect to the supply of commodities, and £3 million in compensation.[523] The United Kingdom also noted that "it would be possible for the British Government to detach [the Chagos Archipelago] from Mauritius by Order in Council."[524] The Mauritian delegation then raised the return of the Archipelago when no longer needed for defence purposes and the possibility of approaching the United States regarding the use of Mauritian supplies and manpower in support of the planned defence facility.[525] The United Kingdom's representatives indicated that both conditions should be possible. The list of commitments tentatively agreed to during the Lancaster House Meeting was ultimately set out in the draft record of that meeting.[526]

(e) Following the meeting, Sir Seewoosagur Ramgoolam continued to press the United Kingdom regarding further concessions and secured the inclusion of the additional commitments set out in his handwritten note in respect of –

> (vii) Navigational & Meteorological facilities
>
> (viii) Fishing rights
>
> (ix) Use of Air Strip for Emergency Landing and if required for development of the other islands
>
> (x) Any mineral or oil discovered on or near islands to revert to the Mauritius Government.[527]

These further conditions were incorporated into paragraph 22 of the final record of the Lancaster House Meeting,[528] and the Parties are in agreement that Sir Seewoosagur

---

522 Record of a Meeting in the Colonial Office at 9.00 a.m. on Monday, 20th September, 1965, Mauritius – Defence Issues, FO 371/184528 (**Annex MM-16**).

523 Records relating to meetings on 23 September 1965 at p. 1 (**Annex UKR-8**).

524 *Ibid*. at p. 1.

525 *Ibid*. at p. 1-2; Record of a Meeting held in Lancaster House at 2.30 p.m. on Thursday 23rd September [1965], Mauritius Defence Matters, CO 1036/1253 at paras. 3-4 (**Annex MM-19**);

526 Records relating to meetings on 23 September 1965 at pp. 3-4 (**Annex UKR-8**).

527 Manuscript letter of 1 October 1965 (**Annex UKCM-9**).

528 Record of a Meeting held in Lancaster House at 2.30 p.m. on Thursday 23rd September [1965], Mauritius Defence Matters, CO 1036/1253 at para. 22 (**Annex MM-19**); Note on Mauritius and Diego Garcia dated 12 November 1965 (**Annex UKR-13**).

Ramgoolam's further conditions were in addition to those agreed in the course of the meeting itself.[529]

(f) Finally, when the Mauritius Council of Ministers was formally asked to approve detachment, subject to the Lancaster House Undertakings, it did so while imposing a further understanding, set out in the telegram from Governor Rennie to the Secretary of State for the Colonies:

> Council of Ministers today confirmed agreement to the detachment of Chagos Archipelago on conditions enumerated, on the understanding that
>
> (1) statement in paragraph 6 of your despatch "H.M.G. have taken careful note of points (vii) and (viii)" means H.M.G. have in fact agreed to them.
>
> (2) As regards (vii) undertaking to Legislative Assembly excludes
>
> (a) sale or transfer by H.M.G. to third party or
>
> (b) any payment or financial obligation by Mauritius as condition of return.
>
> (3) In (viii) "on or near" means within area within which Mauritius would be able to derive benefit but for change of sovereignty. I should be grateful if you would confirm this understanding is agreed.[530]

422. Taken as a whole, this record clearly indicates the importance of the undertakings to the Mauritian Ministers. The commitments made by the United Kingdom increased substantially between the proposal of detachment and the Mauritius Government's ultimate acceptance on 5 November 1965. Even at the last minute, the Mauritian Ministers continued to press for further details and concessions. Given all of this, the Tribunal considers the Lancaster House Undertakings to have been an essential condition to securing such Mauritian consent to the detachment of the Archipelago as was given. Without yet passing on the legal nature of these commitments or the validity of Mauritian consent, the Tribunal is confident that, without the United Kingdom's undertakings, neither Sir Seewoosagur Ramgoolam nor the Mauritius Council of Ministers would have agreed to detachment.

423. At the same time, the Tribunal can see no hint, in the record of the United Kingdom's approach to the negotiations, that the United Kingdom intended anything less than a firm commitment that would shape its relations with Mauritius following independence. By the time the conditions were formally presented to the Mauritius Council of Ministers for their agreement to detachment, the United Kingdom had already adopted, at the close of the 1965 Constitutional Conference, the "view that it was right that Mauritius should be independent and take her place

529 Final Transcript, 1037:4-23; 1287:1-2.

530 Mauritius Telegram No. 247 to the Colonial Office, 5 November 1965, FO 371/184529 (**Annex MM-25**).

among the sovereign nations of the world."[531] Independence in the near future was expected, and the commitments made by United Kingdom were not aimed at the narrow window of time between detachment and independence, but at future relations between the United Kingdom and an independent Mauritius. Moreover, the United Kingdom itself described its commitment in the language of obligation. In requesting that the conditions be presented to the Mauritian side, the Governor of Mauritius was asked on 6 October 1965, to secure Mauritian agreement to detachment "on the conditions" set out in the Lancaster House Meeting.[532] To the Tribunal, these are not the words of a voluntary intent to assist Mauritius to the extent politically feasible, but of an offer made on the basis of an intent to be bound.

ii. The Place of the Undertakings in International Law

424. Regarding the legal status of the 1965 Agreement, the Tribunal accepts the United Kingdom's submission that, as a matter of British constitutional law, an agreement between the British Government and a non-self-governing territory would not be governed by international law. For the purposes of British constitutional law, the Tribunal notes –

> It is not possible for overseas territories to conclude an agreement binding under international law with another overseas territory or for one or more overseas territories to conclude such an agreement with the United Kingdom. This is because internationally the Territories are not legal entities separate from each other or from the United Kingdom. [. . .] [R]egardless of the form they take, probably the most that these instruments could be is a contract binding upon the Parties under domestic law.[533]

Accordingly, although the Tribunal finds that both Parties were committed to honouring the 1965 Agreement in their post-independence relations, they were legally disabled from expressing that commitment as a matter of international law for such time as Mauritius remained a colony.

425. Had Mauritius remained part of the British Empire, the status of the 1965 Agreement would have remained a matter of British constitutional law. The independence of Mauritius in 1968, however, had the effect of elevating the package deal reached with the Mauritian Ministers to the international plane and of transforming the commitments made in 1965 into an international agreement. In return for the detachment of the Chagos Archipelago, the United Kingdom made a series of commitments regarding its future relations with Mauritius. When Mauritius became

---

531 Mauritius Constitutional Conference 1965, presented to Parliament by the Secretary of State for the Colonies by Command of Her Majesty, Command Paper 2797 (October 1965) (**Annex UKCM-11**).

532 Colonial Office Despatch No. 423 to the Governor of Mauritius, 6 October 1965, FO 371/184529 (**Annex MM-21**).

533 I. Hendry & S. Dickson, *British Overseas Territories Law* (2011), p. 261 (**Authority UKR-30**).

independent and the United Kingdom retained the Chagos Archipelago, the Parties fulfilled the conditions necessary to give effect to the 1965 Agreement and, by their conduct, reaffirmed its application between them.

426. While the Tribunal readily accepts that States are free in their international relations to enter into even very detailed agreements that are intended to have only political effect, the intention for an agreement to be either binding or non-binding as a matter of law must be clearly expressed or is otherwise a matter for objective determination. As recalled by the ICJ in *Aegean Sea Continental Shelf*, "in determining what was indeed the nature of the act or transaction embodied in the [agreement], the [Tribunal] must have regard above all to its actual terms and to the particular circumstances in which it was drawn up" (*(Greece v. Turkey), Judgment, I.C.J. Reports 1978*, p. 3 at p. 39, para. 96).

427. The Parties did not themselves characterize the status of the 1965 Agreement either at its conclusion or at the moment of Mauritian independence. The Tribunal, in turn, does not consider the circumstances in which the Agreement was initially framed—as a matter between the United Kingdom and its colony—to be determinative of the Parties' intent with respect to its eventual status. Objectively, the Tribunal considers the subject matter of the 1965 Agreement—an agreement to the reconstitution of a portion of a soon-to-be-independent colony as a separate entity in exchange for compensation and a series of detailed undertakings—to be more in the nature of a legal agreement than otherwise. And, as set out above, the Tribunal sees no hint in the course of negotiations or in the language used in 1965 that anything less than a firm commitment was intended.

428. Accordingly, the Tribunal concludes that, upon Mauritian independence, the 1965 Agreement became a matter of international law between the Parties. Moreover, since independence the United Kingdom has repeated and reaffirmed the Lancaster House Undertakings on multiple occasions. This repetition continued after Mauritius began proactively to assert its sovereignty claim in the 1980s, and even after such a claim was enshrined in the Constitution of Mauritius in 1991. As the Tribunal will set out in the sections that follow, the United Kingdom's repetition of the undertakings, and Mauritius' reliance thereon, suffices to resolve any concern that defects in Mauritian consent in 1965 would have prevented the Lancaster House Undertakings from binding the United Kingdom.

iii. The Repetition of the Lancaster House Undertakings since 1965

429. The undertakings were renewed collectively in 1973 in a letter from the United Kingdom to Prime Minister Sir Seewoosagur Ramgoolam, which contained "an assurance that there is no change in the undertakings, given on behalf of the British Government and set out in the record, as then agreed, of the meeting at Lancaster House on 23 September 1965."[534] The undertakings were also reaffirmed individually. The Tribunal will review each undertaking in turn and then consider the legal significance of this repeated reaffirmation.

430. The United Kingdom has renewed its commitment eventually to return the Chagos Archipelago to Mauritius, when no longer required for defence purposes, on numerous occasions and in unambiguous language:

(a) On 23 March 1976, the Parliamentary Under Secretary of State, Mr Ted Rowlands, wrote to the Mauritius High Commissioner in London, Sir Leckraz Teelock, as follows:

> I also take this opportunity to repeat my assurances that Her Majesty's Government will stand by the understandings reached with the Mauritian Government concerning the former Mauritian islands now forming part of the British Indian Ocean Territory; and in particular that they will be returned to Mauritius when they are no longer needed for defence purposes in the same way as the three ex-Seychelles islands are now being returned to Seychelles.[535]

(b) On 11 July 1980, the Prime Minister of the United Kingdom, the Rt. Hon. Margaret Thatcher, stated publicly in the House of Commons as follows:

> When the Mauritius Council of Ministers agreed in 1965 to the detachment of the Chagos Islands to form part of British Indian Ocean territory, it was announced that these would be available for the construction of defence facilities and that, in the event of the islands no longer being required for defence purposes, they should revert to Mauritius. This remains the policy of Her Majesty's Government.[536]

(c) On 1 July 1992, the British High Commissioner in Port Louis, Mr Michael Howell, wrote to the Prime Minister of Mauritius, Sir Anerood Jugnauth, as follows:

> The British Government has always acknowledged however that Mauritius has a legitimate interest in the future of these islands and recognises the Government of the Republic of Mauritius as the only State which has a right to assert a claim to sovereignty when the United Kingdom relinquishes its own sovereignty. The British Government has therefore given an undertaking to the Government of the Republic of Mauritius that, when the islands are no longer needed for the defence purposes of the United Kingdom and the United States, they will be ceded to Mauritius. There

534 Letter from United Kingdom to Mauritius, 3 May 1973 (**Annex UKCM-24**).

535 Letter dated 15 March 1976 from Parliamentary Under Secretary of State, UK Foreign and Commonwealth Office, to the Mauritius High Commissioner, London (**Annex MM-78**).

536 Hansard, House of Commons Debates, 11 July 1980, vol. 988 c314W (**Annex MM-94**).

> will be no sale or transfer by the British Government to a third party or any payment or financial obligation by Mauritius as a condition of such transfer.[537]

(d) On 10 November 1997, the Foreign Secretary of the United Kingdom, Mr Robin Cook, wrote to the Prime Minister of Mauritius, Dr Navinchandra Ramgoolam, as follows:

> I am pleased to reaffirm, as was publicly stated in 1992 under the previous Administration, the Territory will be ceded to Mauritius when no longer required for defence purposes.[538]

(e) On 12 December 2003, the Parliamentary under Secretary of State at the United Kingdom's Foreign & Commonwealth Office, Mr Bill Rammell, wrote to the Mauritian Minister of Foreign Affairs and Regional Cooperation, the Honourable AK Gayan MLA as follows:

> [s]uccessive British Governments have given undertakings to the Government of Mauritius that the Territory will be ceded when no longer required for defence purposes subject to the requirements of international law. This remains the case.[539]

431. The United Kingdom has similarly renewed its commitment concerning the benefit of any minerals or oil discovered in or near the Chagos Archipelago:

(a) In response to a Note Verbale from the Mauritian Prime Minister's Office dated 19 November 1969,[540] the British High Commission clarified that the scope of the undertaking concerning minerals or oil meant "that the benefit of any minerals or oil discovered in or near the Chagos Archipelago should revert to the Government of Mauritius".[541] The United Kingdom further explained:

> It is not considered that the wording of the understanding can be construed as indicating any intention that ownership of minerals or oil in the areas in question should be vested in the Government of Mauritius or that the Authorities of Mauritius should have any right to legislate with respect to or otherwise regulate matters relating to the ownership, exploration or exploitation of such minerals or oil . . .[542]

---

537 Letter dated 1 July 1992 from the British High Commissioner, Port Louis, to the Prime Minister of Mauritius (**Annex MM-103**).

538 Letter dated 10 November 1997 from the UK Secretary of State for Foreign and Commonwealth Affairs to the Prime Minister of Mauritius (**Annex MM-105**).

539 Letter dated 12 December 2003 from the Minister responsible for Overseas Territories, UK Foreign and Commonwealth Office to the Minister of Foreign Affairs and Regional Cooperation, Mauritius (**Annex MM-124**).

540 Note Verbale dated 19 November 1969 from the Prime Minister's Office (External Affairs Division), Mauritius to the British High Commission, Port Louis, No. 51/69 (17781/16/8) (**Annex MM-54**).

541 Note Verbale dated 18 December 1969 from the British High Commission, Port Louis, to the Prime Minister's Office (External Affairs Division), Mauritius (**Annex MM-55**).

542 *Ibid*.; Pacific and Indian Ocean Department (Foreign and Commonwealth Office), Visit of Sir Seewoosagur Ramgoolam, Prime Minister of Mauritius, 4 February 1970, Speaking Note, 2 February 1970 (**Annex MM-56**). Mauritius notes that Annex MM-56 is a "composite exhibit, and attached at the

(b) Notwithstanding this initial disagreement over the interpretation of the undertaking, Mauritius subsequently accepted the British position on the content of the oil and minerals undertaking in 1973.[543]

(c) The undertaking was renewed on 1 July 1992 by the British High Commissioner in Port Louis, Mr Michael Howell, to Prime Minister Sir Anerood Jugnauth:

> The British Government also reaffirms its undertaking that there is no intention of permitting prospecting for minerals and oils while the islands remain British. There are no plans to establish an exclusive economic zone around the Chagos islands.[544]

(d) On 10 November 1997 the undertaking was again renewed by the Foreign Secretary of the United Kingdom, Mr Robin Cook, to the Prime Minister of Mauritius, Dr Navinchandra Ramgoolam:

> I also reaffirm that this Government has no intention of permitting the prospecting for oil and minerals while the Territory remains British, and acknowledge that any oil and mineral rights will revert to Mauritius when the Territory is ceded.[545]

432. With respect to fishing rights, the Tribunal notes that—notwithstanding the Parties' disagreement over the scope of those rights—the United Kingdom has recognized the existence of fishing rights and reaffirmed its obligations in this regard. Of particular significance is the manner in which the United Kingdom has acted consistently with its undertaking in connection with its regulation of fishing in Chagos waters over several decades and the treatment of Mauritian vessels, being given fishing licences at no cost in the waters of the Archipelago for many years until the no-take MPA was proclaimed.

433. When the fishing ordinance was adopted by the BIOT in 1971 (and subsequently amended in 1984), fishing within the 12 nautical mile zone around the Chagos Archipelago was prohibited with the exception of Mauritius, which was specifically designated in 1984 as a country whose vessels could be issued licenses to fish and at no charge (see paragraph 118 above). In 1991, when the United Kingdom extended the fishery limits to 200 nautical miles, access to BIOT waters in the new 200-nautical mile limit was granted to Mauritian fishermen on the same terms

---

end of this exhibit . . . is a note dated 15 December 1969 from the British High Commissioner to the Prime Minister of Mauritius". *See* Final Transcript, 272:23-25.

543 *See* Final Transcript, 1047:16-1049:21, *referring to* Final Transcript, 851:22-852:1.

544 Letter dated 1 July 1992 from the British High Commissioner, Port Louis, to the Prime Minister of Mauritius (**Annex MM-103**).

545 Letter dated 10 November 1997 from the UK Secretary of State for Foreign and Commonwealth Affairs to the Prime Minister of Mauritius (**Annex MM-105**).

as within the previous limits.[546] On 1 July 1992, a letter from the British High Commissioner, Mr Michael Howell, to Prime Minister Sir Anerood Jugnauth acknowledged this long-standing commitment and the United Kingdom's intention to continue to honour this commitment in the following terms:

> The British Government has honoured the commitments entered into in 1965 to use its good offices with the United States Government to ensure that fishing rights would remain available to Mauritius as far as practicable. It has issued free licences for Mauritius fishing vessels to enter both the original 12 mile fishing zone of the territory and now the wider waters of the exclusive fishing zone. It will continue to do so, provided that the Mauritian vessels respect the licence conditions laid down to ensure proper conservation of local fishing resources.[547]

This system remained in place until the introduction of the MPA.

iv. Estoppel, Representation, and Reliance

434. All told, the Tribunal is faced with undertakings given as part of an agreement concluded in 1965 between the United Kingdom and one of its colonies, that became a matter of international law upon the independence of Mauritius, and that were reaffirmed in correspondence between the Parties in the decades since independence.

435. Estoppel is a general principle of law that serves to ensure, in the words of Lord McNair, "that international jurisprudence has a place for some recognition of the principle that a State cannot blow hot and cold—*allegans contraria non audiendus est*."[548] The principle stems from the general requirement that States act in their mutual relations in good faith and is designed to protect the legitimate expectations of a State that acts in reliance upon the representations of another. The principle as it exists in international law was well summarized by Judge Spender in the *Temple of Preah Vihear*:

> the principle [of estoppel] operates to prevent a State contesting before the Court a situation contrary to a clear and unequivocal representation previously made by it to another State, either expressly or impliedly, on which representation the other State was, in the circumstances, entitled to rely and in fact did rely, and as a result the other State has been prejudiced or the State making it has secured some benefit or advantage for itself.
>
> (*(Cambodia v. Thailand), Judgment of 15 June 1962, Dissenting Opinion of Judge Spender, I.C.J. Reports 1962*, p. 101 at pp. 143-44).

---

546 Telegram from R.G. Wells (East African Department) to M.E. Howell (Port Louis), 3 April 1992 (**Annex UKR-40**).

547 Letter dated 1 July 1992 from the British High Commissioner, Port Louis, to the Prime Minister of Mauritius (**Annex MM-103**).

548 A.D. McNair, "The Legality of the Occupation of the Ruhr", 5 *British Year Book of International Law* 17, 35 (1924).

436. Estoppel in international law differs from "complicated classifications, modalities, species, sub-species and procedural features" of its municipal law counterpart (*Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962, Separate Opinion of Vice President Alfaro, I.C.J. Reports 1962*, p. 39; *see also ibid., Separate Opinion of Sir Gerald Fitzmaurice, I.C.J. Reports 1962*, p. 52 at p. 62), but its frequent invocation in international proceedings has added definition to the scope of the principle. The Permanent Court of International Justice declined to apply the principle in *Serbian Loans*, noting the absence of a "clear and unequivocal representation by the bondholders upon which the debtor State was entitled to rely and has relied" (*Payment of Various Serbian Loans Issued in France, Judgment of 12 July 1929, P.C.I.J. Series A, Nos. 20/21*, p. 5 at p. 39). In *Barcelona Traction, Light and Power Company, Limited*, the Court dismissed a Spanish claim of estoppel in the absence of evidence that "any true prejudice was suffered by the Respondent" (*(Belgium v. Spain) Preliminary Objections, Judgment, I.C.J. Reports 1964*, p. 3 at p. 25) and a requirement of detrimental reliance has featured repeatedly in the Court's subsequent judgments.[549] In *Gulf of Maine*, the Court held that representations must be made by an official authorized to commit his or her government (*Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada v United States of America), Judgment of 12 October 1984, I.C.J. Reports 1984*, p. 246 at pp. 307-308). And in *North Sea Continental Shelf*, the Court declined to find estoppel in the absence of what it described as "past conduct, declarations, etc., which not only clearly and consistently evinced [the representation alleged as the basis for estoppel], but also had caused [the opposing parties], in reliance on such conduct, detrimentally to change position or suffer some prejudice" (*(Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3 at p. 26, para. 30).

437. Additionally—and in contrast to at least some forms of estoppel in municipal law—the principle in international law does not distinguish between representations as to existing facts and those regarding promises of future action or declarations of law. The question of estoppel in *North Sea Continental Shelf* concerned whether the Federal Republic of Germany had clearly and consistently demonstrated an acceptance of the legal regime set out in the 1958 Convention on the Continental Shelf to which it had not acceded. The ICJ declined to reach such a finding, not on the grounds that the subject matter was incapable of leading to estoppel, but rather insofar as

549 *See Military and Paramilitary Activities in and against Nicaragua (Nicaragua v United States of America) (Jurisdiction) I.C.J. Reports 1984*, p. 392 at p. 414; *Land, Island and Maritime Frontier Dispute (El Salvador v Honduras) (Application by Nicaragua to Intervene) I.C.J. Reports 1990*, p. 92 at p. 118; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria) (Merits) I.C.J. Reports 1998*, p. 275 at p. 304; *see also* D.W. Bowett, "Estoppel before International Tribunals and Its Relation to Acquiescence," *British Yearbook of International Law*, Vol. 33, p. 176 (1957).

neither the alleged representation, nor the purported reliance, were unequivocally apparent on the facts presented (*North Sea Continental Shelf (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3 at p. 26, paras. 31-32). The Tribunal is of the view that the forms of representation capable of giving rise to estoppel are not strictly defined in international law and notes in particular the observation of Judge Fitzmaurice regarding the interplay between estoppel and undertakings given by a State:

> The real field of operation, therefore, of the rule of preclusion or estoppel, *stricto sensu*, in the present context, is where it is possible that the party concerned did not give the undertaking or accept the obligation in question (or there is room for doubt whether it did), but where that party's subsequent conduct has been such, and has had such consequences, that it cannot be allowed to deny the existence of an undertaking, or that it is bound.
>
> *Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962, Separate Opinion of Sir Gerald Fitzmaurice, I.C.J. Reports 1962*, p. 52 at p. 63).

438. Further to this jurisprudence, estoppel may be invoked where (a) a State has made clear and consistent representations, by word, conduct, or silence; (b) such representations were made through an agent authorized to speak for the State with respect to the matter in question; (c) the State invoking estoppel was induced by such representations to act to its detriment, to suffer a prejudice, or to convey a benefit upon the representing State; and (d) such reliance was legitimate, as the representation was one on which that State was entitled to rely.

439. In the present case, the Tribunal considers the first two elements of estoppel to have been readily fulfilled. As set out in the preceding section, the United Kingdom made repeated representations in respect of all three undertakings over the course of over 40 years. These representations took the form both of confirmation that the United Kingdom had given an undertaking in the past (i.e., "[t]he British Government has therefore given an undertaking to the Government of the Republic of Mauritius that, when the islands are no longer needed for the defence purposes of the United Kingdom and the United States, they will be ceded to Mauritius"[550]) and of independent promises (i.e., "the Territory will be ceded to Mauritius when no longer required for defence purposes"[551]), and were made in statements by the Prime Minister and Foreign Secretary of the United Kingdom, who were unequivocally authorized to speak for it on this matter. The Tribunal also considers that the United Kingdom's consistent, unvaried practice of permitting Mauritian fishing in the waters of the Archipelago constituted a representation by conduct that such fishing rights would be continued, not necessarily

---

550 Letter dated 1 July 1992 from the British High Commissioner, Port Louis, to the Prime Minister of Mauritius (**Annex MM-103**).

551 Letter dated 10 November 1997 from the UK Secretary of State for Foreign and Commonwealth Affairs to the Prime Minister of Mauritius (**Annex MM-105**).

unconditionally, but at least in the absence of an exceptional change of circumstances. The remaining questions are therefore whether Mauritius did in fact rely upon these representations to its detriment and, if so, whether such reliance was legitimate.

(a) Whether Mauritius relied to its detriment on the United Kingdom's representations

440. The Tribunal considers that evidence of opportunities foregone in reliance upon a representation constitutes one of the clearest forms of detrimental reliance, although a benefit conveyed on the representing State will also suffice. With respect to the undertakings eventually to return the Chagos Archipelago when no longer required for defence purposes and to preserve the benefit of mineral and petroleum resources for Mauritius, pending return, the Tribunal notes that Mauritius, during the January 2009 bilateral talks, declined an express offer to begin the process of formalizing the United Kingdom's undertakings in the form of a treaty. Mauritius considered instead that the existing undertakings were sufficient. The United Kingdom's record of the meeting provides that –

> The UK delegation reiterated its sovereignty position, suggested formalising this in a Treaty while pointing out that this would not be easy for us to achieve.
>
> [. . .]
>
> In response to the proposed Treaty, the Mauritian delegation said that this was not necessary. They had our government's undertakings already. In any case, an open-ended Treaty would not serve any purpose. The Treaty would need to include a definite time when the Chagos Archipelago would be ceded.[552]

Mauritius' record of the same conversation provides as follows:

> *Mr Colin Roberts*
>
> We have undertaken to cede the territory to Mauritius when no longer required. We have also suggested a sort of formalising it into a treaty.
>
> [. . .]
>
> *Mr Seeballuck*
>
> Chair, on item (5) we humbly believe that a treaty which would [sic] restrict merely to cede a territory when no longer required would not reflect any step forward on the issue. We have several letters from the UK Government, replies given to questions in the House of Commons where the UK Government has stated that the Chagos Archipelago will revert to Mauritius when no longer required for military purposes. And we have no reason to put in doubt the contents of these documents.

552 UK Foreign and Commonwealth Office, Overseas Territories Directorate, "British Indian Ocean Territory: UK/Mauritius Talks", 14 January 2009 (**Annex MR-128**).

> A treaty that would simply say that it will cede a territory when no longer required – we consider that unless the treaty includes a definite time – an open ended treaty will not be for any benefit.
>
> [. . .][553]

441. There is no evidence that the United Kingdom corrected Mauritius' view on the equivalence of the undertakings with a treaty commitment.

442. Stepping back from this specific example, however, the Tribunal is also of the view that Mauritius' entire course of conduct with respect to the Chagos Archipelago was undertaken in reliance on the full package of undertakings given at Lancaster House. From independence until at least 1980, Mauritius was silent as to the legitimacy of detachment. Since 1980, while the dispute over sovereignty has assumed an increasingly prominent position in the two States' bilateral relations, Mauritius and the United Kingdom have nevertheless maintained a productive and friendly relationship on other matters, often pursuant to a sovereignty umbrella. The Tribunal considers this initial silence, and Mauritius' comparatively restrained assertion of its sovereignty claim thereafter, to have been a result of the undertakings given by the United Kingdom. In so relying, Mauritius forewent the opportunity of asserting its sovereignty claim more aggressively, in particular in the early years following independence, when sentiments in favour of decolonization were still running high, before the existence of the BIOT as an independent entity had been firmly established, and at the time when portions of the BIOT were even being returned to the Seychelles. Had the package of undertakings not been given, the Tribunal considers it beyond question that Mauritius would have asserted its claim to the Archipelago earlier and more directly, and would have withheld its cooperation in other areas of the Parties' bilateral relations, as indeed occurred in 2009 and 2010 when the United Kingdom appeared (at least to Mauritius) to have set aside its concern for Mauritian rights in favour of the pursuit of the MPA.

443. Accordingly, the Tribunal concludes that Mauritius relied, both specifically and generally, on the package of undertakings given and reaffirmed by the United Kingdom. In so doing, Mauritius forewent the opportunity of pressing its sovereignty claim in the initial years following independence, forewent the United Kingdom's offer to conclude a treaty formalizing the commitment to eventually return the archipelago, and conveyed a benefit on the United

---

553 Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, "Meeting of Officials on the Chagos Archipelago/British Indian Ocean Territory held at the Foreign and Commonwealth Office, London, Wednesday 14 January 2009, 10 a.m.", 23 January 2009 (**Annex MR-129**).

Kingdom through the cooperation on other matters that the Tribunal believes would otherwise have been withheld.

444. Like the United Kingdom's repetition of the undertakings, Mauritius' reliance continued after it began actively to assert a claim to sovereignty over the Archipelago and therefore stands apart from the legal status of the undertakings at the time they were first given. In this respect, the Tribunal notes with approval Judge Fitzmaurice's observation (see paragraph 437 above) that estoppel is most at home in situations in which the existence of a formal agreement may be in doubt, but the course of the Parties' subsequent conduct has consistently been as though such an agreement existed (*Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962, Separate Opinion of Sir Gerald Fitzmaurice, I.C.J. Reports 1962*, p. 52 at p. 63).

(b) Whether Mauritius was entitled to rely upon the United Kingdom's representations

445. Having concluded that Mauritius did in fact rely upon all three of the undertakings at issue in these proceedings, the Tribunal turns to the question of whether Mauritius was entitled to so rely, or—phrased differently—whether such reliance was legitimate. Not all reliance, even to the clear detriment of a State, suffices to create grounds for estoppel. A State that elects to rely to its detriment upon an expressly non-binding agreement does not, by so doing, achieve a binding commitment by way of estoppel. Such reliance is not legitimate. Nor does a State that relies upon an expressly revocable commitment render that commitment irrevocable.

446. At the same time, the Tribunal does not consider that a representation must take the form of a binding unilateral declaration before a State may legitimately rely on it. To consider otherwise would be to erase any distinction between estoppel and the doctrine on binding unilateral acts. While the ILC excluded estoppel from the scope of its study on unilateral acts, the course of its debates clearly recognized the distinct legal origins of the two related concepts:

> the distinction between the two [i.e., between a unilaterally binding promise and estoppel] consists in the way the obligation is created: whereas a promise is a legal act, the obligation arising from the manifestation of the author's will, estoppel acquires its effect, not from that will as such, but from the representation of the author's will made in good faith by the third party.[554]

In the course of these proceedings, the Parties argued for and against the existence of one or more binding unilateral acts by reference to the *Nuclear Tests* cases (*(Australia v France), Judgment of 20 December 1974, I.C.J. Reports 1974*, p. 253; *(New Zealand v France)*,

554 V.R. Cedeño, "Seventh Report on Unilateral Acts of States," UN Doc. A/CN.4/542 at para. 17 (22 April 2004).

Judgment of 20 December 1974, I.C.J. Reports 1974, p. 457). The sphere of estoppel, however, is not that of unequivocally binding commitments (for which a finding of estoppel would in any event be unnecessary (see *Temple of Preah Vihear (Cambodia v. Thailand), Judgment of 15 June 1962, Separate Opinion of Sir Gerald Fitzmaurice, I.C.J. Reports 1962*, p. 52 at p. 63)), but is instead concerned with the grey area of representations and commitments whose original legal intent may be ambiguous or obscure, but which, in light of the reliance placed upon them, warrant recognition in international law.

447. On the facts before it, the Tribunal considers that Mauritius was entitled to rely upon the representations made by the United Kingdom which were consistently reiterated after independence in terms which were capable of suggesting a legally binding commitment and which were clearly understood in such a way. The Tribunal also sees no evidence that Mauritius should have considered the United Kingdom's undertakings revocable. The ILC considered the question of revocability generally in the course of its examination of unilateral acts. In the absence of an express indication, the ILC concluded that a unilateral promise may not be revoked arbitrarily and that a significant factor in whether revocation would be considered arbitrary is "[t]he extent to which those to whom the obligations are owed have relied on such obligations."[555] The Tribunal considers this to be self-evident and a background assumption that would have guided Mauritius' reaction to the United Kingdom's representations. Where, as here, the United Kingdom has repeatedly committed to a future course of action with knowledge that another State is acting in reliance upon that commitment, both Mauritius and the Tribunal are entitled to presume that the United Kingdom did not consider such commitments freely revocable. To assume otherwise would be contrary to the "well established principle of law according to which bad faith is not presumed" (*Affaire du lac Lanoux (Spain/France), Award of 16 November 1957*, RIAA, Vol. XII, p. 281 at p.305).[556]

* * *

448. On the basis of the foregoing, the Tribunal concludes that, after its independence in 1968, Mauritius was entitled to and did rely upon the Lancaster House Undertakings to (a) return the Chagos Archipelago to Mauritius when no longer needed for defence purposes; (b) preserve the benefit of any minerals or oil discovered in or near the Chagos Archipelago for the Mauritius

555 International Law Commission, *Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations*, at principle 10(b).

556 In the original French text of this decision: "il est un principe général de droit bien établi selon lequel la mauvaise foi ne se présume pas."

Government; and (c) ensure that fishing rights in the Chagos Archipelago would remain available to the Mauritius Government as far as practicable. The Tribunal, therefore, holds that the United Kingdom is estopped from denying the binding effect of these commitments, which the Tribunal will treat as binding on the United Kingdom in view of their repeated reaffirmation after 1968.

(b) The Scope of the Lancaster House Undertaking with Respect to Fishing Rights

449. The Tribunal has found that the United Kingdom's undertaking regarding fishing rights was legally binding on the United Kingdom, yet the Parties remain in disagreement as to what this undertaking entailed. Moreover, the Parties agree that at the time fishing rights were included in the record of the Lancaster House Meeting, the content of the undertaking was unclear to the participants themselves. Since then, the Parties have adopted diametrically opposed views. Mauritius advocates "the maximum possible benefit" within the constraints imposed by the qualifying terms "use of good offices" and "as far as practicable". The United Kingdom, in contrast, argues for a narrow interpretation by reference to the very limited fishing practice in 1965 and the express wording of the undertaking. Ultimately, the Tribunal recalls the Parties' agreement that "[i]t is for the Tribunal to interpret [the Lancaster House Undertakings] and to determine whether they establish legal obligations on the United Kingdom and, if so, what those obligations are."[557]

450. As an initial matter, the Tribunal is not convinced that the scope of the undertaking can, as the United Kingdom suggests, be determined by reference to the type and scale of fishing actually practised in the Archipelago at the time of the undertaking. The Tribunal notes in particular:

(a) The existence of clear, forward-looking statements, expressed by Sir Seewoosagur Ramgoolam and other Mauritian Ministers during negotiations, regarding an intent to secure future benefits in the form of sugar quotas and trade arrangements;

(b) The fact that other undertakings given at Lancaster House related to facilities not yet constructed (such as the air strip) and concerned future events, including some in the potentially distant future, such as the eventual return of the Archipelago to Mauritius;

(c) The clear intent of the Secretary of State for the Colonies to "secure the maximum benefit for Mauritius", and the subsequent conduct of the British Government in carrying this out so as to assure the maximum possible fishing rights for Mauritius over the maximum

557 Final Transcript, 256:10-12; The United Kingdom's Rejoinder, para. 8.10.

possible area, as far as practicable, limited only by specific defence needs at particular islands;[558]

(d) The acknowledgement by the Commonwealth Office that –

> we are very much concerned to keep in mind the importance of the fishing grounds to Mauritius, for instance the possible importance of fishing in Chagos as a source of food, in view of the rapidly increasing population;[559]

(e) The recognition by the United Kingdom that its reference to contemporaneous fishing practices was "about appreciating the context of discussions in 1965 and understanding why the issue of fishing rights received only *very* limited attention".[560]

451. Addressing the Parties' positions in turn, the Tribunal does not consider that Mauritius' rights pursuant to the undertaking amount to a "perpetual and absolute right" to fish. If nothing else, such a conclusion is precluded by the express qualifying terms in the undertaking itself. At the same time, the Tribunal does not accept that the United Kingdom undertook merely to give "preference with respect to fishing rights to the extent such were granted."[561] The Tribunal considers the unique position of Mauritius in comparison to third States to be significant. Mauritius was granted rights in the territorial sea and contiguous zone even when other States were not and continued to receive licenses when other States did not. As the fishing regime surrounding the Archipelago developed and expanded, Mauritius continued to enjoy priority in the extended zones. Rather than representing the United Kingdom's understanding of its "moral obligation",[562] the Tribunal considers the best explanation for the United Kingdom's actions to be the recognition of an obligation to respect Mauritius' rights.

452. In the Tribunal's view, the extent of Mauritius' rights and the United Kingdom's obligations should, as far as possible, be interpreted by reference to the express words of the undertaking. The Tribunal is also guided by what the United Kingdom itself considered to have been the extent of its obligation. In this context, the Tribunal considers the undertaking with respect to fishing rights to be a positive obligation subject to some limitations. The positive aspect of the

---

558 Minute by Mr Fairclough of the Colonial Office, 15 March 1966 (**Annex UKCM-16**); Letter dated 12 July 1967 from the UK Commonwealth Office to the Governor of Mauritius, FCO 16/226 (**Annex MM-50/MR-60**).

559 Letter dated 12 July 1967 from the UK Commonwealth Office to the Governor of Mauritius, FCO 16/226 (**Annex MM-50/MR-60**).

560 Final Transcript, 1295:17-1296:3, *referring to* Debate in Mauritius' Legislative Assembly of 21 December 1965 (**Annex UKCM-15**).

561 Final Transcript, 842:23.

562 Final Transcript: 1296:17.

obligation is found in the words "ensure" and "would remain available" whereas the limitations are found in the words "use their good offices with the U.S. Government" and "as far as practicable". The connection to the United States Government is inescapable, considering the totality of the arrangement to detach the Archipelago for the promotion of defence purposes as requested by the United States. Thus, the qualifying words "use their good offices with the U.S. Government" are to be understood by reference to the defence needs of the United States. Nevertheless, the Tribunal considers that the United Kingdom retained the ultimate discretion to determine how any conflict between U.S. defence needs and Mauritian fishing rights would be resolved.[563]

453. Subject to these limitations, the United Kingdom is under a positive obligation to "ensure" that fishing rights "would remain available" to Mauritius. The United Kingdom has acted consistently over a number of decades to comply with this obligation, most significantly reflected in permitting Mauritius to fish in the 3 nautical mile territorial sea and in the maritime zones beyond as they moved progressively out to 200 nautical miles. On each occasion, the United Kingdom has "ensured" that fishing rights "would remain available" on the same terms, even as other States' rights were being curtailed.

454. The Tribunal considers the introduction of the licensing system pursuant to the Fishing Ordinances of 1971 and 1984, to be highly relevant to the United Kingdom's compliance with its obligation. Having "used its good offices with the United States" to "ensure" that fishing in the prohibited zones "would remain available" to Mauritius, the United Kingdom exercised its discretion permitted by the qualifying terms "as far as practicable" to determine the *manner* in which fishing rights were granted to Mauritius (i.e., subject to licenses granted free of charge).

455. In all the circumstances, the Tribunal is of the view that Mauritius enjoyed rights to fish in the waters of the Chagos Archipelago—in particular in the territorial sea with which the Tribunal is solely concerned—subject to licences issued freely by the BIOT administration to Mauritian-flagged vessels, but dependent on the overarching defence needs of the United States and the United Kingdom's discretion in the routine management of the fishery. Such discretion was nevertheless to be exercised consistently with the obligation to "ensure" that fishing rights "would remain available".

563 The Tribunal considers this interpretation to be entirely consistent with the existence of qualifying words and conditions in the terms of the other undertakings. The obligation to return the Archipelago is conditioned upon the disappearance of defence needs. In turn, the obligation to return the benefit of any minerals or oil to the Mauritius Government is conditioned upon the eventual return of the Archipelago itself.

(c) Mauritius' Claim to Traditional Fishing Rights in the Territorial Sea

456. In light of the Tribunal's conclusion that Mauritius is entitled to fishing rights in the Territorial Sea pursuant to the United Kingdom's undertaking at Lancaster House, the Tribunal considers it unnecessary to address the question of whether Mauritius possessed traditional fishing rights independently of any commitment by the United Kingdom.

B. THE INTERPRETATION AND APPLICATION OF ARTICLES 2(3), 56(2), 194 AND 300 OF THE CONVENTION

457. The Parties are at odds over the interpretation and application of the various Articles of the Convention. Mauritius claims that the United Kingdom has violated Articles 2(3), 56(2), 194 and 300 in connection with its declaration of the MPA on 1 April 2010. In particular, Mauritius considers that the extinction of its rights in the territorial sea "with immediate effect, without notice, without consultation" to have been a violation of Article 2(3).[564] Mauritius further considers the manner in which the United Kingdom conducted itself prior to the declaration of the MPA to have violated the United Kingdom's obligation to accord due regard, pursuant to Article 56(2), to Mauritius' rights and to endeavour to harmonize its policies on marine pollution pursuant Article 194. The crux of Mauritius' complaint is that –

> The UK did not inform Mauritius of its plans; it provided Mauritius with inaccurate information; and it ignored Mauritius' repeated calls for bilateral consultations, insisting on proceeding instead with a fundamentally flawed Public Consultation all despite a commitment by the UK Prime Minister to his Mauritian counterpart that the MPA would be put on hold.[565]

Finally, Mauritius submits that the MPA was not actually declared in pursuit of the environmental objectives that were used to justify it and that its declaration constitutes an abuse of rights within the context of Article 300.

458. The United Kingdom neither accepts Mauritius' interpretation of the Convention nor concedes that it has violated any obligation thereunder. According to the United Kingdom, Article 2(3) does not impose an obligation of compliance, and the meaning of "due regard" in Article 56(2) does not mean to "give effect to" the rights of other States.[566] The United Kingdom similarly disputes that Article 194 imposes a duty with respect to marine pollution and argues that Article 300 applies only in conjunction with the violation of another provision of the Convention. In any event, the United Kingdom considers the fulsome bilateral exchanges and public

564 Final Transcript, 290:14 to 291:2.

565 Final Transcript, 336:18 to 337:2.

566 Final Transcript, 1104:22 to 1105:8.

consultations regarding the establishment of the MPA to have satisfied any potentially applicable obligation.

1. Parties' Arguments

(a) The Interpretation and Application of Article 2(3)

459. Article 2(3) of the Convention provides as follows:

> *Article 2*
> *Legal status of the territorial sea, of the air space over the territorial sea and of its bed and subsoil*
>
> [. . .]
>
> 3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.

Mauritius' Position

460. According to Mauritius, Article 2(3) of the Convention imposes an obligation of compliance that requires the United Kingdom to exercise its sovereignty "limited by" [567] obligations arising out of the Convention and "other rules of international law." This interpretation is based on the ordinary meaning of the provision,[568] Mauritius submits, and is consistent with the intention of the drafters of the 1958 Convention on the Territorial Sea and the Contiguous Zone and the 1982 Convention. [569] Mauritius notes that "there is no material difference [in the language] between the two" treaties.[570]

461. Mauritius relies on the ILC's commentary on the 1958 Convention on the Territorial Sea to emphasise that the intended purpose of Article 2(3) is to operate as a reservation.[571] Mauritius does not accept that the provision is "merely descriptive",[572] and submits that an obligation of compliance is apparent from the French[573] and Russian[574] texts of the Convention. Mauritius also notes that a review of comparable provisions establishes that the Convention's use of "is"

---

567 Final Transcript, 291:23 to 292:2.

568 Final Transcript, 294:2-14.

569 Mauritius' Reply, paras. 6.8-6.9; Final Transcript, 294:15-22.

570 Final Transcript, 291:10-16.

571 Final Transcript, 295:1-20.

572 Final Transcript, 868:21 to 869:2.

573 Mauritius' Reply, paras. 6.10, 6.12; Final Transcript, 296:7-16.

574 Mauritius' Reply, para. 6.11; Final Transcript, 297:2-5.

and "shall" is not consistent and that an obligation of compliance is not limited to the latter terminology.[575]

462. Turning to the interpretation of the phrase "other rules of international law," Mauritius argues that these are "broad and open-ended words," which are neither intended to be limitative,[576] nor expressly qualified.[577] The four categories of those "other rules of international law", Mauritius submits, are –

> (i) the rules of international law that require a coastal State to respect traditional fishing rights, as affirmed in the UK's undertakings;
>
> (ii) the rule of international law that requires a State to respect its undertakings more generally, including those that protect fishing and mineral rights;
>
> (iii) the rule of international law that requires a State to comply with a commitment it has given, through its head of government, to the head of government of another State; and
>
> (iv) the rule of international law that requires a coastal State to consult in regard to matters that can affect the rights of another State.[578]

463. All of these, according to Mauritius, were breached by the United Kingdom when:

> In April 2010 it purported to extinguish the entirety of Mauritius' fishing rights, whether traditional or other, whether inshore, or within three miles of the coast, or within 12 miles of the coast, or within 200 miles of the coast. In April 2010 by that decision, the UK failed to respect the undertakings that it had, on its own account, given to Mauritius. In April 2010 it also failed to honour the commitment that was given by Prime Minister Gordon Brown to Prime Minister Ramgoolam in November 2009 that the "MPA" would be put "on hold". In the period leading up to the announcement of the decision taken in April 2010, as we have seen, the United Kingdom manifestly failed to consult with Mauritius, instead Mauritius was presented with a fait accompli, it was communicated in a telephone call unexpectedly on the morning of 1 April 2010 by Mr David Miliband to Prime Minister Ramgoolam. By establishing and applying the "MPA" in this manner which purports to deny the exercise by Mauritius of its rights, the UK, we say, is in manifest violation of Article 2(3) of the Convention.[579]

The United Kingdom's Position

464. The United Kingdom's primary position is that the Lancaster House Undertakings in relation to fishing rights are not binding and are therefore irrelevant to any application of Article 2(3).[580] The Tribunal has already comprehensively addressed this issue.

---

575 Mauritius' Reply, paras. 6.13-6.14; Final Transcript, 297:20-22.

576 Final Transcript, 299:1-9.

577 Final Transcript, 299:9-12.

578 Final Transcript, 292:4-11.

579 Final Transcript, 293:6-18.

580 Final Transcript, 828:14-17.

465. Nevertheless, the United Kingdom submits that "there are two points of disagreement [concerning the interpretation of Article 2(3)]—over the meaning of 'is exercised' and, then, over the intended scope of 'other rules of international law.'"[581]

466. According to the United Kingdom, Article 2(3) of the Convention is "descriptive rather than executory".[582] The United Kingdom argues that the ILC Commentary on the 1958 Convention on the Territorial Sea—which Mauritius has invited the Tribunal to consider—"is more suggestive of the wording being descriptive as opposed to establishing any obligation of compliance."[583] Moreover, the United Kingdom considers that the other treaty provisions relied on by Mauritius as a point of linguistic comparison must be examined individually and the specific wording considered in context.[584] The United Kingdom also disputes that any point regarding binding intent can be derived from the French text of the Convention.[585]

467. The United Kingdom maintains that the phrase "other rules of international law" is "correctly interpreted as a reference to general rules of international law",[586] noting the explanation in the ILC's 1956 Report to the General Assembly that –

> Incidents in the territorial sea raising legal questions are also governed by the general rules of international law, and these cannot be specially codified in the present draft for the purposes of their application to the territorial sea. That is why 'other rules of international law' are mentioned in addition to the provisions contained in the present articles.[587]

Moreover, there is nothing to suggest that the drafters intended to establish "an entirely open-ended obligation of compliance with the entirety of international law in the territorial sea".[588] Such a separate "free-standing and unlimited" obligation, the United Kingdom contends, would have been exceptional, and the drafters would have "at least . . . used the language of obligation . . . as used in other provisions of the Convention."[589]

---

581 Final Transcript, 869:3-4.

582 Final Transcript, 869:10-13.

583 Final Transcript, 870:1-4.

584 Final Transcript, 872:6-19.

585 Final Transcript, 872:23 to 873:15.

586 The United Kingdom's Counter-Memorial, para. 8.6; Final Transcript, 870:9-15.

587 The United Kingdom's Counter-Memorial, para. 8.6, *citing* Report of the International Law Commission covering the work of its eighth session, 23 April-4 July 1956, doc. A/3159, *YILC*, Vol. II, 253 at 265.

588 Final Transcript, 871:9-11; *see also* The United Kingdom's Counter-Memorial, para. 8.5, The United Kingdom's Rejoinder, para. 8.2.

589 The United Kingdom's Counter-Memorial, para. 8.5(c)-(d).

468. The United Kingdom rejects the existence of a customary law obligation to consult with other States that would apply by way of Article 2(3).[590] Unlike established precedents requiring consultation, the United Kingdom notes, the present case does not concern shared natural resources or common property resources, or relate to transboundary harm.[591] Even in the event that the Tribunal were to accept an obligation to consult in the present circumstances, the United Kingdom considers that the scope of such an obligation would be limited. According to the United Kingdom, the nearest analogy would be the rule on consultation in cases of transboundary harm codified by Principle 19 of the Rio Declaration on Environment and Development, which requires no more than the provision of prior and timely notification and relevant information, and consultation in good faith at an early stage.[592] Based on these criteria, the United Kingdom submits that it "did in fact consult Mauritius fully, at an early stage, with adequate information, and well before declaring the MPA. . . . [I]f there is any legal obligation to consult before exercising sovereign rights, . . . then there has been no breach."[593]

469. Moreover, the United Kingdom rejects any notion that consultations must "continue indefinitely, . . . [or] continue until the other party is happy, any more than consultations under article 283 have to carry on indefinitely".[594] According to the United Kingdom, the necessary consultations took place in July 2009 and events subsequent thereto are "not material to Mauritius' case".[595] In all the circumstances, the United Kingdom considers that it –

> clearly did all it could to try to bring these consultations to an amicable and reasonable conclusion, but at the end of the day, it was Mauritius which unquestionably pulled out of the consultations as it said because it did not wish to see the Public Consultation proceed and that's why it terminated the bilateral consultations with the United Kingdom.[596]

(b) The Interpretation and Application of Article 56(2)

470. Article 56(2) of the Convention provides as follows:

> *Article 56*
> *Rights, jurisdiction and duties of the coastal State*
> *in the exclusive economic zone*
>
> [. . .]

590 Final Transcript, 890:4-7.

591 Final Transcript, 876:21 to 877:6.

592 Final Transcript, 878:3-7.

593 Final Transcript, 878:14-17.

594 Final Transcript, 880:24-881:2.

595 Final Transcript, 881:14-16.

596 Final Transcript, 888:4-8.

> 2. In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.
>
> [. . .]

Mauritius' Position

471. According to Mauritius, Article 56(2) of the Convention requires, as a mandatory and unambiguous obligation,[597] the United Kingdom to have "due regard" for the rights of other States in the exclusive economic zone. Mauritius argues that this formulation obliges the United Kingdom "to respect the rights of Mauritius".[598] Relying on the *Virginia Commentary* to the Convention, Mauritius considers that such due regard and respect requires the United Kingdom "to refrain from acts that interfere with [Mauritius' rights]".[599] Mauritius also relies on the ILC's commentary on the comparable provisions of the 1958 Convention on the High Seas, which "interpreted the obligation to have 'reasonable regard' for the interests of other States as meaning that, '[s]tates are bound to refrain from any acts that might adversely affect the use of the high seas by nationals of other States.'"[600] Accordingly, Mauritius submits, "[b]y prohibiting Mauritius from exercising [its rights], the UK has breached Article 56(2). To put it in the terms of that provision, the UK has failed to have due regard for the rights of Mauritius."[601]

472. Mauritius rejects the United Kingdom's argument that the obligation to "have due regard" under Article 56(2) "stops well short of an obligation to give effect to such rights"[602] and extends only to "taking account" of or "giving consideration" to Mauritian rights.[603] In Mauritius' view, this interpretation is unsupported, and runs "contrary to its ordinary meaning as elucidated by the *Virginia Commentary* and the ILC, both of which require States to *refrain* from acting in ways that interfere with the rights of other states *regardless* of the strength of the reasons for doing so."[604]

---

597 Final Transcript, 322:7-17.

598 Final Transcript, 322:19-21.

599 Final Transcript, 323:1-5.

600 Final Transcript, 323:7-10.

601 Final Transcript, 332:12-14.

602 The United Kingdom's Counter-Memorial, para. 8.36.

603 Final Transcript, 1104:22 to 1105:8.

604 Final Transcript, 1105:13-16.

473. In any event, Mauritius argues, Article 56(2) "necessarily implies an obligation to consult with other States when their rights or duties can be affected"[605] and the United Kingdom "has *also* violated that provision by failing to consult with Mauritius."[606] Mauritius relies on the *Fisheries Jurisdiction* cases (*(United Kingdom & Germany v. Iceland), I.C.J. Reports 1974*, p. 3 at p. 32, paras. 74-75; *(Federal Republic of Germany v. Iceland), I.C.J. Reports 1974*, p. 175 at p. 201, paras. 66-67), which held that the "obligation to negotiate flows from the very nature of the respective rights".[607] Although those cases concerned the exercise of preferential rights in the high seas, Mauritius argues that the underlying principle is that "where two States seek to exercise rights in a manner that may be incompatible, consultation is required."[608] The "proper balance in any particular set of circumstances", Mauritius asserts, "is achieved through consultation".[609]

474. Finally, Mauritius submits that "even under the standard posited by the United Kingdom, the obligation plainly has been breached."[610] In Mauritius' view, "[t]he United Kingdom did *not* . . . have 'good reasons for overriding the rights' of Mauritius to fish in the EEZ. It had no reasons at all, and . . . there is no indication that Mauritius' entitlement to fish, or its exercise of fishing rights, had any adverse environmental impacts."[611]

The United Kingdom's Position

475. With respect to Article 56, the United Kingdom submits that the "straightforward point" is that "the formulation 'shall have due regard to' does not somehow mean 'shall give effect to'".[612]

476. According to the United Kingdom, "'due regard' means what it says: It means take account of, give consideration to, do not ignore."[613] The United Kingdom also adopts the observation of the *Virginia Commentary* that "[t]he significance of [Article 56(2)] is that it balances the rights, jurisdiction and duties of the coastal State with the rights and duties of other States in the

605 Final Transcript, 332:21-22.

606 Final Transcript, 332:15-16.

607 Final Transcript, 333:10-11.

608 Final Transcript, 333:17-18

609 Final Transcript, 333:20-21.

610 Final Transcript, 1105:16-17.

611 Final Transcript, 1105:17-21.

612 Final Transcript, 874:8-10.

613 Final Transcript, 822:12-13.

exclusive economic zone."[614] At the same time, the United Kingdom argues, "[i]f there are good reasons for overriding the rights of other States in the EEZ, then article 56(2) allows that."[615]

477. The United Kingdom does not accept that Article 56(2) imports an obligation to consult with other States. In the United Kingdom's view, if "having 'due regard' for the rights of other states means consulting them, we would suggest the text would have said so. Other articles of the Convention do expressly require consultation when the rights of other states may be affected."[616] "[I]t is quite possible," the United Kingdom argues, "to have regard for the rights of other states without consulting them: states do so on a daily basis."[617]

478. Against this standard, the United Kingdom submits that "there is no breach of article 56(2)."[618] Examining the record of discussions prior to the declaration of the MPA, the United Kingdom notes as follows:

- That there were meaningful and initially constructive consultations between the parties with regard to the declaration of the MPA.
- Secondly, that those consultations were undertaken well before the MPA declaration was adopted and in circumstances designed to give Mauritius every opportunity to influence the design and implementation of the project.
- The consultations ensured that the Mauritian government at all levels was fully informed of what was proposed and given the opportunity to respond.
- Mauritius' response was focused largely on joint management of resources and activities which could advance its sovereignty claim.
- After October 2009 Mauritius chose not to engage in the Public Consultation or in further bilateral talks on the MPA proposal.
- It was only once that was clear and the Public Consultation was complete, did the United Kingdom proceed with the declaration of the MPA on 1 April 2010.[619]

479. The United Kingdom considers that –

> the evidence shows that the United Kingdom acted in good faith throughout these consultations in an attempt to engage Mauritius on the substance of the proposal, and that it did so before taking any decision to implement the MPA. It sought and it wished to

---

614 Final Transcript, 822:13-15, *quoting* M. Norquist, ed. *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. II at p. 543 (1989).

615 Final Transcript, 822:17-18.

616 Final Transcript, 890:9-12.

617 Final Transcript, 890:13-14.

618 Final Transcript, 890:21.

619 Final Transcript, 889:8-20.

continue discussions with Mauritius. The decision to end those consultations was taken not by the United Kingdom but by Mauritius.[620]

480. In short, the United Kingdom concludes, "both the internal United Kingdom documentary record on which Mauritius relies, and the bilateral negotiations to which the United Kingdom has referred, amply demonstrate that due regard has indeed been paid to the claimed rights of Mauritius."[621]

(c) The Interpretation and Application of Article 194

481. Article 194 of the Convention provides as follows:

> *Article 194*
> *Measures to prevent, reduce and control pollution of the marine environment*
>
> 1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.
>
> 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.
>
> 3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, inter alia, those designed to minimize to the fullest possible extent:
>
> (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping;
>
> (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels;
>
> (c) pollution from installations and devices used in exploration or exploitation of the natural resources of the seabed and subsoil, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the design, construction, equipment, operation and manning of such installations or devices;
>
> (d) pollution from other installations and devices operating in the marine environment, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, and regulating the

620 Final Transcript, 889:21-25.

621 Final Transcript, 890:18-21.

> design, construction, equipment, operation and manning of such installations or devices.
>
> 4. In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.
>
> 5. The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Mauritius' Position

482. Mauritius argues that the MPA is "a measure . . . intended to protect the environment" and therefore "falls to be considered by reference to the requirements of Part XII" of the Convention.[622] In Mauritius' view, any attempt to characterize the MPA as "merely introduc[ing] a ban on commercial fishing"[623] is disingenuous and inconsistent with the terms on which the United Kingdom carried out its Public Consultation[624] and with the terms of the MPA itself.[625]

483. With respect to the interpretation of Article 194(1), Mauritius submits that this provision imposes an obligation to "endeavor to act in harmony" which "requires that States must try hard to do or achieve harmonization of policies regarding pollution prevention."[626] At a minimum, this translates to "undertaking such efforts to make pollution-related policies for the Chagos Archipelago consistent or compatible with those of other States in the region. It requires the sharing of information, the exchange of ideas, and some degree of consultation."[627]

484. According to Mauritius, the United Kingdom violated Article 194(1) as "it went out of its way to avoid finding a way to work with Mauritius."[628] In Mauritius' view –

> One would have thought that it would bend over backwards to achieve protections of these waters, and atolls, and reefs and for the biodiversity, but no. [. . .] The U.K. proceeded unilaterally and without proper notice. [. . .] [T]he U.K. simply refused to engage with

622 Final Transcript, 304:9-14.

623 Final Transcript, 313:4.

624 Final Transcript, 313:20 to 314:19.

625 Final Transcript, 306:23 to 307:4.

626 Final Transcript, 311:3-5.

627 Final Transcript, 311:6-9.

628 Final Transcript, 311:9-10.

> Mauritius. When establishing the "MPA", there was no meaningful attempt to find out what Mauritius wanted to know, and no attempt to harmonize marine pollution policies.[629]

485. Turning to Article 194(4), Mauritius argues that this provision is plainly applicable because "[t]he 'MPA' and the implementing regulations which may one day come are measures to prevent, reduce or control pollution of the marine environment".[630] Accordingly, this provision requires the United Kingdom to "refrain from unjustifiably interfering with activities carried out by Mauritius in the exercise of its rights in conformity with the Convention."[631] Essentially, this obligation requires an assessment of whether the interference to Mauritius' rights is "justifiable". Mauritius alleges that the United Kingdom has not introduced any evidence to show that Mauritius' fishing activity was a source of pollution or harm and –

> mounts no real effort, no effort at all to persuade this Tribunal that a total ban on Mauritian fishing in these waters was justifiable. The burden is on the United Kingdom to show that it was a justifiable decision. In the absence of any evidence, we simply do not see how they can do that. There is no evidence, there is no argument.[632]

486. In all the circumstances, Mauritius argues that there is a "manifest and clear"[633] violation of Article 194(4) as the MPA is "a total ban on all activity. It's an anti-pollution measure. It very obviously interferes with the fishing rights of Mauritius. It is unjustifiable."[634]

The United Kingdom's Position

487. The United Kingdom does not accept that it has a duty to coordinate its policy on marine pollution with Mauritius pursuant to Article 194(1) or that it must not legislate on marine pollution in a manner that interferes with Mauritius' right to fish in the MPA under Article 194(4).[635]

488. With respect to Article 194(1), the United Kingdom asserts that this is "simply the chapeau to the more specific treatment of different sources of marine pollution set out in paragraph (3)", which refers to Articles 207 and 212.[636] Accordingly, the United Kingdom does not accept that

---

629 Final Transcript, 312:11-18.

630 Final Transcript, 318:20-22.

631 Final Transcript, 318:16-17.

632 Final Transcript, 319:22to 320:1.

633 Final Transcript, 321:1-6.

634 Final Transcript, 320:21-22.

635 Final Transcript, 897:18 to 898:3.

636 Final Transcript, 897:22-898:1.

the obligation to harmonize policies under this provision can be isolated from the differing standards laid down by those Articles.[637]

489. With respect to Article 194(4), the United Kingdom notes that pollution has been strictly regulated in the MPA under existing laws for many years, and there has been no suggestion that these laws have interfered with Mauritius' fishing activities in BIOT waters.[638]

(d) The Interpretation and Application of Article 300

490. Article 300 of the Convention provides as follows:

> *Article 300*
> *Good faith and abuse of rights*
>
> States Parties shall fulfil in good faith the obligations assumed under this Convention and shall exercise the rights, jurisdiction and freedoms recognized in this Convention in a manner which would not constitute an abuse of right.

Mauritius' Position

491. Mauritius submits that the United Kingdom has breached Article 300 of the Convention by exercising its right under Article 56(1)(b)(iii) "to take measures for 'the protection and preservation of the marine environment' in the waters around the Archipelago"[639] in ways that constitute an abuse of right.[640]

492. According to Mauritius, Article 300 imposes two requirements:

> First, the right must not be exercised for a purpose that is entirely different from the purpose for which the right was created—especially if this comes at the expense of the rights or legally-protected interests of others, of other States, or indeed, of other uses of the oceans. Second, where a State takes measures in the exercise of a jurisdictional right, those measures must at least be capable of fulfilling the purpose for which the right was exercised. If they are not, the manner in which the right is being exercised is objectionable, even if that is capable of repair. If it's not repaired, then there is a breach of Article 300.[641]

493. The establishment of the MPA, Mauritius submits, violates the requirements of Article 300 of the Convention because "the record . . . casts serious doubt on the purposes behind the

---

637 Final Transcript, 898:1-3.

638 Final Transcript, 899:3-5.

639 Final Transcript, 377:12-13.

640 Mauritius' Memorial, para. 7.81.

641 Final Transcript, 377:19 to 378:3.

proclamation of the 'MPA', and the manner in which it has been designed and implemented is certainly not conducive of the objectives officially declared."[642]

494. Mauritius relies upon a document that is purported to be the reproduced text of a cable from the U.S. Embassy, reporting on a meeting on 12 May 2009 with the then BIOT Commissioner, Mr Colin Roberts, and then BIOT Administrator, Ms Joanne Yeadon.[643] In particular, Mauritius relies upon the portion of that report that records Mr Roberts as having said that "the BIOT's former inhabitants would find it difficult, if not impossible, to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve", that "according to the HGM,s [*sic.*] current thinking on a reserve, there would be 'no human footprints' or 'Man Fridays' on the BIOT's uninhabited islands", and that "establishing a marine park would . . . put paid to resettlement claims of the archipelago's former residents." Mauritius submits that these remarks "put[] into question the purposes behind the proclamation of the 'MPA,'"[644] which serves to fulfil the United Kingdom's political aims.[645]

495. Moreover, even if the United Kingdom's motives "were in principle purely environmental," Mauritius contends, there is still a breach of Article 300 because "there has been no serious attempt to follow up on those objectives."[646] Mauritius asks –

> whether it can be said that, whatever the actual purposes of individuals might have been, the "MPA" is still capable of succeeding in fulfilling its official purpose—the protection of the living resources and the environment of the waters around the Archipelago? Can it be said that the design and implementation of the "MPA" is reasonable in relation to achieving its stated objective? The answer to these questions is 'no', categorically.[647]

In support, Mauritius notes five ways in which the MPA fails to meet its environmental objectives: the insufficiency of scientific justification by the United Kingdom; the lack of regulations; the lack of financing; the severe inadequacy of enforcement; and the "exclusion zone covering Diego Garcia and its territorial waters."[648]

---

642 Final Transcript, 378:11-13.

643 Cable from US Embassy, London, on UK Government's Proposals for a Marine Reserve Covering the Chagos Archipelago, May 2009 (**Annex MM-146**).

644 Final Transcript, 379:13-14.

645 Final Transcript, 377:19-378:3.

646 Final Transcript, 381:14 to 382:13, *citing Whaling in the Antarctic (Australia v Japan: New Zealand Intervening), Judgment of 31 March 2014*, para. 97.

647 Final Transcript, 382:14-18.

648 Final Transcript, 382:21 to 387:13.

The United Kingdom's Position

496. The United Kingdom advances four propositions with respect to the abuse of rights:

> First, abuse of rights is not an independent basis of claim, and Mauritius appears to have conceded this point . . .
>
> Second, the burden of proving abuse of rights is on the party alleging it. In this respect the normal rules of international litigation apply, and Mauritius does not argue otherwise. However [. . .] Mauritius has failed even to adduce *prima facie* evidence of improper purposes or bad faith.
>
> Third, clear and convincing proof of injury is required [. . .] [and] without serious injury there would perhaps be no reason for a court to adjudicate on such a claim of abuse. [. . .] If proof of serious injury is required for an abuse of rights claim to succeed, then [. . .] Mauritius fails at the first hurdle.
>
> [And] fourth [. . .], the rights in question must have been used in an abusive manner.[649]

497. In response to the issues advanced by Mauritius, the United Kingdom rejects the evidence relied on by Mauritius to establish improper purposes, arguing that "none of [the evidence] . . . adds up or comes near to the necessary evidential burden which Mauritius must discharge to prove this claim".[650] The United Kingdom responds to the alleged U.S. account of a 12 May 2009 meeting in the following terms:

> Mr Roberts denied on oath in the domestic proceedings that he had repeated the words in question. Ms Yeadon corroborated this, and confirmed that she would have reported to her superiors if Mr Roberts had used the words. And the High Court accepted that the words were not said. [. . .] [T]he UK Government strongly objects to the entirely unwarranted slurs which have been cast upon its officials, and the implication that the Court was not competent to decide the veracity of their statements.[651]

498. In contrast, "there is ample evidence," the United Kingdom submits, "to demonstrate the real purpose for creating the MPA and for concluding that it was reasonable to proceed as proposed."[652] In response to Mauritius' argument that "there is no sufficient evidential basis for a no-take policy," the United Kingdom contends that –

> First, it's not an abuse of rights claim [. . .] what we are actually faced with here is a need to balance the competing rights of coastal states and of others fishing in their EEZ, and the relevant rules are articles 56, 58, 61 and 62. So the question [. . .] is whether in closing the MPA to foreign fishing to Mauritian fishing the United Kingdom has acted consistently with those articles, and that is not an appropriate question for an abuse of rights discussion.
>
> Secondly, [. . .] Mauritius has not shown that the decision to ban all commercial fishing in the MPA lacks scientific justification. All it can point to are the differing opinions of scientists about whether to ban fishing or continue with the previous policy. [. . .] But [. . .]

649 Final Transcript, 900:1 to 901:5.

650 Final Transcript, 901:24 to 902:2.

651 Final Transcript, 1165:13-19.

652 Final Transcript, 903:1-2.

> justifying measures of the kind taken by the United Kingdom, in order to conserve fish stocks, biodiversity and the marine ecosystems on which they depend does not require strong and cogent evidence.
>
> [. . .]
>
> So it follows [. . .] that if Mauritius wishes to cast doubt on the scientific justification for the no-take MPA [. . .], it will have to provide much stronger and far more cogent evidence that clearly and convincingly contradicts the existing scientific and environmental basis for the no-take policy on fishing. Notwithstanding anything said by Mauritius last week, it comes at the moment nowhere near doing so.[653]

2. The Tribunal's Decision

(a) The Interpretation of Article 2(3)

499. Turning first to Article 2(3), the Tribunal is confronted with the stark difference between the Parties as to whether the provision gives rise to any obligation at all. Mauritius contends that the Article creates an obligation under the Convention to comply with other requirements of international law in the exercise of sovereignty in the Territorial Sea. The United Kingdom considers the text to be purely descriptive.

500. For its part, the Tribunal considers the English-language formulation of Article 2(3)—providing that "sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law"—to be ambiguous. The Tribunal agrees with Mauritius, however, that a sense of obligation is more readily apparent in the non-English versions of this provision. Furthermore, the Tribunal observes that differences between "is" and "shall" in the English text of the Convention are not consistently reflected by comparable distinctions in the non-English texts[654] and is therefore cautious of ascribing any significant consequence to such usage.

---

653 Final Transcript, 903:22 to 905:17.

654 As but one example, the English text of Article 87, concerning the freedom of the high seas, includes a distinction, within a single article, between the formulations "is exercised" and "shall be exercised":

> 1. The high seas are open to all States, whether coastal or land-locked. Freedom of the high seas is exercised under the conditions laid down by this Convention and by other rules of international law. It comprises, inter alia, both for coastal and land-locked States:
>
> [. . .]
>
> 2. These freedoms shall be exercised by all States with due regard for the interests of other States in their exercise of the freedom of the high seas, and also with due regard for the rights under this Convention with respect to activities in the Area.

In the French text, however, the same provisions are set out without distinction, using the formulation "exerce" in the present tense and differing only in the reflexive orientation of the former sentence:

501. Pursuant to Article 320 of the Convention, "the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic". Article 33 of the Vienna Convention on the Law of Treaties governs the interpretation of a treaty authenticated in multiple languages and provides that, unless otherwise indicated, "the text is equally authoritative in each language".[655] The Convention includes no provision for the resolution of differences between its authentic texts. Therefore it is possible to have recourse to the Vienna Convention. Article 33 of the Vienna Convention further provides that "when a comparison of the authentic texts discloses a difference of meaning which the application of articles 31 and 32 does not remove, the meaning which best reconciles the texts, having regard to the object and purpose of the treaty, shall be adopted."[656]

502. Approaching first the text of Article 2(3), the Tribunal is of the view that the balance of the authentic versions favours reading that provision to impose an obligation.

503. The Tribunal also considers this interpretation to be consistent with the placement of Article 2(3) within the structural context of the Convention. The formulation of Article 2(3) is identical to that of Article 87(1), concerning the high seas, and any interpretation the Tribunal may reach regarding the scope of obligation embodied in the former provision would apply equally to the latter. Looking across the various maritime zones created by the Convention, the Tribunal notes that each of the territorial sea (Article 2(3)), international straits (Article 34(2)), the exclusive economic zone (Article 56(2)), the continental shelf (Article 78(2)) and the high seas (Article 87(2)) includes a provision to the effect that States will exercise their rights under the Convention subject to, or with regard to, the rights and duties of other States or rules of international law beyond the Convention itself. While the language of these provisions is not harmonized, a *renvoi* to material beyond the Convention must be interpreted in a manner that is coherent with respect to all of the foregoing maritime zones.

> 1. La haute mer est ouverte à tous les Etats, qu'ils soient côtiers ou sans littoral. La liberté de la haute mer s'exerce dans les conditions prévue par le dispositions de la Convention et les autres règles du droit international. Elle comporte notamment pour les Etats, qu'ils soient côtiers ou sans littoral:
>
> [. . .]
>
> 2. Chaque Etat exerce ces libertés en tenant dûment compte de l'intérêt que présente l'exercice de la liberté de la haute mer pour les autres Etats, ainsi que des droits reconnus par la Convention concernant les activités menées dans la Zone.

655 Vienna Convention on the Law of Treaties, art. 33, 22 May 1969, 1155 UNTS 331.

656 *Ibid.*

504. Recalling the object and purpose of the Convention, the Tribunal notes the express references in its preamble to the need to consider the "closely interrelated" problems of ocean space "as a whole," and the "desirability of establishing through this Convention, . . . a legal order for the seas and oceans." In the Tribunal's view, these objectives—as well as the need for coherence in interpreting Article 2(3) within the context of the provisions for other maritime zones—are more readily achieved by viewing Article 2(3) as a source of obligation. As discussed in the paragraphs that follow, this view is confirmed by an examination of the origin of Article 2(3).

505. As noted by both Parties, the text of what is now Article 2(3) was derived from Article 1 of the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone which provided as follows:

> *Article 1*
>
> 1. The sovereignty of a State extends, beyond its land territory and its internal waters, to a belt of sea adjacent to its coast, described as the territorial sea.
>
> 2. This sovereignty is exercised subject to the provisions of these articles and to other rules of international law.

The Tribunal considers the text in this form to be identical to the 1982 Convention for present purposes, and notes that the five authentic language versions of the 1958 text do nothing to reconcile the ambiguity in the later treaty.

506. Article 1 of the 1958 Convention had its origins, in turn, in the Draft Articles on the Law of the Sea prepared by the International Law Commission in 1956, where it was proposed by the Commission's Special Rapporteur, Mr J.P.A. François. As set out in the ILC's Draft Articles, Article 1 provided as follows:

> *Article 1*
>
> 1. The sovereignty of a State extends to a belt of sea adjacent to its coast, described as the territorial sea.
>
> 2. This sovereignty is exercised subject to the conditions prescribed in these articles and by other rules of international law.

507. While the intent of Article 2(3) does not appear to have been significantly discussed during the negotiations leading to the adoption of the Convention,[657] the provision was the subject of

---

657 Debate on the territorial sea during the Third UN Conference on the Law of the Sea appears to have been consumed almost entirely with the question of whether the concept of a unified territorial sea should be disposed of in favor of recognizing a plurality of legal regimes with overlapping, but not congruent, geographical scope. *See* M. Norquist, ed., *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. II at pp. 64-74 (1989).

significant debate during the preparation of the ILC Draft Articles.[658] For the Tribunal, a review of the record of these debates makes the following points apparent.

508. First, the Special Rapporteur adopted the provision from the draft Regulations prepared by the League of Nations Codification Conference in The Hague in 1930, where it was included in light of perceived differences between the exercise of sovereignty over the territorial sea and sovereignty over land. The Committee Report from the 1930 Conference, recalled as guidance by the ILC's Rapporteur, described the purpose of the provision in the following terms:

> Obviously sovereignty over the territorial sea, like sovereignty over the domain on land, can only be exercised subject to the conditions laid down by international law. As the limitations which international law imposes on the power of the State in respect of the latter's sovereignty over the territorial sea are greater than those it imposes in respect of the domain on land, it has not been thought superfluous to make special mention of these limitations in the text of the article itself.[659]

509. Second, a number of members of the Commission sought to delete the provision as superfluous, either because "[t]he sovereignty of the State, wherever exercised, was always limited by the rules of international law"[660] or because they considered that there were no limitations on sovereignty in the territorial sea beyond the right of innocent passage.[661]

510. Conversely, a number of members believed that "the Commission's function was to promote the codification of existing international law. Accordingly, it should formulate all the provisions of the international law in force", rather than include a general reference.[662]

511. Ultimately, these views were opposed by the strong views of other members of the Commission that "[i]t was vital that specific reference should be made to the limitations imposed by

---

658 *See* International Law Commission, Summary Record of the 165th Meeting, UN Doc A/CN.4/SR.165 (16 July 1952); International Law Commission, Summary Record of the 253rd Meeting, UN Doc A/CN.4/SR.253 (23 July 1954); International Law Commission, Summary Record of the 295th Meeting, UN Doc A/CN.4/SR.295 (20 May 1955); International Law Commission, Summary Record of the 324th Meeting, UN Doc A/CN.4/SR.324 (1 July 1955); International Law Commission, Summary Record of the 361st Meeting, UN Doc A/CN.4/SR.361 (6 June 1956).

659 International Law Commission, Summary Record of the 165th Meeting, UN Doc A/CN.4/SR.165 at para. 25 (16 July 1952).

660 International Law Commission, Summary Record of the 253rd Meeting, UN Doc A/CN.4/SR.253 at paras. 2, 12 (23 July 1954).

661 International Law Commission, Summary Record of the 165th Meeting, UN Doc A/CN.4/SR.165 at paras. 26, 38 (16 July 1952).

662 International Law Commission, Summary Record of the 253rd Meeting, UN Doc A/CN.4/SR.253 at paras. 9, 17 (23 July 1954).

international law on sovereignty over the territorial sea, particularly in view of the recent tendency to increase the breadth of that sea"[663] and that –

> it was not permissible for the Commission to assume that the draft articles covered the entire topic so that the residuary reference to "other rules of international law" was unnecessary. In the first place, allowance had to be made for the possibility of an involuntary omission; secondly, there were certain general rules of international law which were applicable in the matter, as indeed to other topics of international law, such as the principle prohibiting the abuse of rights and, generally, the law of state responsibility.[664]

This latter view prevailed in the Draft Articles as finally adopted.

512. The ILC's Draft Articles were not prepared with dispute resolution in mind and, indeed, at the time of the foregoing remarks, it remained unclear whether the final product of the Commission's work would be a draft convention or some less formal instrument without binding effect. From the record of the discussions, the Tribunal understands the Commission's view of its task to have been to codify in the Draft Articles the obligations then existing with respect to the territorial sea, with specific language where possible and general references where necessary. The Tribunal also views the consideration given to whether it would be possible to fully specify the limitations on sovereignty in the territorial sea to be incompatible with the interpretation of draft article 1(2) as merely an introductory description.

513. During the First UN Conference on the Law of the Sea that led to the adoption of the 1958 Convention on the Territorial Sea and the Contiguous Zone, Article 1(2) received little attention, none of which appears to bear on the question before the Tribunal. Discussion was instead focussed on resolving deeply held differences as to the breadth of the territorial sea. Nevertheless, the Tribunal notes that the 1958 Conference did engage in discussion on the addition to Article 2 of the Convention on the High Seas of the comparable provision that "[f]reedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law." Such text was not included in the ILC Draft Articles and its addition was derived from the ILC's commentary and Article 1(2) of the Draft Articles, concerning the territorial sea.[665] The addition was supported on the grounds that "any freedom that was to be exercised in the interests of all entitled to enjoy it must be regulated"[666] and that "freedom of the high seas should be made subject to the articles of the convention and the other

---

663 International Law Commission, Summary Record of the 165th Meeting, UN Doc A/CN.4/SR.165 at para. 34 (16 July 1952).

664 International Law Commission, Summary Record of the 253rd Meeting, UN Doc A/CN.4/SR.253 at para. 10 (23 July 1954).

665 First UN Conference on the Law of the Sea, Official Records, Vol. IV (Second Committee, High Seas: General Regime), Summary Records of Meetings and Annexes, UN Doc. A/CONF.13/40 at p. 37.

666 *Ibid*. at p. 39.

rules of international law".[667] In the Tribunal's view, the comments made in relation to this amendment were uniformly of the view that its addition constituted a restriction on the freedom of the seas.

514. Accordingly, the Tribunal concludes that the multi-lingual "terms of the treaty in their context and in the light of its object and purpose",[668] together with the negotiating history of the Convention, lead to the interpretation that Article 2(3) contains an obligation on States to exercise their sovereignty subject to "other rules of international law". Having reached this conclusion, however, the Tribunal notes that the Parties remain in dispute with respect to the intended scope of "other rules of international law", to which the Tribunal will now turn.

515. Both Parties have referred the Tribunal to the ILC's commentary on Article 1(2) of its Draft Articles, which provided in relevant part as follows:

> (3) Clearly, sovereignty over the territorial sea cannot be exercised otherwise than in conformity with the provisions of international law.
>
> (4) Some of the limitations imposed by international law on the exercise of sovereignty in the territorial sea are set forth in the present articles which cannot, however, be regarded as exhaustive. Incidents in the territorial sea raising legal questions are also governed by the general rules of international law, and these cannot be specially codified in the present draft for the purposes of their application to the territorial sea. That is why "other rules of international law" are mentioned in addition to the provisions contained in the present articles.
>
> (5) It may happen that, by reason of some special relationship, geographical or other, between two States, rights in the territorial sea of one of them are granted to the other in excess of the rights recognized in the present draft. It is not the Commission's intention to limit in any way any more extensive right of passage or other right enjoyed by States by custom or treaty.[669]

516. While the Parties draw different conclusions regarding the implications of these comments, the Tribunal understands them to indicate that the Commission understood Article 1(2) of the Draft Articles to require States to exercise their sovereignty in the territorial sea subject to the general rules of international law. The Commission also recognized that States may possess particular rights in the territorial sea by virtue of bilateral agreements or local custom, but noted merely that the Articles were not intended to interfere with such rights. In the Tribunal's view, this accords with the discussions of the provision in the Commission, in which the only references to other rules of international law were to such matters as the abuse of rights and the law of State

667 *Ibid*. at pp. 42, 43.

668 Vienna Convention on the Law of Treaties, art. 31(1), 22 May 1969, 1155 UNTS 331.

669 International Law Commission, Articles concerning the Law of the Sea with Commentaries, *Report of the International Law Commission on the Work of its Eighth Session, 23 April to 4 July 1956*, Official Records of the General Assembly, Eleventh Session, Supplement No. 9, UN Doc. A/3159 at p. 265.

responsibility. There is no indication that through this provision the Commission intended to create an obligation of compliance with any bilateral commitment a State might undertake in the territorial sea, nor is there any basis to assume that the intent of the provision changed between the Commission's formulation of the Draft Articles and the adoption of the Convention in 1982. The Tribunal therefore concludes that the obligation in Article 2(3) is limited to exercising sovereignty subject to the general rules of international law.

517. Turning to the implications of this provision in the present case, the Tribunal does not consider that the Lancaster House Undertakings represent part of the general rules of international law for which the Convention creates an obligation of compliance. The Tribunal does, however, consider that general international law requires the United Kingdom to act in good faith in its relations with Mauritius, including with respect to undertakings. Whether this requirement has been met in the creation of the MPA will be evaluated below.

(b) The Interpretation of Article 56(2)

518. In contrast to Article 2(3), the English text of Article 56(2) leaves no doubt that the provision imposes an obligation on the coastal State:

> In exercising its rights and performing its duties under this Convention in the exclusive economic zone, the coastal State shall have due regard to the rights and duties of other States and shall act in a manner compatible with the provisions of this Convention.

The difference between the Parties, therefore, concerns what is meant by "due regard" and the extent to which this implies an obligation to consult, or even of non-impairment.

519. In the Tribunal's view, the ordinary meaning of "due regard" calls for the United Kingdom to have such regard for the rights of Mauritius as is called for by the circumstances and by the nature of those rights. The Tribunal declines to find in this formulation any universal rule of conduct. The Convention does not impose a uniform obligation to avoid any impairment of Mauritius' rights; nor does it uniformly permit the United Kingdom to proceed as it wishes, merely noting such rights. Rather, the extent of the regard required by the Convention will depend upon the nature of the rights held by Mauritius, their importance, the extent of the anticipated impairment, the nature and importance of the activities contemplated by the United Kingdom, and the availability of alternative approaches. In the majority of cases, this assessment will necessarily involve at least some consultation with the rights-holding State.

(c) The Application of Articles 2(3) and 56(2)

520. Mauritius' rights in the territorial sea and exclusive economic zone pursuant to the Lancaster House Undertakings have been identified above (see paragraphs 417–456). Article 2(3) requires the United Kingdom to exercise good faith with respect to Mauritius' rights in the territorial sea. Article 56(2) requires the United Kingdom to have due regard for Mauritius' rights in the exclusive economic zone. The Tribunal considers these requirements to be, for all intents and purposes, equivalent.

521. There is no question that Mauritius' rights have been affected by the declaration of the MPA. In the territorial sea, Mauritius' fishing rights have effectively been extinguished. And as set out above (see paragraph 298), the Tribunal considers that the United Kingdom's undertaking for the eventual return of the Archipelago gives Mauritius an interest in significant decisions that bear upon its possible future uses. The declaration of the MPA was such a decision and will invariably affect the state of the Archipelago when it is eventually returned to Mauritius. The Tribunal considers Mauritius' rights to be significant and entitled, as a matter of good faith and the Convention, to a corresponding degree of regard.

522. The Tribunal has put on record the events from February 2009 to April 2010 concerning the initial steps taken to establish the MPA and the bilateral consultations between the United Kingdom and Mauritius. The Tribunal takes issue with several aspects of these events.

523. First, the MPA was originally notified to Mauritius not by the United Kingdom, but by a London newspaper article of 9 February 2009,[670] despite the following facts:

(a) In advance of the Mauritius–United Kingdom Joint Meeting on 14 January 2009, internal United Kingdom communications dated 31 December 2008 proposed the inclusion of the following agenda item:

> iv) Fishing rights/protection of the environment; [Means of discussing current/possible Mauritian rights in BIOT waters and introducing discussion of Pew ideas, if not name].[671]

(b) This was included in the proposed agenda for the meeting, sent by Note Verbale dated 6 January 2009, which included the reference to –

> iv) Fishing rights/protection of the environment".[672]

---

670 S. Gray, "Giant marine park plan for Chagos", The Independent, 9 February 2009 (**Annex MM-138**).

671 E-mail dated 31 December 2008 from Andrew Allen, Overseas Territories Directorate, to Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office (**Annex MR-125**).

(c) Nevertheless, the possibility of something like the MPA appears to have been raised in only the vaguest possible terms during the meeting. The United Kingdom's record records only an indication that "the UK was also looking at more ambitious approaches to managing the marine resource", without further specification.[673]

(d) Mauritius' record of comments during the January 2009 meeting by Mr Colin Roberts, the BIOT Commissioner, confirms this impression:

> The second is the environment issue. The coral structure has become the most important coral structure. The value lies more in the capacity of the coral structure for re-growth of all coral structures of the Indian Ocean. As government we have not formed a policy on this. The fishing industry is not very vibrant. We should look to it in the broader perspective to the benefits to the international community.[674]

524. Even accepting the United Kingdom's explanation that "officials simply would not have engaged in formal discussions on the proposal with third States until the policy to move forward with it had been adopted by Ministers", which occurred on 7 May 2009,[675] there is no evidence that bilateral consultations with Mauritius, either formal or informal, commenced until July 2009. This was notwithstanding:

(a) a clear reference to the need for talks with Mauritius in Mr Roberts' paper on the marine reserve concept dated 5 May 2009, which provided that –

> If Ministers wish to proceed next steps would include:
>
> [. . .]
>
> - opening talks with **Mauritius**
> - opening talks with the **US**[676]

(b) an exchange between Mr Roberts and Mr Gould on 7 May 2009 in which Mr Roberts proposed –

> 1) to continue our private "bilateral" engagement of stakeholders

---

672 Note Verbale dated 6 January 2009 from UK Foreign and Commonwealth Office to Mauritius High Commission, London, No. OTD 01/01/09 (**Annex MR-127**).

673 UK Foreign and Commonwealth Office, Overseas Territories Directorate, "British Indian Ocean Territory: UK/Mauritius Talks", 14 January 2009 (**Annex MR-128**).

674 Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, "Meeting of Officials on the Chagos Archipelago/British Indian Ocean Territory held at the Foreign and Commonwealth Office, London, Wednesday 14 January 2009, 10 a.m.", 23 January 2009 (**Annex MR-129**).

675 Final Transcript, 554:3-5.

676 Paper submitted on 5 May 2009 by Colin Roberts, Director, Overseas Territories Directorate, to the Private Secretary to the Foreign Secretary, "Making British Indian Ocean Territory the World's Largest Marine Reserve" (**Annex MR-132**).

[. . .]

3) to devise a public consultation process which takes account of the key legal and political risks identified, but is not dependent on resolution of all issues. I would aim to launch a consultation process in the second half of this year[677]

(c) a meeting between Mr Roberts and representatives from the U.S. Embassy on 12 May 2009 to discuss the proposal and the two concerns expressed by the United States, to the effect:

(1) that any marine park would not interfere with US military vessels/submarines operating in the area [. . .]

(2) that there would not be a decision five years down the line that a military base would be seen as incompatible with the MPA";[678]

(d) and an e-mail dated 4 June 2009 stating "we have not yet engaged with Mauritius on the proposal but we will be doing so soon".[679]

525. In fact, the meeting of 21 July 2009 comprised the entirety of bilateral consultation, which, the United Kingdom argues, were "the necessary consultations [that] took place".[680] Despite this, the Tribunal notes the following:

(a) According to the United Kingdom's record of the meeting, the United Kingdom's delegation explained that –

> not many details were available as the UK wanted to talk to Mauritius before proposals were developed. If helpful the UK could, for the purposes of discussion, produce a proposal with variations on paper for the Mauritians to look at.[681]

The United Kingdom further indicated that it was considering a "standard public consultation", but noted that "the UK had wanted to speak to Mauritius about the ideas beforehand". The United Kingdom's record also included the comment that "[m]uch remains to talk about as far as a marine protected area is concerned".[682]

(b) The United Kingdom also presented evidence from Mr Roberts recalling that he –

---

677 E-mail exchange between Colin Roberts, Director, Overseas Territories Directorate, and Matthew Gould, Principal Private Secretary to the Foreign Secretary, UK Foreign and Commonwealth Office, 7 May 2009 (**Annex MR-134**).

678 E-mail exchange between Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office and Ian [surname redacted], 4 June 2009 (**Annex MR-135**).

679 *Ibid.*

680 Final Transcript, 881:14-16.

681 UK Foreign and Commonwealth Office, Overseas Territories Directorate, "UK/Mauritius Talks on the British Indian Ocean Territory", 24 July 2009 (**Annex MR-143**).

682 *Ibid.*

> raised the possibility that a formal public consultation might be conducted and invited Mauritius to join with us in the consultation, e.g. by launching an international consultation by a joint press statement by the two Governments or by referencing Mauritius in the consultation document.[683]

(c) Mauritius' record of the meeting confirms that it was intended to be the start of discussions, noting that "the UK Government wished to start dialogue on a proposal made . . . to establish a marine protected area in the region of the Chagos Archipelago".[684]

(d) The Parties contemplated further cooperation in the form of joint action by a team of marine scientists, which never took place. What is more, the Joint Communiqué records that the Mauritian side "agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks".[685]

(e) The Parties continued to contemplate further joint action with respect to fishing licenses, as the Joint Communiqué goes on to record:

> The Mauritian side reiterated the proposal it made in the first round of the talks for the setting up of a mechanism to look into the joint issuing of fishing licences in the region of the Chagos Archipelago/British Indian Ocean Territory. The UK delegation agreed to examine this proposal and stated that such examination would also include consideration of the implications of the proposed marine protected area.[686]

526. There is a stark contrast between the United Kingdom's consultations with the United States and those that took place with Mauritius, in particular:

(a) Mr Roberts met with the representatives from the U.S. Embassy on 12 May 2009, only days after the Ministerial-level decision to move forward with the MPA proposal.[687]

(b) Internal United Kingdom correspondence dated 3 and 14 July 2009 demonstrates extensive concern with the U.S. reaction to the MPA proposal. British representatives laying the ground for the MPA noted the need –

---

683 Colin Roberts' 3rd Witness Statement, para. 20 (**Annex UKR-74**).

684 Information Paper by the Prime Minister of Mauritius, Second Meeting at Senior Officials' Level between Mauritius and UK on the Chagos Archipelago, CAB(2009) 624, 12 August 2009 (**Annex MR-144**).

685 Joint Communiqué, Second round of bilateral talks between Mauritius and the UK on the Chagos Archipelago, 21 July 2009, Port Louis, Mauritius (**Annex MM-148/MR-142**).

686 *Ibid*.

687 E-mail exchange between Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office and Ian [surname redacted], 4 June 2009 (**Annex MR-135**).

i) to establish clearly that the creation of an MPA (excluding DG itself and its 3 mile zone) is consistent with the existing [exchanges of notes]. One question here is whether any of our agreements with the US have any application beyond the 12 mile territorial limit.

ii) refine a set of commitments to reassure the US, but which do not undermine the fundamental value of the MPA. My suggestions are:

- Nothing we are proposing will require any change to the [exchanges of notes] governing the territory.

- MPA designation a matter fully within the UK's sovereign powers. But will of course want to consult US.

- Diego Garcia and its 3mile limit will be excluded from the MPA (so no relevance to the anchor/buoy question [in] the lagoon)

- There will be no change to the rights and freedoms currently enjoyed by the US government in the territory under the [exchanges of notes] (However any recreational fishing will be banned in the MPA and separately we are proposing to ban recreational fishing in DG's 3-mile limit and the lagoon). The US must recognise that we do not exclude the possibility of future strengthening of environmental controls. But as in the past these would come through negotiation with the US. We do not propose any stricter controls on the US by virtue of creating an MPA

- We are not aware of any US activity in the proposed MPA which would be inconsistent with the MPA. However, if the US think they do or will want to do anything inconsistent with an MPA, now is the time to tell us. They may find it useful to consider the extent to which the US Marine National Monuments have constrained any military activities. The BIOT MPA will be *sui generis*. If necessary we can consider a specific "military exclusion" in the MPA legislation.

- there will be no change to the fundamental purpose of BIOT: to serve the defence interests of the UK and US.[688]

(c) On 7 September 2009, the BIOT Administration made a formal submission concerning the "Implications for US Activities in Diego Garcia and BIOT", setting out the "two or three models for providing a framework for this [MPA]" and the assurances given to the United States as contemplated by the e-mail dated 3 July 2009.[689]

527. In the same internal correspondence, British representatives appear to have been aware of Mauritius' rights in the Archipelago (whatever their view as to their precise legal status), noting the need for "a full analysis of the history of fishing and environmental protection in BIOT" and "an authoritative statement of what we think are Mauritius' rights today to fish in BIOT

688 E-mail exchange between Colin Roberts, Director, Overseas Territories Directorate, and Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office, 13 & 14 July 2009 (**Annex MR-138**).

689 Submission dated 7 September 2009 from BIOT Administration, "BIOT Marine Reserve Proposal: Implications for US Activities in Diego Garcia and British Indian Ocean Territory" (**Annex MR-145**).

waters".[690] Nevertheless, further discussion was largely limited to the possibility of policy "sweeteners" to secure Mauritian agreement and concluded that while "we might explore these issues in talks, I don't think we can commit at this stage".[691]

528. In the Tribunal's view, the United Kingdom's approach to consultations with the United States provides a practical example of due regard and a yardstick against which the communications with Mauritius can be measured. The record shows that the United States was consulted in a timely manner and provided with information, and that the United Kingdom was internally concerned with balancing the MPA with U.S. rights and interests.

529. In contrast, the 21 July 2009 meeting with Mauritius reminds the Tribunal of ships passing in the night, in which neither side fully engaged with the other regarding fishing rights or the proposal for the MPA. Indeed, the United Kingdom's record suggests the differing agendas and understandings at play in its comment that –

> There was a short discussion about access to fishing rights. The Mauritians wanted to manage jointly the resources. This was simply put on the table for the UK to consider. Comment: this all seemed a bit surreal when we'd spent the last half hour discussion [*sic*] the possible ban on any fishing in the territory but the Mauritians had warned us that this would remain an agenda item.[692]

530. The Tribunal's overall impression of the meeting was that there remained a number of issues unanswered, information that the United Kingdom promised to provide to Mauritius, and further work and consultations that would be jointly undertaken. It is difficult for the Tribunal to conclude, based on the foregoing, that this one meeting could satisfy the obligation to have "due regard" or to consult.

531. The Tribunal notes the United Kingdom's position that a further round of talks with Mauritius was contemplated, but did not take place in light of Mauritius' refusal to discuss the issue in parallel with the United Kingdom's Public Consultation. The Tribunal notes the United Kingdom's point that it was Mauritius which declined to agree upon a date for talks[693] and accepts the argument that consultation need not continue indefinitely or "until the other party is happy".[694] That being said, the United Kingdom created an expectation that further bilateral

---

690 E-mail exchange between Colin Roberts, Director, Overseas Territories Directorate, and Joanne Yeadon, Head of BIOT & Pitcairn Section, UK Foreign and Commonwealth Office, 13-14 July 2009 (**Annex MR-138**).

691 *Ibid.*

692 UK Foreign and Commonwealth Office, Overseas Territories Directorate, "UK/Mauritius Talks on the British Indian Ocean Territory", 24 July 2009 (**Annex MR-143**).

693 Final Transcript, 561:16 to 564:12.

694 Final Transcript, 880:24 to 881:7.

consultation "about the ideas [would take place] beforehand" and that Mauritius would be offered a further opportunity for discussion before a final decision was taken. As late as March 2010, the United Kingdom assured Mauritius that "no decision on the creation of an MPA has yet been taken" and that "the United Kingdom is keen to continue dialogue about environmental protection within bilateral framework or separately. The public consultation does not preclude, overtake or bypass these talks."[695] Only days later, the United Kingdom nevertheless decided to announce the creation of the MPA. The Tribunal finds it difficult to reconcile this course of events with the spirit of negotiation and consultation or with the need to balance the interests at stake in the waters of the Archipelago.

532. The Tribunal also observes that the meeting between then Prime Minister Brown and Prime Minister Ramgoolam added to the confusion and atmosphere of cross purposes between the Parties. Whatever was actually said at CHOGM, it had the effect of creating additional expectations that were not met by the United Kingdom. While the United Kingdom has shown the Tribunal the steps it took to mend such fences, it did not pursue renewed consultations with Mauritius in early 2010 and elected instead to press ahead with the final approval of the MPA.

533. Turning to the final events in March to April 2010, the Tribunal notes that the United Kingdom has not been able to provide any convincing explanation for the urgency with which it proclaimed the MPA on 1 April 2010.[696] The Public Consultation closed only on 5 March 2010. The facilitator's report on the Public Consultation was only received "sometime in March".[697] And the BIOT Administration's submission to the UK Ministers was made on 30 March 2010, only two days before the declaration of the MPA. The Tribunal finds it difficult to account for the haste with which the United Kingdom acted and would have expected significant further engagement with Mauritius following the Public Consultation. To the extent that the timing of the declaration of the MPA was in fact dictated by the electoral timetable in the United Kingdom or an anticipated change of government, the Tribunal does not accept that such considerations can justify the disregard of the United Kingdom's obligations to Mauritius. The absence of any justifiable rationale for the United Kingdom's haste—which, the Tribunal notes, stands in sharp contrast to the absence of implementing measures following the MPA's declaration—exacerbates the inadequacy of the prior consultation with Mauritius.

---

695 Letter dated 19 March 2010 from the British High Commissioner, Port Louis, to the Secretary to Cabinet and Head of the Civil Service, Mauritius (**Annex MM-163**); Note Verbale dated 26 March 2010 from British High Commission, Port Louis, to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, No. 14/2010 (**Annex MM-164**).

696 Final Transcript, 592:24 to 593:2; 593:16-19; 888:22 to 889:4.

697 Final Transcript, 591:3-5.

534. The Tribunal considers that the United Kingdom's obligation to act in good faith and to have "due regard" to Mauritius' rights and interests arising out of the Lancaster House Undertakings, as reaffirmed after 1968, entails, at least, both consultation and a balancing exercise with its own rights and interests. With respect to consultations, the Tribunal does not accept that the United Kingdom has fulfilled the basic purpose of consulting, given the lack of information actually provided to Mauritius and the absence of a reasoned exchange between the Parties, exemplified by the misunderstanding that characterized the 21 July 2009 meeting. Furthermore, the United Kingdom's statements and conduct created reasonable expectations on the part of Mauritius that there would be further opportunities to respond and exchange views. This expectation was frustrated when the United Kingdom declared the MPA on 1 April 2010.

535. The Tribunal also concludes that the United Kingdom failed properly to balance its own rights and interests with Mauritius' rights arising from the Lancaster House Undertakings. Not only did the United Kingdom proceed on the flawed basis that Mauritius had no fishing rights in the territorial sea of the Chagos Archipelago, it presumed to conclude—without ever confirming with Mauritius—that the MPA was in Mauritius' interest. This approach is to be contrasted with the one adopted with respect to the United States, as another State with rights and interests in the Archipelago. There, the record demonstrates a conscious balancing of rights and interests, suggestions of compromise and willingness to offer assurances by the United Kingdom, and an understanding of the United State's concerns in connection with the proposed activities. All these elements were noticeably absent in the United Kingdom's approach to Mauritius.

536. Accordingly, the Tribunal concludes that the United Kingdom has breached Articles 2(3) and 56(2) and therefore finds that the proclamation of the MPA was incompatible with the Convention.

(d) The Interpretation and Application of Article 194

537. Article 194 sets out two provisions that potentially bear on the declaration of the MPA. Article 194(1) requires that –

> States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection.

Article 194(4) then requires that –

> In taking measures to prevent, reduce or control pollution of the marine environment, States shall refrain from unjustifiable interference with activities carried out by other States in the exercise of their rights and in pursuance of their duties in conformity with this Convention.

The Parties differ as to whether the former provision gives rise to an obligation and whether the latter has any bearing on the MPA.

538. In the Tribunal's view, the Parties' disagreement regarding the scope of Article 194 is answered by the fifth provision of that Article, which expressly provides that –

> The measures taken in accordance with this Part shall include those necessary to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.

Article 194 is accordingly not limited to measures aimed strictly at controlling pollution and extends to measures focussed primarily on conservation and the preservation of ecosystems. As repeatedly justified by the United Kingdom, the MPA is such a measure.

539. The Tribunal concludes that in establishing the MPA, the United Kingdom was under an obligation to "endeavour to harmonize" its policies with Mauritius. Article 194(1), however, is prospective and requires only the United Kingdom's best efforts. It does not require that such attempts precede any action with respect to the marine environment, nor does it impose any particular deadline. The Tribunal does not therefore see in the limited life of the MPA to date that the United Kingdom has violated an obligation pursuant to Article 194(1).

540. Article 194(4) imposes a different type of obligation. The Tribunal considers the requirement that the United Kingdom "refrain from unjustifiable interference" to be functionally equivalent to the obligation to give "due regard", set out in Article 56(2), or the obligation of good faith that follows from Article 2(3). Like these provisions, Article 194(4) requires a balancing act between competing rights, based upon an evaluation of the extent of the interference, the availability of alternatives, and the importance of the rights and policies at issue. Article 194(4) differs, however, in that it facially applies only to the "activities carried out by other States" pursuant to their rights, rather than to the rights themselves. Mauritius' rights to the eventual return of the Archipelago and to the benefit of oil and minerals are prospective in nature: there are no activities presently carried out pursuant to these undertakings. Accordingly, the Tribunal considers that Article 194(4) is applicable only to Mauritian fishing rights, which in turn the Tribunal is considering only in respect of the territorial sea.

541. The Tribunal does not exclude the possibility that environmental considerations could potentially justify, for the purposes of Article 194(4), the infringement of Mauritian fishing rights in the territorial sea. Such justification, however, would require significant engagement

with Mauritius to explain the need for the measure and to explore less restrictive alternatives. This engagement is nowhere evident in the record. Accordingly, and for the reasons already largely set out in the application of Articles 2(3) and 56(2), the Tribunal concludes that the declaration of the MPA was not compatible with Article 194(4) and Mauritian fishing activities in the territorial sea.

(e) The Role for Article 300

542. Mauritius' submissions pursuant to Article 300 are based primarily, although not exclusively, on the alleged U.S. record of a meeting with BIOT officials on 12 May 2009. The Tribunal has reviewed the record of the English court proceedings that considered the matter and sees no basis to question the conclusion reached following the examination of the relevant individuals, that the content of that meeting was not as recorded in the leaked cable. Nor does the Tribunal consider it appropriate to place weight on a record of such provenance.

543. The Tribunal has before it a substantial amount of internal United Kingdom correspondence concerning the MPA, none of which suggests an ulterior motive or improper purpose. Having already concluded that the declaration of the MPA was not in keeping with Articles 2(3), 56(2), and 194(4) of the Convention, the Tribunal sees no need to comment further on Article 300 or the abuse of rights.

C. FINAL OBSERVATIONS

544. In concluding that the declaration of the MPA was not in accordance with the provisions of the Convention, the Tribunal has taken no view on the substantive quality or nature of the MPA or on the importance of environmental protection. The Tribunal's concern has been with the manner in which the MPA was established, rather than its substance. It is now open to the Parties to enter into the negotiations that the Tribunal would have expected prior to the proclamation of the MPA, with a view to achieving a mutually satisfactory arrangement for protecting the marine environment, to the extent necessary under a "sovereignty umbrella".

* * *

CHAPTER VII - COSTS

545. In its Final Submissions, the United Kingdom requested that the Tribunal "determine that the costs incurred by the United Kingdom in presenting its case shall be borne by Mauritius, and that Mauritius shall reimburse the United Kingdom for its share of the expenses of the Tribunal." Additionally, in its decision on the challenge to Judge Greenwood, the Tribunal decided (further to the request of the United Kingdom) "[t]o defer any decision regarding the costs of the Challenge."

546. This arbitration has presented a number of difficult issues in the interpretation of the Convention with respect to which the Parties were genuinely in dispute. Although Mauritius has not prevailed on the entirety of its submissions, it has succeeded in significant part. The Tribunal also considers that the Parties' legal arguments were carefully considered, whether or not they prevailed, and that the Parties acted with skill, dispatch, and economy in presenting their respective cases. The United Kingdom's application for costs is accordingly dismissed. Each Party shall bear its own costs. The costs of the Tribunal shall be shared equally.

* * *

this page intentionally blank

CHAPTER VIII - DISPOSITIF

547. For the reasons set out in this Award, the Tribunal decides as follows:

A. In relation to its jurisdiction, the Tribunal,

(1) FINDS, by three votes to two, that it lacks jurisdiction with respect to Mauritius' First and Second Submissions;

(2) FINDS, unanimously, that there is not a dispute between the Parties such as would call for the Tribunal to exercise jurisdiction with respect to Mauritius' Third Submission;

(3) FINDS, unanimously, that it has jurisdiction pursuant to Article 288(1), and Article 297(1)(c), to consider Mauritius' Fourth Submission and the compatibility of the MPA with the following provisions of the Convention:

a. Article 2(3) insofar as it relates to Mauritius' fishing rights in the territorial sea or to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;

b. Article 56(2), insofar as it relates to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;

c. Article 194; and

d. Article 300, insofar as it relates to the abuse of rights in connection with a violation of one of the foregoing articles;

(4) AND DISMISSES, unanimously, the United Kingdom's objection to the jurisdiction of the Tribunal over Mauritius' Fourth Submission with respect to the aforementioned provisions of the Convention.

B. In relation to the merits of the Parties' dispute, the Tribunal, having found, *inter alia*,

(1) that the United Kingdom's undertaking to ensure that fishing rights in the Chagos Archipelago would remain available to Mauritius as far as practicable is legally binding insofar as it relates to the territorial sea;

(2) that the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding; and

(3) that the United Kingdom's undertaking to preserve the benefit of any minerals or oil discovered in or near the Chagos Archipelago for Mauritius is legally binding;

DECLARES, unanimously, that in establishing the MPA surrounding the Chagos Archipelago the United Kingdom breached its obligations under Articles 2(3), 56(2), and 194(4) of the Convention.

C. In relation to the costs of these proceedings, the Tribunal DECIDES that each Party shall bear its own costs and that the costs of the Tribunal shall be shared equally by the Parties.

this page intentionally blank

Done at The Hague, this 18th day of March 2015,

Judge Rüdiger Wolfrum

[concurring in part and dissenting in part]

Judge Sir Christopher Greenwood CMG

Judge James Kateka

[concurring in part and dissenting in part]

Judge Albert Hoffmann

Professor Ivan Shearer AM
President

Mr. Brooks W. Daly
Registrar

CHAGOS MARINE PROTECTED AREA ARBITRATION

(MAURITIUS V. UNITED KINGDOM)

DISSENTING AND CONCURRING OPINION

Judge James Kateka and Judge Rüdiger Wolfrum

1. To our regret we are not able to agree with the reasoning and the findings of the Tribunal on Mauritius' Submissions Nos. 1 and 2; we, however, concur with the findings on Submissions Nos. 3 and 4, although not with all the relevant reasoning.

2. This Opinion will concentrate on the areas of disagreement, namely the characterization of the legal dispute between the Parties and the jurisdiction of the Tribunal concerning Submissions Nos. 1 and 2 of Mauritius. It will also deal with some issues concerning the merits of the case.

A. CHARACTERIZATION OF THE DISPUTE

1. Final Submission No. 1 of Mauritius[1]

3. The Parties differ on the characterization of the dispute. Mauritius states that its case is that the MPA is unlawful under the Convention. The United Kingdom, for its part, argues that the dispute is one about sovereignty over the Chagos Archipelago. In its Final Submission No. 1, Mauritius requested the Tribunal to adjudge and declare that the United Kingdom is not entitled to declare an "MPA" or other maritime zones because it is not the "coastal State within the meaning of *inter alia* Articles 2, 55, 56 and 76 of the Convention." During the oral hearing, Mauritius put it this way: "[t]he central question before this Tribunal is not whether the United Kingdom has sovereignty, it is whether the United Kingdom for the purposes of the Convention is 'the coastal State' and was, as such, entitled to act as it does".[2] This statement was made without prejudice to the fact that there exists a longstanding dispute between the parties about sovereignty over the Chagos Archipelago.

---

1 Final Submission No. 1 reads: "the United Kingdom is not entitled to declare an 'MPA' or other maritime zones because it is not the 'coastal State' within the meaning of *inter alia* Articles 2, 55, 56 and 76 of the Convention".

2 Final Transcript, 999:16-18.

4. We agree with the Award that it is for the Tribunal to characterize the dispute (*see* Award, para. 208). However, we differ from the approach taken in the Award in characterizing the dispute. Two different issues have to be decided in this context: namely, (a) whether the dispute between Mauritius and the United Kingdom is a dispute about the interpretation and the application of the Convention or a dispute on the sovereignty over the Chagos Archipelago, and (b) whether the Tribunal has jurisdiction over the dispute however defined. Logically one has to turn to the characterization of the dispute first and to other issues concerning jurisdiction second. We note that the Award, without consequently separating these two issues (*see* Award, para. 209), touches upon both of them while concentrating on the United Kingdom's argument as to whether the First Submission is to be considered an artificial re-characterization of the long-standing sovereignty dispute (*see* Award, para. 207).

5. We disagree with the approach taken by the Tribunal, which does not fully reflect the established jurisprudence of the ICJ in its *Fisheries Jurisdiction* case (*(Spain v. Canada), Judgment of 4 December 1998, ICJ Reports 1998*, p. 432 at p. 447, paras. 29 *et seq.*), to which the Award briefly refers in its paragraph 208. This judgment refers to several other cases, in particular to *Nuclear Tests* (*(Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 253 at p. 260, para. 24). This jurisprudence may be summarized as follows.

   (a) that it is for the Court itself to determine the dispute dividing the parties, (*Fisheries Jurisdiction (Spain v. Canada), Judgment of 4 December 1998, ICJ Reports 1998*, p. 432 at p. 449, paras. 30-31);

   (b) to do so on an objective basis while giving particular attention to the formulation of the dispute chosen by the Applicant by examining the position of both parties, (*ibid.*); and

   (c) to distinguish between the dispute itself and the arguments advanced by the parties, (*ibid.* at para. 32).

6. The above jurisprudence of the ICJ[3] has to be seen in its context. It focuses on the interpretation of a declaration made by Canada. Nevertheless, some of the principles expressed in this judgment are of relevance for the issue to be decided here, in particular since they are based upon previous rulings of the ICJ. These principles are, first, that the decision on the characterization of the legal dispute has to be made by the Tribunal on objective grounds "giving particular attention to the formulation of the dispute chosen by the Applicant" (*ibid.* at

[3] See the cases set out in paragraph 5 above.

para. 30), and, second, that it is necessary to distinguish between the dispute itself and the arguments advanced by the parties.

7. Considering the jurisprudence of the ICJ,[4] the question raised in paragraph 209 of the Award is not formulated appropriately.

8. Mauritius centres its case in Submission No. 1 on the meaning of the term "coastal State" and accordingly qualifies it as a case on the interpretation and application of the Convention within the jurisdiction of the Tribunal (Article 288 of the Convention). It argues that the meaning of the words "coastal State" and the issues of sovereignty are interwoven in the present case. We are sympathetic with this reasoning, but at the same time we emphasize that the case is not only a sovereignty claim as the United Kingdom qualifies it.

9. The following are the factual and legal grounds why we believe that the dispute cannot be qualified as a dispute about the sovereignty of the Chagos Archipelago:

10. First, it has to be noted that in its Submission No. 1, Mauritius only questioned the competence of the United Kingdom to be the coastal State in respect of establishing the MPA. This was emphasized and re-emphasized in the written, as well as in the oral, proceedings. From the very wording of Submission No. 1, it is clear that the claim advanced by Mauritius is not on the territorial sovereignty of the United Kingdom over the Chagos Archipelago but only covers an aspect thereof: namely, the establishment of the MPA ("The United Kingdom is not entitled to declare an "MPA" or any other maritime zone"). It is evident that territorial sovereignty encompasses more than the establishment of an MPA.

11. Second, it is undisputed that the issue concerning the sovereignty of the Chagos Archipelago was raised in general at some stage before the arbitral proceedings were initiated, but there was no indication that third party dispute settlement was sought. The United Kingdom criticized this within the context of Article 283 of the Convention. It is worth noting in this regard that, although Mauritius maintained its claim concerning its sovereignty over the Chagos Archipelago, it was satisfied with the assurance by the United Kingdom that the Archipelago would be returned at a future date. Mauritius did not even seek an agreement with the United Kingdom to that extent. The United Kingdom offered to conclude an agreement, but Mauritius declined. This indicates that, while Mauritius maintained its claim to sovereignty over the Chagos Archipelago, this was not its primary concern in the context of the claim now before the Tribunal.

---

4 *Ibid.*

12. Third, Mauritius initiated these proceedings against the United Kingdom only after the establishment of the MPA. It was clear right from the beginning that without this development Mauritius would not have initiated a dispute settlement procedure.

13. Fourth, Mauritius does not advance in its Submission No. 1 any argument concerning the exercise of territorial sovereignty over the islands. Its Submission No. 1 is clearly limited.

14. Fifth, account has to be taken of the limited scope of Submission No. 1 of Mauritius and that this has an impact upon the jurisdiction of the Tribunal. Under this submission, the Tribunal could not decide on the sovereignty of the United Kingdom over the Chagos Archipelago as such—even if it had the competence to do so—since the submission limits the jurisdiction of the Tribunal in this respect. It would be illogical if the Tribunal declared that this dispute was on the sovereignty over the Chagos Archipelago while being aware that, due to the limited scope of Submission No. 1, it was unable to decide on a dispute with such a broad scope.

15. We have noted that in some instances statements by counsel for Mauritius referred to the territorial sovereignty of Mauritius over the Chagos Archipelago. These are arguments, in the words of the ICJ (*Fisheries Jurisdiction (Spain v. Canada), Judgment of 4 December 1998, ICJ Reports 1998*, p. 432 at p. 449, para. 35), to be clearly separated from the case. Apart from that, in our view an overstatement by counsel for Mauritius of the Applicant's case should not dilute the thrust of the argument about the unlawfulness of the establishment of the MPA.

16. The United Kingdom emphasized that questions of sovereignty lie "at the heart of the current claim"[5] and that the issue of sovereignty over the Chagos Archipelago is a longstanding point of contention. It considers the claim an "artificial re-characterization of a long-standing sovereignty dispute."[6]

17. The Tribunal comes to the same conclusion as the United Kingdom by emphasizing the references to the sovereignty dispute "across a range of fora and instruments" (Award, para. 211), without, however, considering in detail the wording of Mauritius' Submission No. 1. This is to be regretted. The wording of paragraph 212 of the Award is quite telling. It states ". . . that the Parties' dispute with respect to Mauritius' First Submission is properly characterized as relating to land sovereignty over the Chagos Archipelago. The Parties' differing views on the "coastal State" for the purposes of the Convention are simply one aspect of this larger dispute". On the basis of Mauritius' Submission No. 1, it is exactly the other way around. The differing

5 Final Transcript, 666:18-19.

6 Final Transcript, 660:19-20.

views on the coastal State are the dispute before the Tribunal and the issue of sovereignty over the Chagos Archipelago is merely an element in the reasoning of Mauritius and not to be decided by the Tribunal.

2. Final Submission No. 2 of Mauritius[7]

18. As far as Submission No. 2 is concerned, we disagree with the Tribunal's qualification in paragraph 229 of the Award that the Second Submission ". . . must be viewed against the backdrop of the Parties' dispute regarding sovereignty over the Chagos Archipelago." Here again, no distinction is being made between the submission and the reasoning. The submission states: "having regard to the commitments that it has made to Mauritius in relation to the Chagos Archipelago, the United Kingdom is not entitled unilaterally to declare an 'MPA' or other maritime zone because . . .". We consider that the remaining part is reasoning.

19. We disagree that this is a dispute on the sovereignty over the Chagos Archipelago. In our view, this is a dispute as to whether the United Kingdom has ceded one or more rights as a coastal State in the commitments made in the Lancaster House Undertakings. Submission No. 2 is the opposite of a claim questioning the sovereignty of the United Kingdom over the Chagos Archipelago since it proceeds from the assumption that the United Kingdom had territorial sovereignty and had ceded certain rights as the sovereign.

B. JURISDICTION

20. The relevant provisions on jurisdiction are Articles 286, 287(5) and 288(1) of the Convention.

21. Mauritius ratified the Convention on 4 November 1994 and has made no declaration. The United Kingdom acceded to the Convention on 25 July 1997 and in a declaration of the same date extended the Convention to, amongst others, the BIOT. Another declaration of the United Kingdom excludes disputes under Article 298(1)(b) and (c) of the Convention from compulsory dispute settlement. These declarations are not of direct relevance for this case.

---

[7] Final Submission No. 2 reads: "having regard to the commitments that it has made to Mauritius in relation to the Chagos Archipelago, the United Kingdom is not entitled unilaterally to declare an 'MPA' or other maritime zones because Mauritius has rights as a 'coastal State' within the meaning of *inter alia* Articles 56(1)(b)(iii) and 76(8) of the Convention".

1. Final Submission No. 1

22. In considering this submission, it may be noted that for jurisdictional purposes, the Tribunal does not have to determine that the United Kingdom has violated the provisions relied upon by Mauritius. The Tribunal merely has to establish whether the provisions relied on apply to the Applicant's claims. In determining whether it has jurisdiction, the Tribunal must establish a link between the facts advanced by the Applicant and a particular provision to show that this provision can sustain the claim (*M/V "Louisa" (Saint Vincent and the Grenadines v. Kingdom of Spain), Judgment, ITLOS Reports 2013*, p. 4 at para. 99; *Oil Platforms (Islamic Republic of Iran v. United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803 at p. 810, para. 16). The Award refers to this principle in paragraph 296.

23. Article 288(1) of the Convention sets out when international courts or tribunals under Part XV of the Convention have jurisdiction. They have jurisdiction over "any dispute concerning the interpretation or application of the Convention". Although this provision is broadly phrased, it contains a limitation: namely, the dispute must be on the interpretation or application of the Convention. It is crucial to establish whether Mauritius advances such a claim.

24. Mauritius invokes in its Submission No. 1 Articles 2, 55, 56 and 76 of the Convention. These provisions refer to the status and competences of coastal States. Mauritius argues that Article 288(1) of the Convention does not say that disputes concerning the interpretation or application of the words "coastal State" are excluded from the jurisdiction of a court or tribunal referred to in Article 287 of the Convention. Mauritius also disagrees with the United Kingdom's argument that the words "coastal State" are to be determined as a matter of fact[8] and do not require the interpretation or application of the Convention. For Mauritius, it is a legal question. Linked with its consideration of Article 288(1) is Mauritius' consideration of the limitations and exceptions in section 3 of Part XV, namely Articles 297 and 298. It argues that jurisdiction is not excluded by section 3. Mauritius argues that Article 297 has nothing to say about the entitlement of a State to be able to claim that it is the "coastal State".

25. We raise these details of Mauritius' arguments on jurisdiction because we feel that the Tribunal has neglected some of Mauritius' arguments due to its focusing its attention on the question ". . . of the extent to which Article 288(1) accords the Tribunal jurisdiction in respect of a dispute over land sovereignty when, as here, that dispute touches in some ancillary manner on

[8] Counsel for the United Kingdom dismissively said that the term "coastal State" should detain the Tribunal no more than ten seconds as it means the State with the coast adjacent to the maritime zone with which the given provision of the Convention is concerned. *See* Final Transcript, 665:14-16.

matters regulated by the Convention" (Award, para. 213). This approach narrows the issue of jurisdiction and prevents the Tribunal from considering the issue from a broader perspective, as required by Article 288(1) of the Convention.

26. But apart from that, we consider the subsequent reasoning of the Tribunal (*see* Award, paras. 214–221) not convincing; in particular, it does not sufficiently deal with the arguments advanced by both Parties concerning the "*a contrario* argument". The Tribunal merely states that "much of this argumentation misses the point" (Award, para. 215). Instead the Tribunal emphasizes that the negotiation records of the Convention provide no firm answer regarding jurisdiction over territorial sovereignty. With this we would agree. But as will be demonstrated below, we draw a different conclusion therefrom.

27. Furthermore, the reasoning of the Tribunal is not fully coherent. How is it possible to state in paragraph 215 of the Award that the negotiating records of the Convention provide no firm answer regarding jurisdiction over territorial sovereignty and to assume in paragraphs 216 and 217, on the basis of Articles 297 and 298(1) of the Convention, that if the drafters had anticipated the possibility of territorial disputes they would have provided an opt-out facility? That the drafters did not foresee the possibility does not in itself justify reading a limitation into the jurisdiction of the international courts and tribunals acting under Part XV of the Convention.

28. There is no reasoning by the Tribunal concerning the argument put forward by Mauritius. According to Mauritius, sovereignty disputes are not necessarily excluded by Article 298(1)(a) of the Convention; they may be resolved under Part XV when they form a necessary part or have a "genuine link" to a dispute concerning the interpretation and application of any provision of the Convention. This, according to Mauritius, does not mean every dispute touching on sovereignty automatically falls within the Convention. The Tribunal does not take into account this argument since it considered the sovereignty issue the "real issue in the case" and the "object of the claim" (Award, para. 220), a statement we already have dealt with and do not consider sustainable. In the following paragraphs we will set out our position on the jurisdiction of this Tribunal on the basis of a comprehensive analysis of Articles 297, 298 and 288 of the Convention.

2. Limitations to jurisdiction

29. As stated above, Article 288(1) establishes that an international court or tribunal has jurisdiction over any dispute "concerning the interpretation or application of this Convention". It is evident that the jurisdiction of international courts and tribunals is thus limited. Exceptions to the

jurisdiction of international courts and tribunals under Part XV of the Convention are contained in Articles 297 and 298 of the Convention.

30. We shall first establish whether the dispute between Mauritius and the United Kingdom is excluded by the exceptions as contained in Articles 297 and 298 of the Convention. Thereafter, we shall return to Article 288(1) of the Convention, dealing with the question as to whether that provision excludes the jurisdiction over disputes which necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory.

31. Apart from the wording of Articles 297 and 298 of the Convention, their relationship to each other has to be taken into account, as well as the system of exceptions in the Convention seen as a whole and their legislative history. It is also relevant in this context that the Geneva Conventions on the Law of the Sea only provided for an Optional Protocol on dispute settlement, whereas under the Convention a mandatory dispute settlement system exists in spite of the exceptions provided under Articles 297 and 298 of the Convention.

32. On the basis of a purely textual analysis of Article 297 of the Convention, it is evident that its exclusion of the jurisdiction of international courts and tribunals under Part XV of the Convention does not embrace the exclusion of disputes for the reason that the decision on them would involve the consideration of any unsettled dispute concerning continental or insular land territory.

33. Article 298(1)(a) of the Convention provides that any State Party when signing, ratifying or acceding to the Convention may declare that it does not accept the third party dispute settlement procedures provided for in section 2 of Part XV of the Convention with respect to one or more of the three categories of disputes referred to in Article 298(1)(a)(i) to (iii) of the Convention. The first category deals with sea boundary delimitation. The relevant paragraph (1)(a)(i) contains the following clause:

> . . . at the request of any party to the dispute, accept submission of the matter to conciliation under Annex V, section 2; and provided further that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission;

34. Since the United Kingdom has not submitted such a declaration and since the present dispute is not a dispute on sea boundaries, this exception clause cannot be applied to the case before the Tribunal.

35. It has been argued by the United Kingdom, though, that this clause should be read into Article 297 of the Convention on exceptions to the jurisdiction of international courts and tribunals under Part XV of the Convention. This view is not supported by the legislative history of Articles 297 and 298 of the Convention as will be set out below.

36. The clause ". . . that any dispute that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory shall be excluded from such submission" was introduced in part into Article 297 of the ICNT[9] (today Article 298 of the Convention) to avoid the possibility of using the dispute settlement system of the Convention on the Law of the Sea for deciding territorial claims. Attempts were made to have this clause transferred to Article 297 of the Convention containing the automatic exceptions but no majority was found to that extent.[10] This is explained by the President of the Third UN Conference on the Law of the Sea in his Report on the work of the informal plenary meeting of the Conference on the settlement of disputes of 23 August 1980.[11] He stated:

> 6. The course of the negotiations conducted in the informal plenary meetings may be summarized as follows. Informal suggestions were made by some of the participants in the course of their interventions. These included suggestions regarding both drafting and substance. In particular, two suggestions were made which touched upon questions of delimitation, which were firstly, that a cross-reference to article 298bis of document SD/3 be made in article 298.1(a) (ii); secondly, the exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from the compulsory dispute settlement procedures and from compulsory submission to conciliation procedures as provided in article 298, paragraph 1(a). These should be included in article 296 with the other exceptions in that article. The exclusion of future delimitation disputes by declaration would remain in article 298. Where no settlement had been reached, such disputes would be submitted to conciliation at the request of any party and the other party would be obliged to accept this procedure.

---

9 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text, Art. 296, UN Doc. A/CONF.62/WP.10 (15 July 1977); *see also* S. Rosenne & L. Sohn, eds., *United Nations Convention on the Law of the Sea 1982: A Commentary*, Vol. V at p. 112 (M. Norquist, gen. ed., 1989). The idea of conciliation was introduced in *Official Records of the Third United Nations Conference on the Law of the Sea, Volume VIII (Informal Composite Negotiating Text, Sixth Session)*, Informal Composite Negotiating Text Revision 1, Art. 296, UN Doc. A/CONF.62/WP.10/Rev.1 (28 April 1979).

10 *See* P.C. Irwin, "Settlement of Marine Boundary Disputes: An Analysis of the Law of the Sea Negotiations," *Ocean Development & International Law*, Vol. 8(2) at p. 105 (1980).

11 *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIV (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Resumed Ninth Session (28 July to 29 August 1980))*, Report of the President on the work of the informal plenary meeting of the Conference on the settlement of disputes, UN Doc. A/CONF.62/L.59 (23 August 1980).

> 7. The President had stressed, both in document SD/3 and at the commencements of these negotiations, that changes of substance should be avoided, in particular, any changes to the text of article 296, paragraph 2 and 3. Since delicate compromises that had been very carefully negotiated are contained in that article, any attempt to raise these questions should be avoided. He pointed out that article 298, paragraph 1 (a) was closely linked to the delimitation issue. The president further stressed that attention should be concentrated on the structural changes alone to the exclusion of substantive changes. So far as paragraph 1 (a) was concerned even structural changes should be avoided.

37. The negotiating history of Articles 297 and 298 of the Convention shows clearly several issues. First, that the "exclusion of past or existing delimitation disputes as well as disputes relating to sovereignty over land or insular territories from compulsory dispute settlement procedures . . ." was touched upon. Second, that this issue was taken up in Article 298(1)(a) of the Convention, which provides for the possibility of making optional exemptions in the context of delimitation disputes. Third, that the initiative to make such (or a similar) exception a general one under Article 297 of the Convention did not prevail. In particular, this means that one cannot read an additional exception into Article 297 of the Convention.

38. On the basis of what we have stated in paragraph 37 above, contrary to what the United Kingdom asserts, a dispute which necessarily involves the concurrent consideration of an unsettled dispute concerning sovereignty or other rights over continental or insular land territory is not excluded from the jurisdiction of international courts or tribunals under Part XV by Article 298 of the Convention. Therefore it is necessary to return to Article 288(1) of the Convention. It has to be considered whether the reference in Article 288(1) of the Convention to disputes concerning the interpretation or application of the Convention excludes disputes which require sovereignty over continental or insular land territory.

39. In our view, there are several reasons why a clause such as is contained in Article 298(1)(a) of the Convention cannot be read into Article 288(1) of the Convention.

40. If such an inherent restriction for the jurisdiction of international courts and tribunals under Part XV of the Convention existed, it would not have been necessary to include it in Article 298(1)(a) of the Convention.

41. It is equally not sustainable to argue, as the United Kingdom does, that the clause in Article 298(1)(a) of the Convention is of a declaratory nature only.[12] The legislative history of this provision proves that there existed some concern in that respect and for that reason this clause

[12] Final Transcript, 693:15-20.

was introduced into Article 298(1) of the Convention. When the initiative was launched to transfer such clause to Article 297 of the Convention, the President of the Conference argued against changes, pointing out that the delimitation issue was negotiated intensively and should not be touched. This does not point in the direction of this clause being of a declaratory nature. On the contrary, such change was considered to be substantial.

42. In our view, there are many situations referred to in the Convention in which, when it comes to a legal dispute, it is necessary to establish whether the State taking action is competent to do so. In many instances these disputes require a decision on the existence of competences or their scope and thus on the sovereignty of the State concerned. So far, the issue has come up only in connection with delimitation and flag State issues. The particularity of the present case is that the issue of sovereignty comes up not in the delimitation context but in the context of the application of Article 56 of the Convention. It is to be noted that the issue of sovereignty will be a crucial factor in the reasoning.

43. As to the argument by the United Kingdom that allowing decisions under Part XV of the Convention touching on sovereignty issues would provide for a too broad jurisdictional power of the dispute settlement institutions referred to in Part XV,[13] one has to bear in mind that such a limitation does not apply to the ICJ, which has a broader mandate unless it decides under Part XV of the Convention. This means such a possibility already exists, albeit under a different dispute settlement regime.

44. In our view, the limitations on the exercise of jurisdiction under Part XV rest in Article 288(1) of the Convention (disputes "concerning the interpretation or application of the Convention") and the exceptions provided for in Articles 297 and 298 of the Convention. This ensures that a required nexus between the claim and the law of the sea exists, but there is in our view no justification to create another jurisdictional limitation beyond the ones of the Convention. It has been stated that Part XV constitutes a well-negotiated text. But exactly that puts into question the introduction of limitations to the jurisdiction of international courts and tribunals acting under Part XV beyond those explicitly provided for.

45. To conclude, according to Article 288(1) of the Convention, a nexus between the case in question and the Convention has to exist. Such a nexus exists in this case through Article 56 of the Convention. In that respect we disagree with the Tribunal's finding in paragraph 220 of the Award which states: "Where the 'real issue in the case' and the 'object of the claim' do not relate to the interpretation or application of the Convention, however, an incidental connection

[13] Final Transcript, 648:10-13.

between the dispute and some matter regulated by the Convention is insufficient to bring the dispute, as a whole, within the ambit of Article 288(1)" on two grounds. We differ in respect of the qualification of the dispute, which is for us a dispute about the interpretation of Article 56 of the Convention, and we consider it permissible to decide incidentally about sovereignty issues. That it will be necessary to consider the sovereignty issue by having recourse to general international law or specific international agreements is anticipated in the Convention. To introduce a new limitation to the jurisdiction of international courts and tribunals acting under Part XV of the Convention would change the balance achieved at the Third UN Conference on the Law of the Sea in respect of the dispute settlement system. The Tribunal lacks the competence do so.

3. Final Submission No. 2

46. As far as the jurisdiction of the Tribunal is concerned, this claim requires the Tribunal to analyse the commitments made by the United Kingdom. The United Kingdom argued that the Tribunal lacks the competence to do so.

47. The Tribunal does not deal with the arguments advanced by both Parties, due to its qualification of the dispute as sovereignty related. The Tribunal should have considered further whether the dispute under Submission No. 2 was one on the competences of the coastal State and whether the undertakings in the Lancaster House Understanding were to be considered as rights under Article 56(2) of the Convention. We regret the fact that the Tribunal did not do so.

4. Final Submission No. 3[14]

48. As far as Mauritius' Submission No. 3 (alleged violation of Article 76(8) of the Convention) is concerned, we agree with the Tribunal that this submission is different from the above two submissions. The United Kingdom did not object to Mauritius' submission of preliminary information to the CLCS. In fact the United Kingdom encouraged Mauritius to file the preliminary information at the January 2009 meeting. It was only at the stage of its *Rejoinder* that the United Kingdom seemed to have had a second thought. During the oral hearing the United Kingdom suggested a possible joint full submission with Mauritius. In any case, the

[14] Final Submission No. 3 reads: "the United Kingdom shall take no steps that may prevent the Commission on the Limits of the Continental Shelf from making recommendations to Mauritius in respect of any full submission that Mauritius may make to the Commission regarding the Chagos Archipelago under Article 76 of the Convention".

United Kingdom says it has no interest in the development of mineral resources in the outer continental shelf.

49. We agree with the extensive review of the record with the view to determining whether a separate dispute between the Parties has come into existence regarding the subject-matter of Mauritius's Submission No.3. We agree that there was no such dispute at the time when the *Application*, *Memorial* and *Counter-Memorial* were filed. Considering the exchange of views between the Parties at the hearing, we agree that there is no dispute between the Parties regarding this issue. We also agree that accordingly the Tribunal is not required to rule on whether it has jurisdiction over Mauritius' Submission No. 3 (*see* Award, paras. 348-350).

5. Final Submission No. 4[15]

50. As far as the fourth submission is concerned, it deals with the violation of Articles 2(3), 55, 56, 63, 64, 194 and 300 of the Convention. We agree with the Tribunal that jurisdiction over Mauritius's Submission No. 4 depends upon the characterization of the Parties' dispute and on the interpretation and application of Article 297 of the Convention (*see* Award, para. 283).

51. Mauritius argues that the MPA deals with the protection of the marine environment and accordingly any dispute would come under Article 297(1)(c) of the Convention in connection with Article 194. The United Kingdom advances several counter-arguments, including that the MPA does not—at least not yet—regulate marine pollution, but deals with fishing. It points out that Article 297(1)(c) covers—by pointing to Part XII to the Convention—pollution only. Therefore the Tribunal's jurisdiction would not cover the establishment of the MPA. In response thereto Mauritius argues that the declarations made by the United Kingdom at the occasion of the establishment of the MPA indicated that the MPA was devoted to protect the marine environment at large, as well as the territorial environment (except Diego Garcia). The implementation regulations announced are meant to replace the BIOT legislation protecting the environment, flora and fauna of the islands and their waters. Only later did the United Kingdom state that implementing legislation was not necessary since the relevant rules were in place. The Award sets out quite in detail that the MPA was designed by the United Kingdom as a means

[15] Final Submission No. 4 reads: "The United Kingdom's purported 'MPA' is incompatible with the substantive and procedural obligations of the United Kingdom under the Convention, including *inter alia* Articles 2, 55, 56, 63, 64, 194 and 300, as well as Article 7 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995."

for the protection of the marine environment (*see* Award, paras. 286-291); we agree with this assessment of the background for the establishment of the MPA.

52. As far as the jurisdiction of the Tribunal is concerned, the starting point has to be the wording of Article 297(1)(c) of the Convention which refers to the protection of the marine environment (". . . acted in contravention of specified international rules and standards for the protection and preservation of the marine environment . . ."). Article 297(1)(c) of the Convention has to be read together with Article 56(1)(b)(iii) and Part XII of the Convention, which specifies the competences of the coastal Sates under that article (*see M/V "Virginia G" (Panama/Guinea-Bissau), Judgment of 14 April 2014, ITLOS Reports 2014*; *ibid., Joint Declaration of Judges Kelly and Attard*). The coastal State must have violated those rules (or standards), which may have been established by the Convention or through a competent international organization or diplomatic conference.

53. The Award provides a detailed description and assessment of the relationship between Articles 288 and 297 of the Convention based upon the legislative history of these provisions (see Award, paras. 307-317) which we share. The plain reading seems to indicate that the language of Article 297(1)(c) of the Convention covers a rather narrow scope of disputes; it would not cover every activity undertaken by the coastal State under Article 56(1)(b)(iii) of the Convention. We are not convinced by that argument of the United Kingdom.[16] One has to look closely at Part XII since Article 297(1)(c) of the Convention does not only refer to rules and standards established through an international organization, but also to rules established by the Convention.

54. As far as the competences of the coastal States in respect of the EEZ are concerned, Article 211(5) of the Convention (also dealing with pollution) is of relevance. Part XII of the Convention does not provide a general competence for coastal States to issue rules on the protection of the marine environment. This is of relevance. Taking this into consideration, T. Mensah says: "For example, disputes could arise where it is alleged that a coastal state has exceeded the powers given to it by the Convention to take measures for environmental protection against a foreign vessel . . .".[17] This means cases where the coastal State has exceeded its regulatory powers concerning the protection of the marine environment come under the clause of Article 297(1)(c) of the Convention. As Mensah points out, the jurisdiction

16 Final Transcript, 802:21 to 803:2.

17 T. Mensah, "Protection and Preservation of the Marine Environment and the Dispute Settlement Regime in the United Nations Convention on the Law of the Sea," *in* A. Kirchner, ed., *International Marine Environmental Law: Institutions, Implementation and Innovations*, p. 9 at p. 11 (2003).

of any court or tribunal is not subject to any of the limitations on jurisdiction specified in Article 297 or the optional exceptions to jurisdiction under Article 298 of the Convention.

55. What Mauritius in fact alleges is that the United Kingdom had no competence under the Convention to establish an MPA and thus is in breach of the Convention. Therefore, we agree with the Award that the Tribunal has jurisdiction to decide on alleged breaches of the rules of the Convention on the protection of the marine environment.

56. The United Kingdom further argues that the MPA was established in the exercise of its sovereign rights under Article 56(1)(a) of the Convention and refers to the exception clause of Article 297(3)(a) of the Convention.[18] As far as Article 297(3)(a) of the Convention is concerned, the United Kingdom accords that provision a rather broad scope which would include the protection of biodiversity under ". . . its sovereign rights with respect to living resources in the exclusive economic zone . . .". In our view this goes clearly beyond the meaning of Article 56(1) of the Convention. The protection of the biodiversity does not come under the sovereign rights concerning the protection and management of living resources. It is a matter of the protection of the environment.

57. Considering that this is a decision on an MPA, rather than a decision on fishing, Article 297(3)(a) of the Convention does not apply.

58. But if that provision is considered to be applicable, it has to be taken into account that Article 297(3)(a) of the Convention contains two parts. The first part says that disputes concerning fisheries shall be settled in accordance with section 2 of Part XV. That is a confirmation of jurisdiction and not a limitation. The limitation starts with the word "except". If the first part of this clause—the confirmation of jurisdiction—is to retain some meaning, not all disputes on fisheries can be interpreted as ". . . any dispute relating to its sovereign rights with respect to living resources . . .". The second part of the clause must be narrower in scope than the scope of the first part. This is not taken into account by the United Kingdom. On the basis of its approach, all disputes on fisheries would be excluded from the jurisdiction of the Tribunal, which means this interpretation would deprive Article 297(3)(a) of the Convention (first part) of its meaning. Apart from that, the United Kingdom expands upon the scope of the exception by including the protection of biodiversity. This is not sustained by Articles 61 and 62 of the Convention which should be correlated to Article 297(3)(a) of the Convention.

[18] The United Kingdom's Preliminary Objections, paras. 5.15-5.30.

59. In this context, it is essential to note that the United Kingdom only later in the proceedings emphasized the fisheries aspect, whereas at the time of declaring the MPA it stressed the environmental aspect. Further, up to the conclusion of the oral proceedings, the United Kingdom was vague as to whether implementing rules were necessary and would follow. The fact that so far only the prohibition of fishing has been proclaimed does not turn this zone into a measure concerning fishing. Otherwise this would give the United Kingdom the right, by not issuing the necessary implementation legislation, or by doing so only selectively, to determine the scope of the dispute.

60. Finally, in our view it is doubtful whether a total ban on fishing is covered by the exception clause under Article 297(3)(a) of the Convention. The second part of Article 297(3)(a) of the Convention focuses on utilizing living resources, including their proper management and conservation, rather than banning fishing completely without a conservation objective. That fishing and management of living resources is to be seen from the perspective of their utilization is confirmed by the object and purpose of the Convention. One of the goals of the Convention, as stated in its preamble, is to establish ". . . a legal order for the seas and the oceans which . . . will promote . . . the equitable and efficient utilization of their resources, the conservation of their living resources . . . and preservation of the marine environment." As provided in article 31(1) of the Vienna Convention on the Law of Treaties, treaties should be interpreted in the light of their object and purpose.

61. To sum up, we share the conclusion of the Tribunal that it has jurisdiction pursuant to Article 288(1) and Article 297(1)(c) of the Convention to consider Mauritius's Submission No. 4 (*see* Award, para. 323).

6. Article 283 of the Convention

62. The "implicit legal disagreement between the Parties [concerning Article 283 of the Convention] relates to the need to refer to a specific treaty or its provisions" as counsel for Mauritius put it.[19]

63. The United Kingdom argues[20] that Mauritius should have indicated in its consultations with the United Kingdom which provisions in the Convention it considered had been violated.

---

19 Final Transcript, 949:19-20.

20 Final Transcript, 739:14-19.

64. This interpretation of Article 283 of the Convention is sustained neither by the wording of this provision, nor by the relevant jurisprudence in this respect. One should rely on the jurisprudence of the ICJ on compromissory clauses (*see, e.g., Application of the International Convention on the Elimination of all Forms of Racial Discrimination (Georgia v. Russian Federation), Preliminary Objections, Judgment, ICJ Reports 2011*, p. 70) with caution. Article 283 of the Convention is particular. Further, the jurisprudence of ITLOS is not fully coherent and mostly the result of deciding provisional measures (*see, e.g., Land Reclamation by Singapore in and around the Straits of Johor (Malaysia v. Singapore), Order of 8 October 2003, ITLOS Reports 2003*, p. 10).

65. In the present case, the dispute—or rather the dissatisfaction—with respect to the sovereignty over the Chagos Archipelago was expressed by Mauritius over a long time. The situation took a new turn with the establishment of the MPA. The opposition of Mauritius thereto was evident and clearly expressed. Apart from that, account has to be taken of the fact that Mauritius was informed rather late about the establishment of the MPA. When the public consultation process ended—a process against which Mauritius had protested—the United Kingdom acted (for domestic reasons) very quickly in the establishment of the MPA. Thereafter there was, from the point of view of Mauritius, no point in engaging in further consultations.

66. We agree with the statement in paragraph 378 of the Award that ". . . Article 283 cannot be understood as an obligation to negotiate the substance of the dispute" and that Mauritius has met the requirement of Article 283 concerning its Submission No. 4 (*see* Award, para. 386).

C. MERITS

67. By declining jurisdiction in respect of Submissions Nos. 1 and 2, the Tribunal missed the opportunity to deal with the separation of the Chagos Islands from Mauritius and the circumstances surrounding this separation. These issues are at the basis of what the Tribunal qualifies as the "real dispute" between Mauritius and the United Kingdom.

68. The United Kingdom emphasized that the Chagos Archipelago was a dependency of Mauritius, only attached to the latter for administrative purposes.[21] The intensive discussion of this point—the fine points of colonial constitutional law[22]—shows that the notion of dependency was used to describe situations which differed significantly. In this case it seems to be of relevance that the extension of the European Convention of Human Rights was interpreted to cover the Chagos

[21] The United Kingdom's Counter-Memorial, para. A2.5; Mauritius' Reply, paras. 2.1-2.135.

[22] *See* Final Transcript, 640:23-25.

Archipelago although the notification only referred to Mauritius. Also the Mauritius (Constitution) Order of 1964 by definition included the dependencies of Mauritius (section 90). This indicates that the Chagos Archipelago was more closely linked to Mauritius than is conceded by the United Kingdom.

69. For that reason, it is not appropriate to consider the Archipelago as an entity, somewhat on its own, which the United Kingdom could decide on without taking into account the views and interests of Mauritius. The way the detachment was executed in reality proves this view to be correct. In particular, the instructions given to the Governor of Mauritius on 6 October 1965 are a clear indication that the United Kingdom considered consent by the cabinet of Mauritius to be essential.[23]

70. This brings us to a central question: namely, as to whether the excision of the Chagos Archipelago was contrary to the legal principles of decolonization as referred to in UN General Assembly Resolution 1514 and/or contrary to the principle of self-determination.[24]

71. The United Kingdom argues that the principle of self-determination developed only in 1970 (*Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations*, General Assembly Resolution 2625 (24 October 1970)). In our view, the principle of self-determination developed earlier. Counsel for the United Kingdom to some extent provided information which may be taken to prove this point. Counsel rightly pointed out that between 1945 and 1965 already more than 50 States gained independence in the process of decolonization.

72. It is clearly stated in General Assembly Resolution 1514 that the detachment of a part of a colony (which in this case includes the dependency of the Chagos Archipelago) is contrary to international law. However, it is worth noting (without going into detail) that in many cases referred to by counsel for the United Kingdom, all parts of the former colonies became independent, whereas here a new colony was established.[25] The list provided by the United Kingdom does not sufficiently distinguish between cases where the detached parts of a colony became independent and cases where a new colony was established.

---

23 Mauritius' Memorial, para. 3.36.

24 *See generally* Final Transcript, 231:22 to 242:12. On the violation of the principle by detaching the Chagos Archipelago, see Final Transcript 245:11 to 247:9.

25 On self-determination, see Mauritius' Memorial, paras. 6.10-6.22. On *uti possidetis*, see *ibid*., paras. 6.23-6.24.

73. There is no bar to having recourse to international law in this respect. According to Article 293 of the Convention, the Tribunal may have recourse to international law which is not incompatible with the Convention. There is no indication that the Convention would not allow a court or tribunal acting under Part XV of the Convention to consider the international law rules concerning decolonization. We consider it appropriate to refer in this respect to Article 305 of the Convention and Resolution III of the Third UN Conference on the Law of the Sea, which clearly indicate the awareness of the Conference of the decolonization process.

74. This brings us to the consent given by the Mauritian Ministers. Two arguments are advanced in this respect by Mauritius: namely, that the consent given was contrary to the rules on self-determination since the ministers did not represent the population and that the consent was given under pressure.[26]

75. As far as "pressure" is concerned, the United Kingdom argues that negotiations can be tough. This is countered by counsel for Mauritius that, in relations between a colonial entity and the metropolitan State, the latter has some responsibility towards the former. This point was not elaborated upon, but meant that the United Kingdom, being the colonial power as well as the guardian of the colony, was under an obligation not to use pressure that could be acceptable in the relationship between two sovereign States, but not between a metropolitan State and a colony.

76. It was further pointed out—correctly—that Mauritius had no choice.[27] The detachment of the Chagos Archipelago was already decided whether Mauritius gave its consent or not.

77. A look at the discussion between Prime Minister Harold Wilson and Premier Sir Seewoosagur Ramgoolam suggests that the Wilson's threat that Ramgoolam could return home without independence amounts to duress. The Private Secretary of Wilson used the language of "frighten[ing]" the Premier "with hope".[28] The Colonial Secretary equally resorted to the language of intimidation. Furthermore, Mauritius was a colony of the United Kingdom when the 1965 agreement was reached. The Council of Ministers of Mauritius was presided over by the British Governor who could nominate some of the members of the Council. Thus there was a clear situation of inequality between the two sides. As Mauritius states, if the Mauritian people, through their Government, had made a free choice without coercion, they could have given

---

26 Final Transcript, 248:24 to 251:21; 972:16-24.

27 Final Transcript, 145:22 to 146:2.

28 Colonial Office, Note for the Prime Minister's Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius, 22 September 1965, PREM 13/3320 (**Annex MM-17**).

valid consent in the pre-independence period to the excision of the Chagos Archipelago. This was not the case.

78. If it is accepted that the consent given is invalid on either of the two grounds mentioned above, the question is to be raised why it took Mauritius so long to make this point. Reference was made in this context to the fact that Mauritius was economically dependent upon the United Kingdom.[29] It was argued that this has to be taken into consideration by referring to a statement made by the ICJ in *Certain Phosphate Lands in Nauru* (*(Nauru v. Australia) Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 240).[30]

79. Even if the view is taken that the consent was valid and/or that Mauritius acquiesced in the detachment (with which we would disagree) one may argue that the "agreement" reached in the Lancaster House Conference has been terminated by the United Kingdom *ex nunc* by establishing the MPA unilaterally and thus depriving Mauritius of some of the actual benefits it was meant to receive from that agreement.

80. This leads us to the conclusion that Submission No. 1 of Mauritius is well founded in fact and law on the merits.

81. According to its Submission No. 2, Mauritius claims that ". . . having regard to the commitments that it has made to Mauritius in relation to the Chagos Archipelago, the United Kingdom is not entitled unilaterally to declare an 'MPA' or other maritime zones because Mauritius has rights as a 'coastal State' within the meaning of *inter alia* Articles 56(1)(b)(iii) and 76(8) of the Convention".

82. This submission requires dealing on the merits with two issues: whether legally binding commitments existed and whether they existed on the level of international law. The Parties seem to agree that the undertakings of the Lancaster House meeting in 1965 did not constitute a treaty under international law. This was explained by counsel for the United Kingdom and confirmed by counsel for Mauritius.[31] According to the United Kingdom, this undertaking was not an agreement between equals. Whether or not it was meant to be binding remains somewhat unclear.[32]

---

29 Trade with the United Kingdom accounted for more than 70 percent of export earnings. *See* Final Transcript, 123:11-16.

30 Final Transcript, 250:22 to 251:2; 976:11-15.

31 *See* Final Transcript, 983:10-22.

32 *See* Final Transcript, 982:10 to 984:12.

83. In our view the facts are in favour of the position that the commitments exchanged were meant to be binding. According to counsel for Mauritius: "It was an arrangement made in the context of negotiations for independence . . . . At the very second of independence, when the excision was affirmed by the continued presence of the United Kingdom in the Archipelago, the United Kingdom disabled itself from denying the conditions attached to its presence."[33]

84. The style of the negotiations, the report on the negotiations and the subsequent practice confirm this. This resulted in a package binding under national law which upon the independence of Mauritius devolved upon the international law level. Being part of international law, it may be read into the Convention to the extent the latter refers to international law.[34]

85. What do the commitments entail? Good offices concerning navigational and meteorological facilities; in respect of fishing rights; landing rights on an airstrip still to be built; benefits from mineral resource activities and right to have the islands returned.[35]

86. This leads to the conclusion that the United Kingdom, by establishing the MPA, violated its prior commitments *vis-à-vis* Mauritius and thus violated Article 56(2) of the Convention. As a consequence thereof the MPA is legally invalid.

87. Concerning Submission No. 4, we agree with the findings of the Tribunal that the establishment of the MPA violated Mauritius' rights under Articles 2(3), 56(2) and 194(4) of the Convention (*see* Award, paras. 536, 541).

88. We would, however, have preferred that the Tribunal had considered the promise of Prime Minister Gordon Brown to Prime Minister Navichandra Ramgoolam at the CHOGM at Port of Spain in 2009. This issue of the promise goes to the heart of the matter of Mauritius' reliance on this United Kingdom undertaking to put the MPA on hold. The United Kingdom's unilateral assurance may not be an Ihlen declaration, but it is a commitment which Mauritius relied upon to its detriment. When Prime Minister Ramgoolam went back to Port Louis after CHOGM, he called a press conference and addressed Parliament to state that the United Kingdom had promised at the highest level of Government to put the MPA on hold. In his witness statement,

---

33 Final Transcript, 982:11-22.

34 *See* Mauritius' Memorial, paras. 3.95-3.98; *see also* Despatch dated 2 July 1971 from M. Elliott, UK Foreign and Commonwealth Office to R. G. Giddens, British High Commission, Port Louis, FCO 31/2763 (**Annex MM-63**).

35 Record of a Meeting held in Lancaster House at 2.30 p.m. on Thursday 23rd September [1965], Mauritius Defence Matters, CO 1036/1253 (**Annex MM-19**); Minutes of a Meeting held at 10 Downing Street, S.W.1, on Thursday, 23rd September, 1965, at 4 p.m. (**Mauritius Arbitrator's Folder, Round 2, Tab 5.1**); Manuscript letter of 1 October 1965 (**Annex UKCM-9**).

which was not challenged by the United Kingdom, the Prime Minister repeated the Brown assurance.

89. In this regard, we note that the Tribunal has concluded that it sees no need to comment further on Article 300 or the abuse of rights (*see* Award, para 543). We disagree with this conclusion. We feel that the Tribunal, having found that the 1965 commitments are legally valid and that the United Kingdom in establishing an MPA breached its obligations under several articles of UNCLOS including Article 56(2), should have examined the issue of good faith on the part of the United Kingdom. For we are of the view that the manner in which the United Kingdom proclaimed the MPA did not take into account the rights and interests of Mauritius, in particular under Article 56 of the Convention. Furthermore, having held that "the United Kingdom is estopped from denying the binding effect of [the 1965] commitments", (Award, para. 448) it is surprising that the Tribunal did not examine the matter further, especially when it is recalled that estoppel rests on the principle of good faith.

90. The Tribunal states that the internal United Kingdom documents in the record do not suggest any ulterior motive. While we do not completely share this observation, we are of the view that the way in which the MPA was established and the negotiations leading up to the MPA leave a lot to be desired on the part of the United Kingdom. As the ICJ stated in the *Nuclear Tests* case, "[t]rust and confidence are inherent in international co-operation" (*Nuclear Tests* (*(Australia* v. *France), Judgment, I.C.J. Reports 1974,* p. 253 at p. 269, para 46). In the case of the MPA, Mauritius learnt of the MPA proposal from the London newspaper, *The Independent,* on 9 February 2009 (*see* Award, para. 126). The United Kingdom went ahead with a public consultation on the MPA in spite of Mauritius' opposition and its demand that the matter should be discussed in the bilateral framework. Indeed in its written evidence to the UK House of Commons Select Committee on Foreign Affairs in respect of the MPA, Mauritius complains that "[t]he manner in which the MPA is being dealt with makes us feel that it is being imposed on Mauritius with a predetermined agenda" (*see* Award, para. 144). Even British senior officials, including the British High Commissioner (*see* Award, para. 150) warned that "to declare the MPA today could have very significant negative consequences for the bilateral relationship". However, the British Government hastily went ahead and declared the MPA on 1 April 2010.

91. We complete this argument on good faith by noting disturbing similarities between the establishment of the BIOT in 1965 and the proclamation of the MPA in 2010. Although these two events are 45 years apart, they show a certain common pattern. This is the disregard of the rights and interests of Mauritius. The 1965 excision of the Chagos Archipelago from Mauritius

shows a complete disregard for the territorial integrity of Mauritius by the United Kingdom which was the colonial power. British and American defence interests were put above Mauritius' rights. Fast forward to 2010 and one finds a similar disregard of Mauritius' rights, such as the total ban on fishing in the MPA. These are not accidental happenings. We further note the observation of the arbitral tribunal in *ConocoPhillips Petrozuata B.V., ConocoPhillips Hamaca B.V., ConocoPhillips Gulf of Paria B.V., and ConocoPhillips Company v. The Bolivarian Republic of Venezuela* (ICSID Case No. ARB/07/30, Decision on Jurisdiction and the Merits, para. 275 (3 September 2010)) on ". . . how rarely courts and tribunals have held that a good faith or other related standards is breached. The standard is a high one." We take the view that, for the reasons as set out above, the United Kingdom did violate the standard of good faith.

92. We disagree with some of the reasoning of the Tribunal on Article 2(3) of the Convention (*see* Award, paras. 514-516). We read the legislative history of that provision differently.

93. In interpreting Article 2(3) of the Convention and thus determining the limits imposed upon the exercise of the costal States' sovereignty over the territorial sea it is necessary to distinguish between the reference to the Convention and "to other rules of international law". The starting point of the ILC deliberations on the law of the sea was as to whether the limits to the exercise of sovereignty by coastal States in its territorial sea set out in article 1(2) of the 1956 ILC Draft Articles are exhaustive. The ILC commentaries on that provision confirm that "the limitations imposed by international law on the exercise of sovereignty in the territorial sea" which "are set forth in the present articles" cannot "be regarded as exhaustive."[36] For this reason, "'other rules of international law' are mentioned in addition to the provisions contained in the present articles."[37] Moreover, as the ILC emphasised, draft Article 1(2) encompasses both obligations founded in general international law and specific arrangements entered into by the States: The ILC commentary stated:

> (5) It may happen that, by reason of some special relationship, geographical or other, between two States, rights in the territorial sea of one of them are granted to the other in excess of the rights recognised in the present draft. It is not the Commission's intention to limit in any way any more extensive right of passage or other right enjoyed by States by custom or treaty.[38]

---

36 Report of the International Law Commission covering the work of its eighth session, 23 April-4 July 1956, Doc. A/3159, *YILC*, Vol. II, 253 at 265 (para. 4).

37 *Ibid*.

38 International Law Commission, Articles concerning the Law of the Sea with Commentaries, *Report of the International Law Commission on the Work of its Eighth Session, 23 April to 4 July 1956*, Official Records of the General Assembly, Eleventh Session, Supplement No. 9, UN Doc. A/3159 at p. 265.

94. The first sentence in paragraph 5 of the commentary to article 1(2) of the ILC Draft makes it quite plain that the draft encompasses obligations that may arise from a "special relationship, geographical or other," where one State recognises or grants the other State rights in the territorial sea.[39] This has the consequence that the reference to 'other rules of international law' not only refers to general international law but has a broader scope. This interpretation is confirmed by *Birnie, Boyle and Redgwell,* who observe that "UNCLOS establishes a twelve-mile limit for the territorial sea, over which the coastal state has sovereignty, subject to any requirements of the Convention and other rules of international law, including any conservatory conventions to which that state is party and which by their terms apply within that area."[40] Taking the ILC Commentary into account means, in our view, that the reference to "other rules of international law" encompasses obligations arising from commitments by the coastal State bilaterally or even unilaterally, as well as commitments based upon customary international law or the binding decisions of an international organization. For these reasons the undertakings of the United Kingdom in the Lancaster House Understanding have to be read directly into Article 2(3) of the Convention.

* * *

[39] See also the Annex VII tribunal decision in *Guyana v Suriname,* interpreting terms in Article 293 "other rules of international law" as encompassing both general international law and international treaties, at para. 406.

[40] P. Birnie, A. Boyle & C. Redgwell, *International Law & the Environment*, p. 716 (3rd ed., 2009).

Dated: 18 March 2015

Judge Rüdiger Wolfrum

Judge James Kateka

United Nations Convention on the Law of the Sea SPLOS/183

Meeting of States Parties

Distr.: General
20 June 2008

Original: English

Eighteenth Meeting
New York, 13-20 June 2008

Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)

The Meeting of States Parties,

Recalling the responsibility of all States parties to fulfil in good faith the obligations assumed by them under the United Nations Convention on the Law of the Sea,

Recalling also that the rights of the coastal State over the continental shelf do not depend on occupation, effective or notional, or any express proclamation,

Noting the importance of the delineation of the outer limits of the continental shelf beyond 200 nautical miles and that it is in the broader interest of the international community that States with a continental shelf beyond 200 nautical miles submit information on the outer limits of the continental shelf beyond 200 nautical miles to the Commission on the Limits of the Continental Shelf for examination in accordance with article 76 of the Convention,

Recalling the importance of the work of the Commission for coastal States and the international community as a whole,

Mindful of the increasing workload of the Commission owing to an increasing number of submissions and the need to ensure that the Commission can perform its functions under the Convention effectively and maintain its high level of quality and expertise,

Recalling the decision of the eleventh Meeting of States Parties regarding the date of commencement of the 10-year period for making submissions to the Commission set out in article 4 of annex II to the United Nations Convention on the Law of the Sea,[1]

[1] SPLOS/72.

08-39876 (E) 030708

Recalling also the decision of the seventeenth Meeting of States Parties to continue to address as a matter of priority issues related to the workload of the Commission, and to take up at the eighteenth Meeting the general issue of the ability of States, particularly developing States, to fulfil the requirements of article 4 of annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph (a),

Recognizing that some coastal States, in particular developing countries, including small island developing States, continue to face particular challenges in submitting information to the Commission in accordance with article 76 of the Convention and article 4 of annex II to the Convention, as well as the decision contained in SPLOS/72, paragraph (a), due to a lack of financial and technical resources and relevant capacity and expertise, or other similar constraints,

1. *Decides* that:

(a) It is understood that the time period referred to in article 4 of annex II to the Convention and the decision contained in SPLOS/72, paragraph (a), may be satisfied by submitting to the Secretary-General preliminary information indicative of the outer limits of the continental shelf beyond 200 nautical miles and a description of the status of preparation and intended date of making a submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure[2] and the Scientific and Technical Guidelines of the Commission on the Limits of the Continental Shelf;[3]

(b) Pending the receipt of the submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, preliminary information submitted in accordance with subparagraph (a) above shall not be considered by the Commission;

(c) Preliminary information submitted by a coastal State in accordance with subparagraph (a) is without prejudice to the submission in accordance with the requirements of article 76 of the Convention and with the Rules of Procedure and the Scientific and Technical Guidelines of the Commission, and the consideration of the submission by the Commission;

(d) The Secretary-General shall inform the Commission and notify member States of the receipt of preliminary information in accordance with subparagraph (a), and make such information publicly available, including on the website of the Commission;

2. *Encourages* coastal States, where appropriate, to take advantage of available data and opportunities for scientific and technical capacity-building, advice and assistance, including from relevant national, regional and other intergovernmental bodies and organizations, as well as the Commission;

3. *Requests* the Commission to compile a list of publicly available scientific and technical data relevant to the preparation of submissions to the Commission, and to publicize the list, including by posting the list on the website of the Commission;

---

[2] CLCS/40/Rev.1.

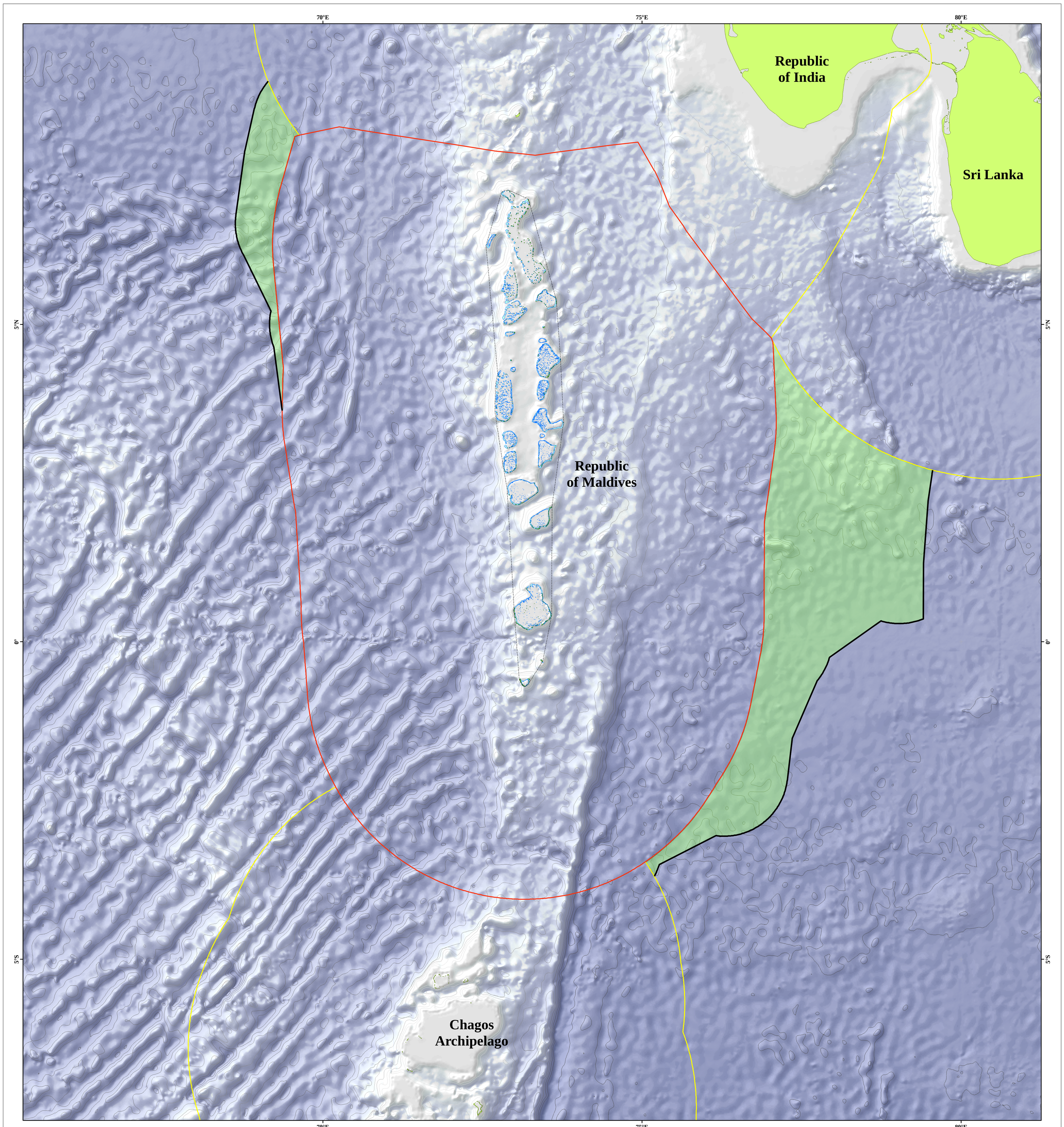
[3] CLCS/11 and Corr.1 and Corr.2; CLCS/11/Add.1 and Corr.1.

4. *Welcomes* the availability on the website of the Commission of information relating to scientific and technical capacity-building, advice and assistance available to coastal States in the preparation of submissions to the Commission;

5. *Calls upon* States parties to contribute voluntarily to the Trust Funds, with a view to facilitating the participation of the members of the Commission from developing States in the meetings of the Commission, as well as to facilitating the preparation of submissions to the Commission on the Limits of the Continental Shelf for developing States, in particular the least developed countries and small island developing States, and compliance with article 76 of the United Nations Convention on the Law of the Sea;

6. *Decides* to take up the issues related to the workload of the Commission at the next Meeting of States Parties under the item "Commission on the Limits of the Continental Shelf: Workload of the Commission".

Republic of Maldives



Areas of extended continental shelf submitted by the Republic of Maldives to the Commission on the Limits of the Continental Shelf

Outer Limit of the Continental Shelf
Republic of Maldives EEZ
Other coastal States EEZ
Archipelagic Baselines
Area of Extended Continental Shelf

ETOPO1 Bathymetry
Metres
0
-6441

Isobaths
Depth (m)
500 - 1000
1001 - 2000
2001 - 3000
3001 - 4000
4001 - 5000

0 50 100 200 300 400 Kilometres
0 10 20 40 60 80 100 120 140 160 180 200 Nautical Miles

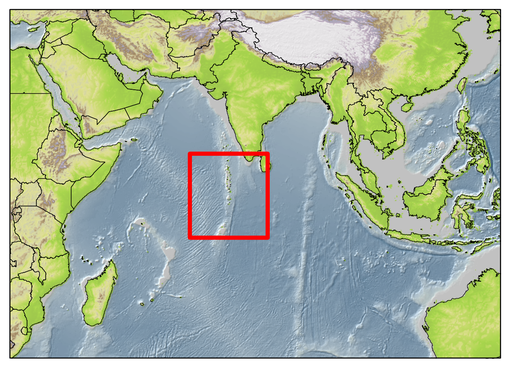
Scale 1:2,500,000
World mercator projection
WGS 1984 Datum

1. This map was created using ESRI ArcGIS 9.3 and Geocap AS GIS software with spatially correct data referenced to the World Geodetic System 1984 Spheroid, Semimajor Axis: 6378137.000000, Semiminor Axis: 6356752.3142452, Inverse Flattening: 298.257224

2. The background gridded bathymetry is derived from ETOPO1, a public domain data set obtained from the National Oceanic and Atmospheric Administration's (NOAA) National Geodetic Data Center (NGDC).

3. The area of Republic of Maldives extended continental shelf is depicted by the green shading.

4. Depiction of 200M lines other than the submitting State is based on the best available data at the time of analysis and should not be taken to signify acceptance or endorsement by the Republic of Maldives of the validity at international law of another State's basepoints from which they are drawn.



MAL-ES-MAP 1

Note No: 171/10

The Permanent Mission of the United Kingdom of Great Britain and Northern Ireland presents its compliments to the Secretary-General of the United Nations, and has the honour to refer to his communication of 28 July 2010, CLCS.53.2010.LOS (Continental Shelf Notification), regarding receipt of the submission made by the Republic of Maldives to the Commission on the Limits of the Continental Shelf.

The United Kingdom notes that the submission of the Republic of Maldives does not take full account of the 200 nautical mile Fisheries and Environment Zones of the British Indian Ocean Territory, both of which themselves respect boundaries agreed with the Government of the Republic of Maldives at a technical level.

The United Kingdom is fully committed to formalising these boundaries at the earliest opportunity with the Republic of Maldives, and is content for the Commission to proceed to examine the Maldives submission in accordance with Annex I of its Rules of Procedure, on the understanding that this shall in no way prejudice the position of the United Kingdom.

The Permanent Mission of the United Kingdom to the United Nations takes this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

United Kingdom Mission
to the United Nations
9 August 2010

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

Note No: 10887/10

29 October 2010

The Permanent Mission of the Republic of Mauritius to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the latter's communication No. CLCS.53.2010.LOS (Continental Shelf Notification) dated 28 July 2010 relating to the submission made by the Republic of Maldives to the Commission on the Limits of the Continental Shelf and to Note No. 171/10 dated 9 August 2010 from the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland addressed to the UN Secretary-General regarding that submission.

The Government of the Republic of Mauritius reiterates its sovereignty over the Chagos Archipelago, including Diego Garcia, which forms an integral part of the territory of the Republic of Mauritius under both Mauritian law and international law. In this context, pursuant to the decision contained in document SPLOS/183 entitled "Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)", the Republic of Mauritius has submitted to the United Nations Secretary-General Preliminary Information Concerning the Extended Continental Shelf in the Chagos Archipelago region on 6 May 2009.

The Republic of Mauritius further affirms that the Chagos Archipelago was illegally excised by the United Kingdom from the territory of Mauritius prior to its independence in violation of UN General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 and that it does not recognize the so-called "British Indian Ocean Territory".

The Government of the Republic of Mauritius therefore requests the Secretary-General of the United Nations to disregard Note No: 171/10 dated 9 August 2010 from the Permanent Mission of the United Kingdom of Great Britain and Northern Ireland.

The Government of the Republic of Mauritius further wishes to inform the UN Secretary-General that it will make its own observations on the submission made by the Republic of Maldives in due course.

211 East 43rd Street • New York, N.Y. 10017 • Tel: (212) 949-0190 • Fax: (212) 697-3829

The Permanent Mission of the Republic of Mauritius to the United Nations requests that this Note Verbale be circulated to all Members of the Commission on the Limits of the Continental Shelf, all States Parties to the United Nations Convention on the Law of the Sea as well as Members of the United Nations.

The Permanent Mission of the Republic of Mauritius to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

Secretary-General of
the United Nations
New York

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

Note No. 11031/11 24 March 2011

The Permanent Mission of the Republic of Mauritius to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the latter's communication No. CLCS.53.2010.LOS (Continental Shelf Notification) dated 28 July 2010 relating to the submission made by the Republic of Maldives to the Commission on the Limits of the Continental Shelf as well as to the Note No. 10887/10 of the Permanent Mission dated 29 October 2010.

The Permanent Mission of the Republic of Mauritius had in its Note No.10887/10 informed the Secretary-General of the United Nations that it would make its own observations on the submission made by the Republic of Maldives. In this regard, the Permanent Mission wishes to inform the Secretary-General that following discussions between the Republic of Mauritius and the Republic of Maldives, the Republic of Maldives had in October 2010 agreed with the Republic of Mauritius that it would amend its submission to take into account the Exclusive Economic Zone co-ordinates of the Republic of Mauritius in the Chagos Archipelago region. However, despite the undertaking given, the Government of the Republic of Mauritius notes that no addendum has up to now been filed with the Secretary-General of the United Nations by the Republic of Maldives to amend its submission.

The Permanent Mission further wishes to inform the Secretary-General that the Government of the Republic of Mauritius reiterates the sovereignty of Mauritius over the Chagos Archipelago, including Diego Garcia, which forms an integral part of the territory of the Republic of Mauritius under both Mauritian law and international law. The Republic of Mauritius further affirms that the Chagos Archipelago was illegally excised by the United Kingdom from the territory of Mauritius prior to its independence in violation of the UN General Assembly Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 and that it does not recognize the so-called "British Indian Ocean Territory".

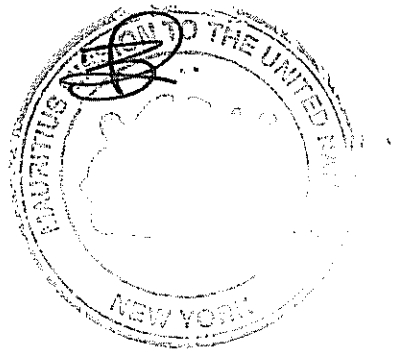
211 East 43rd Street • New York, N.Y. 10017 • Tel: (212) 949-0190 • Fax: (212) 697-3829

The Republic of Mauritius hereby protests formally against the submission made by the Republic of Maldives in as much as the Extended Continental Shelf being claimed by the Republic of Maldives encroaches on the Exclusive Economic Zone of the Republic of Mauritius, the coordinates of which were communicated to the Secretary-General in a Note dated 20 June 2008.

The Permanent Mission of the Republic of Mauritius wishes to inform the Secretary-General that once the Republic of Maldives submits an addendum to amend its submission to take into account the coordinates of the Mauritius Exclusive Economic Zone, a fresh communication will be issued.

The Permanent Mission of the Republic of Mauritius to the United Nations requests that its Note Verbale be circulated to all Members of the Commission on the Limits of the Continental Shelf, all States Parties to the United Nations Convention on the Law of the Sea as well as Members of the United Nations.

The Permanent Mission of the Republic of Mauritius to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.



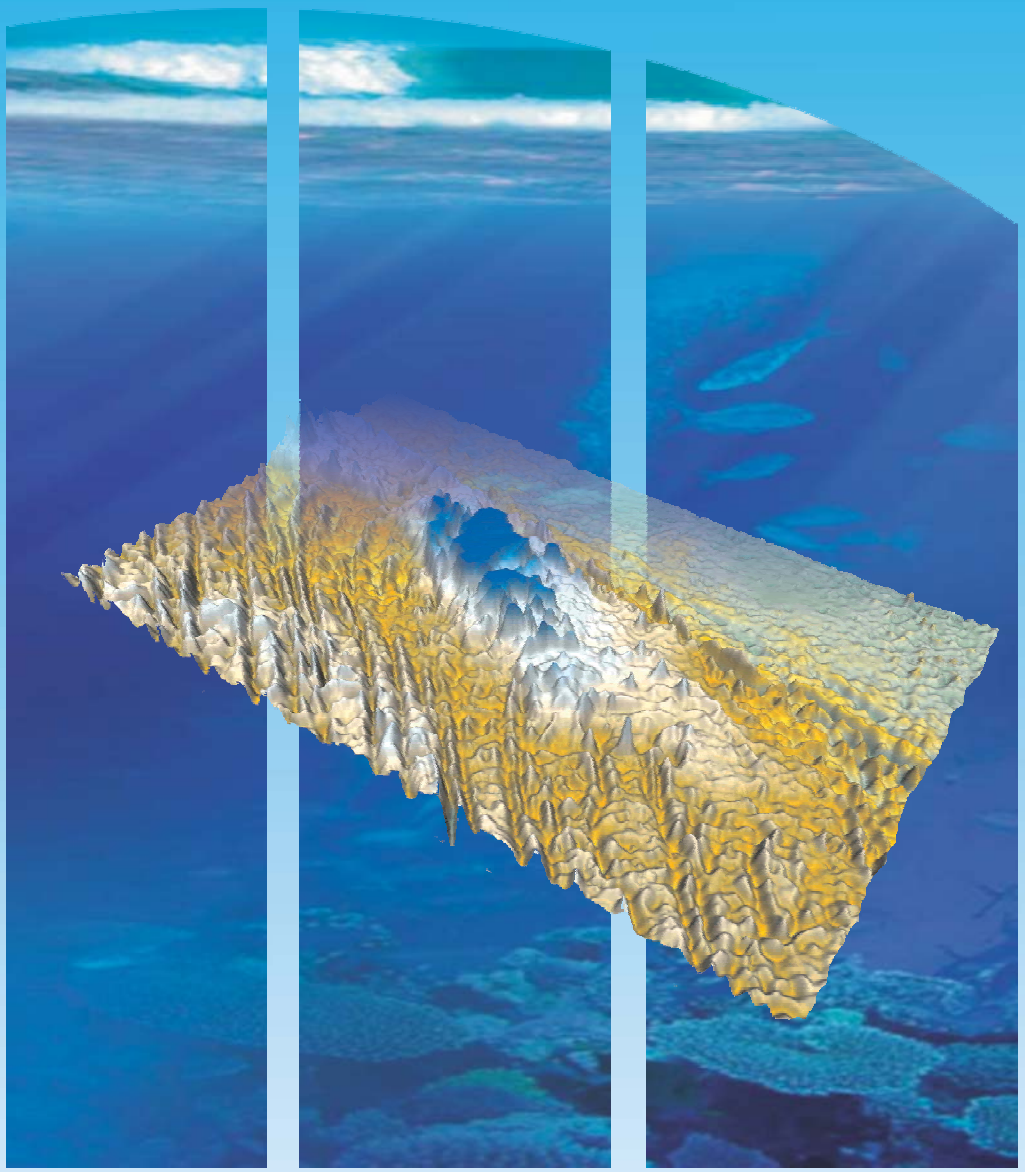
H.E. Mr. Ban Ki-moon
Secretary-General of the United Nations
New York

415

Republic of Mauritius

United Nations Convention on the Law of the Sea

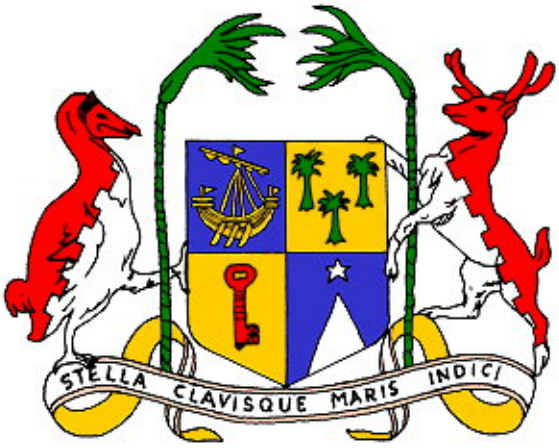
Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183



PRELIMINARY INFORMATION

MCS-PI-DOC
MAY 2009

1982 United Nations Convention on the Law of the Sea



Preliminary Information Submitted by the Republic of Mauritius Concerning the Extended Continental Shelf in the Chagos Archipelago Region Pursuant to the Decision Contained in SPLOS/183

MAY 2009

MCS-PI-DOC

PREFACE

This Preliminary Information document was prepared by the following Ministries and Statutory Corporations of the Government of the Republic of Mauritius:

Prime Minister's Office
Ministry of Foreign Affairs, Regional Integration & International Trade
Attorney-General's Office
Ministry of Housing and Lands
Mauritius Oceanography Institute

The following persons have acted and/or will act as advisers to the Government of the Republic of Mauritius in the preparation of the Submission by the Republic of Mauritius concerning the extended continental shelf in the Chagos Archipelago Region:

Mr Joshua Brien, Legal Adviser, London
Mr Ian Brownlie CBE QC, Barrister, Blackstone Chambers, London
Mr Harald Brekke, Member of the Commission on the Limits of the Continental Shelf
Prof. Karl Hinz, former Member of the Commission on the Limits of the Continental Shelf
Dr Andre Chan Chim Yuk, former Member of the Commission on the Limits of the Continental Shelf

TABLE OF CONTENTS

MAPS

Figure 1 Map indicative of outer limits of the extended continental shelf of the Republic of Mauritius in the Chagos Archipelago Region **MCS-PI-MAP-1**

1. INTRODUCTION

1-1 This Preliminary Information document has been prepared by the Republic of Mauritius pursuant to the *Decision regarding the workload of the Commission on the Limits of the Continental Shelf and the ability of States, particularly developing States, to fulfill the requirements of article 4 of annex II to the United Nations Convention on the Law of the Sea, as well as the decision contained in SPLOS/72, paragraph (a)*, adopted by the Eighteenth Meeting of the States Parties to the Convention (SPLOS/183). This document provides an indication of the outer limits of the continental shelf of the Republic of Mauritius, that lie beyond 200 nautical miles (M) from the baselines from which the breadth of the territorial sea is measured (hereinafter referred to as 'the territorial sea baselines') in respect of the Chagos Archipelago Region.

1-2 The Republic of Mauritius consists of a group of islands in the Indian Ocean. The main Island of Mauritius is located at longitude 57^0 30' east, and latitude 20^0 00' south, approximately 900km east of Madagascar and is part of the Mascarene Islands. The total land area of the Republic of Mauritius is approximately 1,950km². Under the *Constitution of Mauritius* the territory of Mauritius includes, in addition to the main island, the islands of Cargados Carajos (the St Brandon Group of 16 Islands and Islets) located some 402km north of the main Island of Mauritius, Rodrigues Island located 560km north-east, the Agalega Islands located 933km north, Tromelin located north-west of the main Island of Mauritius, and the Chagos Archipelago located at 06^0 26' south 72^0 00' east, approximately 2200km north-east of the main Island.

1-3 The Republic of Mauritius is Party to the Convention, which it signed on the day it was opened for signature on 10 December 1982, and subsequently ratified on 4 November 1994. The *Maritime Zones Act 2005,* which repealed the *Maritime Zones Act 1977,* provides that the provisions of the Convention have the force of law in the Republic of Mauritius, and establishes maritime zones in accordance with the provisions of the Convention, including provisions defining the outer limits of the continental shelf.

1-4 Under Article 4 of Annex II to the Convention, as supplemented by the decisions contained in SPLOS/72 and SPLOS/183 respectively regarding the 10-year period established by Article 4 of Annex II to the Convention, a coastal State for which the Convention entered into force before 13 May 1999 is required to submit particulars of the outer limits of the continental shelf to the United Nations Commission on the Limits of the Continental Shelf ('the Commission') by 13 May 2009.

2. STATUS OF PREPARATION AND INTENDED DATE OF SUBMISSION

2-1 The Republic of Mauritius notes that it has made two partial submissions in respect of the outer limits of its extended continental shelf as set out below:

- a joint submission with the Republic of Seychelles concerning the region of the Mascarene Plateau, lodged on 1 December 2008 (**SMS-ES-DOC**); and,

- a submission concerning the region of Rodrigues Island, lodged on 6 May 2009 (**MRS-ES-DOC**).

2-2 The Republic of Mauritius also intends to make a submission for an extended continental shelf in respect of the Chagos Archipelago Region. The preparation of a submission concerning this region is currently being undertaken and has reached an advanced stage. The Republic of Mauritius expects to complete the Submission by 2012. Pending the lodgement of the submission, this Preliminary Information document is submitted consistent with operative paragraph 1(a) of the decision contained in SPLOS/183 in order to satisfy the requirement of Article 4 of Annex II to the Convention.

2-3 The Republic of Mauritius notes that, in accordance with operative paragraphs 1(b) and 1(c) of the decision contained in SPLOS/183, pending the receipt of the submission concerning the Chagos Archipelago Region, the Preliminary Information submitted by the Republic of Mauritius shall not be considered by the Commission and further, that the Preliminary Information is without prejudice to the submission and its future consideration by the Commission.

2-4 The part of the continental shelf lying beyond 200 M from the territorial sea baselines of the territory of the Republic of Mauritius measured from the Chagos Archipelago is referred to in this Preliminary Information document as the 'extended continental shelf'.

3. INDICATION OF THE OUTER LIMITS OF THE EXTENDED CONTINENTAL SHELF IN THE CHAGOS ARCHIPELAGO REGION

3-1 As provided for under paragraph 1 of Article 76 of the Convention, the Republic of Mauritius has a continental shelf comprising the seabed and subsoil of the submarine areas that extends beyond its territorial sea throughout the natural prolongation of its land territory to the outer

edge of the continental margin, up to the limits provided for in paragraphs 4 to 6 of Article 76 of the Convention or, to a distance of 200 M from the territorial sea baselines where the outer edge of the continental margin does not extend up to that distance.

3-2 Article 121 of the Convention further provides that, in the case of islands, the limits of the continental shelf are to be determined in the same manner as other land territory.

3-3 Paragraphs 4 to 6 of Article 76 of the Convention set out the manner in which a coastal State may establish the outer edge of its continental margin and its extended continental shelf, wherever that margin extends beyond 200 M measured from the territorial sea baselines.

3-4 Data considered by the Republic of Mauritius establish that the outer edge of the continental margin in the relevant land territory in the Chagos Archipelago Region (Egmont and Diego Garcia Islands) extends beyond 200 M measured from archipelagic baselines established in accordance with Article 47 of the Convention.

3-5 Pursuant to operative paragraph 1(a) of the decision contained in SPLOS/183, **Sections 4** and **7** of this Preliminary Information document provide an indication of the outer limits of the extended continental shelf in the Chagos Archipelago Region as determined by the Republic of Mauritius.

4. MAP INDICATIVE OF OUTER LIMITS OF THE EXTENDED CONTINENTAL SHELF IN THE CHAGOS ARCHIPELAGO REGION

4-1 A map at an appropriate scale which provides an overview of the indicative outer limit of the extended continental shelf in the Chagos Archipelago Region is included in this Preliminary Information document as **Figure 1** (**MCS-PI-MAP-1**).

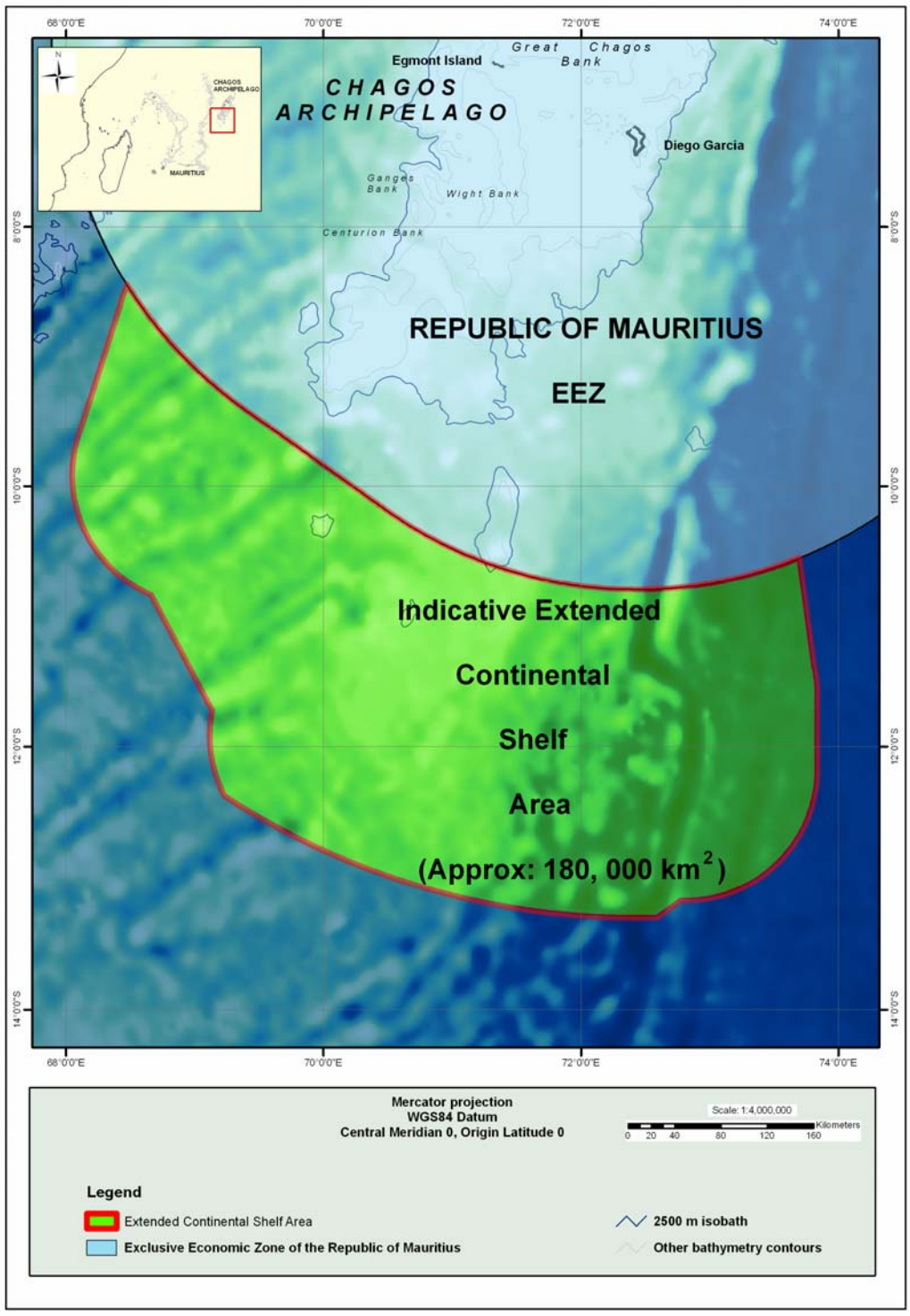


Figure 1 **Map Indicative of the outer limits of the extended continental Shelf of the Republic of Mauritius in the Chagos Archipelago Region.**

MCS-PI-MAP-1

5. PROVISIONS OF ARTICLE 76 INVOKED

The Republic of Mauritius has applied paragraphs 4 (a)(ii), 4 (b), 5, 6 and 7 of Article 76 of the Convention in support of the determination of the indicative outer limits of the extended continental shelf in the Chagos Archipelago Region.

6. UNRESOLVED LAND AND MARITIME DISPUTES

The Republic of Mauritius states that the Chagos Archipelago is and has always formed part of its territory. The Republic of Mauritius wishes to inform the Commission, however, that a dispute exists between the Republic of Mauritius and the United Kingdom over the Chagos Archipelago. Discussions are ongoing between the two governments on this matter. The last bilateral talks were held in London, United Kingdom, in January 2009.

7. OVERVIEW OF INFORMATION INDICATIVE OF OUTER LIMITS OF THE EXTENDED CONTINENTAL SHELF IN THE CHAGOS ARCHIPELAGO REGION

7-1 The Chagos Archipelago is an archipelago composed of atolls and islands that lies approximately 2200km northeast of the main island of Mauritius. The largest individual islands are Diego García (27.20km²), Eagle (Great Chagos Bank, 2.45km²), île Pierre (Peros Banhos, 1.50km²), Eastern Egmont (Egmont Islands, 1.50km²), île du Coin (Peros Banhos, 1.28km²) and île Boddam (Salomon Islands, 1.08km²).

7-2 The Chagos Archipelago is the surface expression of the southern portion of a prominent linear bathymetric feature in the western Indian

Ocean known as the Laccadive-Chagos Ridge. The latter extends as a continuous physiographic ridge from the Laccadive Islands, through the Maldives, to the Chagos Ridge.

7-3 The Chagos Ridge is associated with submarine volcanic accumulations that resulted from the northward passage of the Indian Plate over the Reunion Hotspot.

7-4 The Republic of Mauritius is of the view that the elevations and banks that are surmounted by the Chagos Archipelago represent the submerged prolongation of the relevant land territory of the Republic of Mauritius in this region.

8. PUBLICATION OF INDICATIVE OUTER LIMITS OF THE EXTENDED CONTINENTAL SHELF IN THE CHAGOS ARCHIPELAGO REGION

The Republic of Mauritius has the honour to request the Secretary-General to inform the Commission and notify member States of the receipt of this preliminary information, and make such information publicly available in accordance with operative paragraph 1(d) of the decision contained in SPLOS/183.

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

My ref.: NY/COM6/CLCS

29 May 2013

Dear Sir,

Mauritius submission for an Extended Continental Shelf in the Chagos Archipelago Region

In my letter of 21 December 2012 I informed you that the Government of the Republic of Mauritius proposed to make a partial submission for an extended continental shelf in the Chagos Archipelago Region in June 2013.

However, since more time than expected is required to complete the submission, the Government of the Republic of Mauritius is now proposing to complete and lodge the submission by June 2014.

Yours truly,

Milan J.N. Meetarbhan
Ambassador
Permanent Representative

The Secretary
Commission on the Limits of the Continental shelf
Division for Ocean Affairs and the Law of the Sea (DOALOS)
United Nations
New York

211 East 43rd Street • New York City, NY 10017 • Tel: (212) 949 0190 • Fax: (212) 697 3829 • E-mail: Mauritius@un.int

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

19 June 2014

Secretary of the Commission on the Limits of the Continental Shelf
Division for Ocean Affairs and the Law of the Sea
Office of Legal Affairs
United Nations
New York

Dear Sir,

Mauritius Submission for an Extended Continental Shelf in the Chagos Archipelago Region

Please refer to my letter dated 29 May 2013 relating to the submission for an extended continental shelf in the Chagos Archipelago Region which the Government of the Republic of Mauritius proposes to make to the United Nations Commission on the Limits of the Continental Shelf (CLCS).

As Mauritius is experiencing capacity constraints and is currently engaged in preparations for the examination in July 2014 by a CLCS Sub-Commission of its Submission concerning the Extended Continental Shelf in the Region of Rodrigues Island, it will not be able to complete the submission for an extended continental shelf in the Chagos Archipelago Region by the end of June 2014 as planned.

In this regard, the Government of the Republic of Mauritius wishes to inform the Commission that it now proposes to complete and lodge the submission by the end of this year.

Yours faithfully,

Milan J.N. Meetarbhan
Ambassador
Permanent Representative

211 East 43rd Street • New York, N.Y. 10017 • Tel: (212) 949-0190 • Fax: (212) 697-3829

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

15 December 2014

Excellency,

Mauritius Submission for an Extended Continental Shelf in the Chagos Archipelago Region

I have the honour to refer to my letter dated 19 June 2014, in which I informed you that the Government of the Republic of Mauritius was proposing to complete and lodge the submission for an extended continental shelf in the Chagos Archipelago Region by the end of this year.

While every effort has been made to complete the submission, I wish to inform you that we will not be able to finalise the submission within the envisaged time frame. Indeed our small team dealing with continental shelf issues has had to focus on providing detailed scientific and technical information relating to another submission which is currently being considered by a Sub-Commission of the CLCS.

In the circumstances, the Government of the Republic of Mauritius now proposes to complete and lodge the submission by the end of 2015.

Please accept, Excellency, the assurances of my highest consideration.

Milan J.N. Meetarbhan
Ambassador
Permanent Representative

The Secretary
Commission on the Limits of the Continental Shelf
Division for Ocean Affairs and the Law of the Sea (DOALOS)
United Nations
New York

211 East 43rd Street • New York, N.Y. 10017 • Tel: (212) 949-0190 • Fax: (212) 697-3829

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

24 December 2015

Excellency,

Extended Continental Shelf in the Chagos Archipelago region

I have the honour to refer to the proposed submission of the Republic of Mauritius for an Extended Continental Shelf in the Chagos Archipelago Region, in respect of which a Preliminary Information Note was provided to the United Nations on 6 May 2009.

I wish to inform your Excellency that the Government of the Republic of Mauritius is currently undertaking consultations with the Government of the United Kingdom with a view to making a coordinated submission to the Commission on the Limits of the Continental Shelf.

It is expected that these consultations will be concluded in the course of next year, following which the submission will be made.

Please accept Excellency the assurances of my highest consideration.

Jagdish Koonjul
Ambassador Extraordinary and Plenipotentiary
Permanent Representative

Secretary
Commission on the Limits of the Continental Shelf
Division for Ocean Affairs and Law of the Sea (DOALOS)
United Nations
New York

211 East 43rd Street • New York City, NY 10017 • Tel: (212) 949 0190 • Fax: (212) 697 3829 • E-mail: Mauritius@un.int

United Nations Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE: M.Z.N. 46. 2004. LOS (Maritime Zone Notification) 12 March 2004

United Nations Convention on the Law of the Sea
concluded at Montego Bay, Jamaica
on 10 December 1982

Deposit by the United Kingdom of Great Britain and Northern Ireland of the list of geographical coordinates of points pursuant to article 75, paragraph 2, of the Convention

The Secretary-General of the United Nations communicates the following:

On 12 March 2004, the United Kingdom of Great Britain and Northern Ireland deposited with the Secretary-General, in accordance with article 75, paragraph 2, of the Convention, the following list of geographical coordinates:

List of geographical coordinates of points defining the outer limits of a zone adjacent to the territorial sea of the British Indian Ocean Territory, known as the Environment (Protection and Preservation) Zone, established for that Territory by Proclamation No. 1 of 17 September 2003

Proclamation No. 1 of 17 September 2003 establishing the Environment (Protection and Preservation) Zone for the British Indian Ocean Territory will be reproduced, together with the list of geographical coordinates of points, including an illustrative map, in Law of the Sea Bulletin No. 54. The illustrative map will also be reproduced in the next issue of the Law of the Sea Information Circular.

The original list of geographical coordinates deposited by the United Kingdom of Great Britain and Northern Ireland may be consulted at the Secretariat of the United Nations (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, DC2-0450, telephone: 963-3962 or fax: 963-5847).

United Nations Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE: M.Z.N. 46. 2004. LOS (Notification Zone Maritime) 12 mars 2004

Convention des Nations Unies sur le droit de la mer
conclue à Montego Bay (Jamaïque)
le 10 décembre 1982

Dépôt par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord d'une liste de coordonnées géographiques des points en vertu du paragraphe 2 de l'article 75 de la Convention

Le Secrétaire général de l'Organisation des Nations Unies communique ce qui suit:

Le 12 mars 2004, le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a déposé auprès du Secrétaire général, en conformité avec le paragraphe 2 de l'article 75 de la Convention, la liste de coordonnées géographiques des points décrite ci-après:

> **Liste de coordonnées géographiques des points concernant la limite extérieure d'une zone adjacente à la mer territoriale du Territoire britannique de l'océan Indien (British Indian Ocean Territory), connue comme « Zone de protection et préservation de l'environnement » (« Environment (Protection and Preservation) Zone »), telle qu'établie pour ce territoire par la Proclamation no. 1 du 17 septembre 2003.**

La Proclamation no. 1 du 17 septembre 2003 établissant la Zone de protection et préservation de l'environnement pour le Territoire britannique de l'océan Indien sera publiée dans le Bulletin du droit de la mer no. 54, y compris la liste de coordonnées géographiques des points qui sera accompagnée d'une carte illustrative. Cette carte sera aussi reproduite dans le prochain numéro de la Circulaire d'information sur le droit de la mer.

La liste authentique des coordonnées géographiques déposée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord peut être consultée au Secrétariat des Nations Unies (Division des affaires maritimes et du droit de la mer, Bureau des affaires juridiques, DC2-0450, téléphone: 963-3962 ou télécopie: 963-5847).

3. United Kingdom of Great Britain and Northern Ireland:

(a) PROCLAMATION No. 1 of 17 September 2003 establishing the Environment (Protection and Preservation) Zone for the British Indian Ocean Territory

IN THE NAME of Her Majesty ELIZABETH the Second, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Queen, Head of Commonwealth, Defender of the Faith.

[signed]

……
ALAN EDDEN HUCKLE
Commissioner,

By Alan Edden Huckle, Commissioner for the British Indian Ocean Territory.

I, Alan Edden Huckle, Commissioner for the British Indian Ocean Territory, acting in pursuance of instructions given by Her Majesty through a Secretary of State, do hereby proclaim and declare that:

1. There is established for the British Indian Ocean Territory an environmental zone, to be known as the Environment (Protection and Preservation) Zone, contiguous to the territorial sea of the Territory.

2. The said environmental zone has as its inner boundary the outer limits of the territorial sea of the Territory and as its seaward boundary a line drawn so that each point on it is two hundred nautical miles from the nearest point on the low-water line on the coast of the Territory or other baseline from which the territorial sea of the Territory is measured or, where this line is less than two hundred nautical miles from the baseline and unless another line is declared by Proclamation, the median line. The median line is a line every point on which is equidistant from the nearest point on the baseline of the Territory and the nearest point on the baseline from which the territorial sea of the Republic of the Maldives is measured.

3. Within the said environmental zone, Her Majesty will exercise sovereign rights and jurisdiction enjoyed under international law, including the United Nations Convention on the Law of the Sea, with regard to the protection and preservation of the environment of the zone.

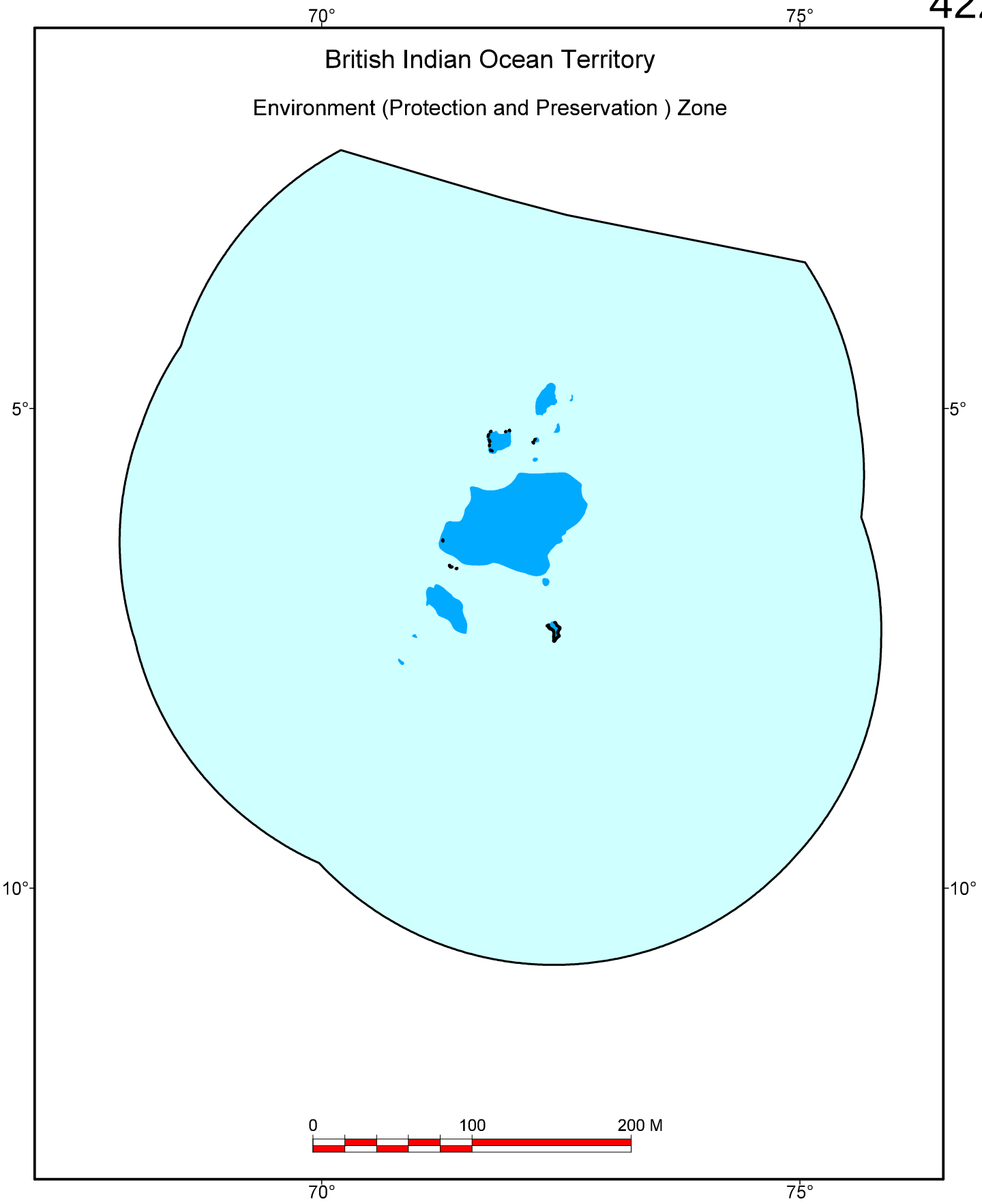
4. In this Proclamation "the Territory" means the British Indian Ocean Territory". The British Indian Ocean Territory comprises the islands of the Chagos Archipelago, as set out in the Schedule to this Proclamation.

Given the Foreign and Commonwealth Office, London, this 17 day of September 2003.

GOD SAVE THE QUEEN

British Indian Ocean Territory

Environment (Protection and Preservation) Zone



SCHEDULE

The islands of the Chagos Archipelago, which constitute the British Indian Ocean Territory, are the following:

Diego Garcia	Three Brothers Islands
Egmont or Six Islands	Nelson or Legour Island
Peros Banhos	Eagle Islands
Salomon Islands	Danger Island

(b) British Indian Ocean Territory Environment (Protection and Preservation) Zone

Latitude				**Longitude**				**Line Type**	**Datum**
3	27	56.82	S	75	3	10.1	E	Geodesic	WGS 84
3	15	22	S	74	0	0	E	Geodesic	WGS 84
3	5	21	S	73	10	0	E	Geodesic	WGS 84
2	58	3	S	72	33	34	E	Geodesic	WGS 84
2	47	31	S	71	53	40	E	Geodesic	WGS 84
2	36	44	S	71	17	14	E	Geodesic	WGS 84
2	17	15.01	S	70	12	4.45	E	Geodesic	WGS 84
2	17	41.37	S	70	11	15.19	E	200M arc	WGS 84
2	18	9.94	S	70	10	22.44	E	200M arc	WGS 84
2	18	38.77	S	70	9	29.83	E	200M arc	WGS 84
2	19	7.86	S	70	8	37.37	E	200M arc	WGS 84
2	19	37.21	S	70	7	45.05	E	200M arc	WGS 84
2	20	6.83	S	70	6	52.88	E	200M arc	WGS 84
2	20	36.71	S	70	6	0.86	E	200M arc	WGS 84
2	21	6.85	S	70	5	8.97	E	200M arc	WGS 84
2	21	37.25	S	70	4	17.25	E	200M arc	WGS 84
2	22	7.91	S	70	3	25.67	E	200M arc	WGS 84
2	22	38.82	S	70	2	34.25	E	200M arc	WGS 84
2	23	10	S	70	1	42.97	E	200M arc	WGS 84
2	23	41.42	S	70	0	51.85	E	200M arc	WGS 84
2	24	13.1	S	70	0	0.89	E	200M arc	WGS 84
2	24	45.05	S	69	59	10.09	E	200M arc	WGS 84
2	25	17.24	S	69	58	19.45	E	200M arc	WGS 84
2	25	49.69	S	69	57	28.96	E	200M arc	WGS 84
2	26	22.38	S	69	56	38.64	E	200M arc	WGS 84
2	26	55.33	S	69	55	48.47	E	200M arc	WGS 84
2	27	28.54	S	69	54	58.47	E	200M arc	WGS 84
2	28	1.99	S	69	54	8.64	E	200M arc	WGS 84
2	28	35.69	S	69	53	18.97	E	200M arc	WGS 84

2	29	9.65	S	69	52	29.47	E	200M arc	WGS 84
2	29	43.84	S	69	51	40.14	E	200M arc	WGS 84
2	30	18.28	S	69	50	50.97	E	200M arc	WGS 84
2	30	52.97	S	69	50	1.99	E	200M arc	WGS 84
2	31	27.9	S	69	49	13.16	E	200M arc	WGS 84
2	32	3.09	S	69	48	24.51	E	200M arc	WGS 84
2	32	38.51	S	69	47	36.05	E	200M arc	WGS 84
2	33	14.17	S	69	46	47.75	E	200M arc	WGS 84
2	33	50.08	S	69	45	59.63	E	200M arc	WGS 84
2	34	26.23	S	69	45	11.68	E	200M arc	WGS 84
2	35	2.62	S	69	44	23.92	E	200M arc	WGS 84
2	35	39.24	S	69	43	36.34	E	200M arc	WGS 84
2	35	39.42	S	69	43	36.11	E	200M arc	WGS 84
2	35	41.75	S	69	43	33.1	E	200M arc	WGS 84
2	36	18.61	S	69	42	45.7	E	200M arc	WGS 84
2	36	55.72	S	69	41	58.47	E	200M arc	WGS 84
2	37	33.05	S	69	41	11.44	E	200M arc	WGS 84
2	38	10.62	S	69	40	24.59	E	200M arc	WGS 84
2	38	48.43	S	69	39	37.93	E	200M arc	WGS 84
2	39	26.46	S	69	38	51.45	E	200M arc	WGS 84
2	40	4.73	S	69	38	5.17	E	200M arc	WGS 84
2	40	43.24	S	69	37	19.07	E	200M arc	WGS 84
2	41	21.97	S	69	36	33.16	E	200M arc	WGS 84
2	42	0.93	S	69	35	47.45	E	200M arc	WGS 84
2	42	40.13	S	69	35	1.93	E	200M arc	WGS 84
2	43	19.54	S	69	34	16.6	E	200M arc	WGS 84
2	43	59.19	S	69	33	31.47	E	200M arc	WGS 84
2	44	39.06	S	69	32	46.54	E	200M arc	WGS 84
2	45	19.16	S	69	32	1.8	E	200M arc	WGS 84
2	45	59.47	S	69	31	17.26	E	200M arc	WGS 84
2	46	40.02	S	69	30	32.93	E	200M arc	WGS 84
2	47	20.78	S	69	29	48.79	E	200M arc	WGS 84
2	48	1.76	S	69	29	4.86	E	200M arc	WGS 84
2	48	42.97	S	69	28	21.12	E	200M arc	WGS 84
2	49	24.39	S	69	27	37.59	E	200M arc	WGS 84
2	50	6.02	S	69	26	54.27	E	200M arc	WGS 84
2	50	47.88	S	69	26	11.16	E	200M arc	WGS 84
2	51	29.95	S	69	25	28.25	E	200M arc	WGS 84
2	52	12.24	S	69	24	45.54	E	200M arc	WGS 84
2	52	54.73	S	69	24	3.06	E	200M arc	WGS 84
2	53	37.44	S	69	23	20.78	E	200M arc	WGS 84
2	54	20.36	S	69	22	38.71	E	200M arc	WGS 84
2	55	3.5	S	69	21	56.85	E	200M arc	WGS 84
2	55	46.84	S	69	21	15.21	E	200M arc	WGS 84
2	56	30.39	S	69	20	33.78	E	200M arc	WGS 84
2	57	14.14	S	69	19	52.57	E	200M arc	WGS 84
2	57	47.02	S	69	19	21.88	E	200M arc	WGS 84
2	58	7.74	S	69	19	2.41	E	200M arc	WGS 84
2	58	51.71	S	69	18	21.42	E	200M arc	WGS 84
2	59	35.87	S	69	17	40.64	E	200M arc	WGS 84
3	0	20.25	S	69	17	0.08	E	200M arc	WGS 84
3	1	4.81	S	69	16	19.74	E	200M arc	WGS 84

3	1	49.59	S	69	15	39.62	E	200M arc	WGS 84
3	2	34.57	S	69	14	59.73	E	200M arc	WGS 84
3	3	19.74	S	69	14	20.05	E	200M arc	WGS 84
3	4	5.11	S	69	13	40.61	E	200M arc	WGS 84
3	4	50.68	S	69	13	1.38	E	200M arc	WGS 84
3	5	36.44	S	69	12	22.39	E	200M arc	WGS 84
3	6	22.4	S	69	11	43.61	E	200M arc	WGS 84
3	7	8.55	S	69	11	5.06	E	200M arc	WGS 84
3	7	54.9	S	69	10	26.75	E	200M arc	WGS 84
3	8	41.43	S	69	9	48.67	E	200M arc	WGS 84
3	9	28.16	S	69	9	10.81	E	200M arc	WGS 84
3	10	15.08	S	69	8	33.19	E	200M arc	WGS 84
3	11	2.18	S	69	7	55.8	E	200M arc	WGS 84
3	11	49.47	S	69	7	18.64	E	200M arc	WGS 84
3	12	36.94	S	69	6	41.72	E	200M arc	WGS 84
3	13	24.6	S	69	6	5.03	E	200M arc	WGS 84
3	14	12.44	S	69	5	28.58	E	200M arc	WGS 84
3	15	0.47	S	69	4	52.36	E	200M arc	WGS 84
3	15	48.68	S	69	4	16.39	E	200M arc	WGS 84
3	16	37.06	S	69	3	40.65	E	200M arc	WGS 84
3	17	25.62	S	69	3	5.16	E	200M arc	WGS 84
3	18	14.37	S	69	2	29.9	E	200M arc	WGS 84
3	19	3.28	S	69	1	54.88	E	200M arc	WGS 84
3	19	52.37	S	69	1	20.11	E	200M arc	WGS 84
3	20	41.63	S	69	0	45.58	E	200M arc	WGS 84
3	21	31.07	S	69	0	11.29	E	200M arc	WGS 84
3	21	55.21	S	68	59	54.68	E	200M arc	WGS 84
3	22	24.47	S	68	59	34.63	E	200M arc	WGS 84
3	22	50.9	S	68	59	16.35	E	200M arc	WGS 84
3	23	40.51	S	68	58	42.31	E	200M arc	WGS 84
3	24	30.29	S	68	58	8.51	E	200M arc	WGS 84
3	25	20.23	S	68	57	34.96	E	200M arc	WGS 84
3	26	10.34	S	68	57	1.66	E	200M arc	WGS 84
3	27	0.62	S	68	56	28.6	E	200M arc	WGS 84
3	27	51.07	S	68	55	55.8	E	200M arc	WGS 84
3	28	41.67	S	68	55	23.24	E	200M arc	WGS 84
3	29	32.44	S	68	54	50.94	E	200M arc	WGS 84
3	30	23.37	S	68	54	18.89	E	200M arc	WGS 84
3	31	14.46	S	68	53	47.09	E	200M arc	WGS 84
3	32	5.71	S	68	53	15.54	E	200M arc	WGS 84
3	32	57.12	S	68	52	44.25	E	200M arc	WGS 84
3	33	48.68	S	68	52	13.21	E	200M arc	WGS 84
3	34	40.4	S	68	51	42.43	E	200M arc	WGS 84
3	35	32.27	S	68	51	11.9	E	200M arc	WGS 84
3	36	24.29	S	68	50	41.63	E	200M arc	WGS 84
3	37	16.46	S	68	50	11.62	E	200M arc	WGS 84
3	38	8.79	S	68	49	41.87	E	200M arc	WGS 84
3	39	1.26	S	68	49	12.38	E	200M arc	WGS 84
3	39	53.88	S	68	48	43.14	E	200M arc	WGS 84
3	40	46.64	S	68	48	14.17	E	200M arc	WGS 84
3	41	39.55	S	68	47	45.46	E	200M arc	WGS 84
3	42	32.6	S	68	47	17.01	E	200M arc	WGS 84

3	43	25.79	S	68	46	48.83	E	200M arc	WGS 84
3	44	19.13	S	68	46	20.91	E	200M arc	WGS 84
3	45	12.59	S	68	45	53.26	E	200M arc	WGS 84
3	46	6.2	S	68	45	25.86	E	200M arc	WGS 84
3	46	59.95	S	68	44	58.73	E	200M arc	WGS 84
3	47	53.84	S	68	44	31.87	E	200M arc	WGS 84
3	48	47.85	S	68	44	5.28	E	200M arc	WGS 84
3	49	42	S	68	43	38.96	E	200M arc	WGS 84
3	50	36.28	S	68	43	12.9	E	200M arc	WGS 84
3	51	30.69	S	68	42	47.12	E	200M arc	WGS 84
3	52	25.23	S	68	42	21.6	E	200M arc	WGS 84
3	53	19.88	S	68	41	56.35	E	200M arc	WGS 84
3	54	14.68	S	68	41	31.38	E	200M arc	WGS 84
3	55	9.59	S	68	41	6.67	E	200M arc	WGS 84
3	56	4.63	S	68	40	42.24	E	200M arc	WGS 84
3	56	59.78	S	68	40	18.08	E	200M arc	WGS 84
3	57	55.06	S	68	39	54.2	E	200M arc	WGS 84
3	58	50.46	S	68	39	30.58	E	200M arc	WGS 84
3	59	45.97	S	68	39	7.25	E	200M arc	WGS 84
4	0	41.61	S	68	38	44.19	E	200M arc	WGS 84
4	1	37.35	S	68	38	21.4	E	200M arc	WGS 84
4	2	33.21	S	68	37	58.89	E	200M arc	WGS 84
4	3	29.19	S	68	37	36.67	E	200M arc	WGS 84
4	4	25.26	S	68	37	14.71	E	200M arc	WGS 84
4	5	21.46	S	68	36	53.03	E	200M arc	WGS 84
4	6	17.76	S	68	36	31.64	E	200M arc	WGS 84
4	7	14.16	S	68	36	10.52	E	200M arc	WGS 84
4	8	10.67	S	68	35	49.68	E	200M arc	WGS 84
4	9	7.29	S	68	35	29.13	E	200M arc	WGS 84
4	10	3.99	S	68	35	8.85	E	200M arc	WGS 84
4	11	0.82	S	68	34	48.86	E	200M arc	WGS 84
4	11	57.73	S	68	34	29.14	E	200M arc	WGS 84
4	12	54.74	S	68	34	9.71	E	200M arc	WGS 84
4	13	51.85	S	68	33	50.57	E	200M arc	WGS 84
4	14	49.06	S	68	33	31.7	E	200M arc	WGS 84
4	15	46.36	S	68	33	13.12	E	200M arc	WGS 84
4	16	43.75	S	68	32	54.82	E	200M arc	WGS 84
4	17	41.23	S	68	32	36.82	E	200M arc	WGS 84
4	18	38.8	S	68	32	19.09	E	200M arc	WGS 84
4	19	36.46	S	68	32	1.65	E	200M arc	WGS 84
4	20	34.21	S	68	31	44.49	E	200M arc	WGS 84
4	20	41.52	S	68	31	42.36	E	200M arc	WGS 84
4	21	17.24	S	68	31	18.04	E	200M arc	WGS 84
4	22	7.15	S	68	30	44.41	E	200M arc	WGS 84
4	22	57.23	S	68	30	11.03	E	200M arc	WGS 84
4	23	47.49	S	68	29	37.9	E	200M arc	WGS 84
4	24	37.9	S	68	29	5.02	E	200M arc	WGS 84
4	25	28.48	S	68	28	32.39	E	200M arc	WGS 84
4	26	19.22	S	68	28	0.01	E	200M arc	WGS 84
4	27	10.13	S	68	27	27.87	E	200M arc	WGS 84
4	28	1.19	S	68	26	56	E	200M arc	WGS 84
4	28	52.41	S	68	26	24.37	E	200M arc	WGS 84

4	29	43.79	S	68	25	53	E	200M arc	WGS 84
4	30	35.33	S	68	25	21.89	E	200M arc	WGS 84
4	31	27.01	S	68	24	51.03	E	200M arc	WGS 84
4	32	18.86	S	68	24	20.42	E	200M arc	WGS 84
4	33	10.86	S	68	23	50.07	E	200M arc	WGS 84
4	34	3	S	68	23	19.98	E	200M arc	WGS 84
4	34	55.3	S	68	22	50.15	E	200M arc	WGS 84
4	35	47.75	S	68	22	20.58	E	200M arc	WGS 84
4	36	40.33	S	68	21	51.27	E	200M arc	WGS 84
4	37	33.07	S	68	21	22.22	E	200M arc	WGS 84
4	38	25.96	S	68	20	53.43	E	200M arc	WGS 84
4	39	18.98	S	68	20	24.91	E	200M arc	WGS 84
4	40	12.15	S	68	19	56.64	E	200M arc	WGS 84
4	41	5.46	S	68	19	28.64	E	200M arc	WGS 84
4	41	58.91	S	68	19	0.9	E	200M arc	WGS 84
4	42	52.49	S	68	18	33.43	E	200M arc	WGS 84
4	43	46.21	S	68	18	6.23	E	200M arc	WGS 84
4	44	40.07	S	68	17	39.29	E	200M arc	WGS 84
4	45	34.06	S	68	17	12.62	E	200M arc	WGS 84
4	46	28.18	S	68	16	46.21	E	200M arc	WGS 84
4	47	22.44	S	68	16	20.07	E	200M arc	WGS 84
4	48	16.82	S	68	15	54.21	E	200M arc	WGS 84
4	49	11.34	S	68	15	28.61	E	200M arc	WGS 84
4	50	5.97	S	68	15	3.29	E	200M arc	WGS 84
4	51	0.74	S	68	14	38.24	E	200M arc	WGS 84
4	51	55.64	S	68	14	13.45	E	200M arc	WGS 84
4	52	50.65	S	68	13	48.93	E	200M arc	WGS 84
4	53	45.79	S	68	13	24.7	E	200M arc	WGS 84
4	54	41.04	S	68	13	0.73	E	200M arc	WGS 84
4	55	36.42	S	68	12	37.04	E	200M arc	WGS 84
4	56	31.91	S	68	12	13.63	E	200M arc	WGS 84
4	57	27.51	S	68	11	50.49	E	200M arc	WGS 84
4	58	23.24	S	68	11	27.63	E	200M arc	WGS 84
4	59	19.08	S	68	11	5.04	E	200M arc	WGS 84
5	0	15.03	S	68	10	42.73	E	200M arc	WGS 84
5	1	11.09	S	68	10	20.69	E	200M arc	WGS 84
5	2	7.26	S	68	9	58.95	E	200M arc	WGS 84
5	3	3.54	S	68	9	37.46	E	200M arc	WGS 84
5	3	59.91	S	68	9	16.27	E	200M arc	WGS 84
5	4	56.4	S	68	8	55.36	E	200M arc	WGS 84
5	5	53	S	68	8	34.72	E	200M arc	WGS 84
5	6	49.7	S	68	8	14.37	E	200M arc	WGS 84
5	7	46.49	S	68	7	54.29	E	200M arc	WGS 84
5	8	43.39	S	68	7	34.5	E	200M arc	WGS 84
5	9	40.38	S	68	7	14.99	E	200M arc	WGS 84
5	9	43.34	S	68	7	14	E	200M arc	WGS 84
5	9	56.06	S	68	7	8.99	E	200M arc	WGS 84
5	10	52.22	S	68	6	47.23	E	200M arc	WGS 84
5	11	48.5	S	68	6	25.74	E	200M arc	WGS 84
5	12	44.88	S	68	6	4.53	E	200M arc	WGS 84
5	13	41.36	S	68	5	43.6	E	200M arc	WGS 84
5	14	37.96	S	68	5	22.95	E	200M arc	WGS 84

5	15	34.65	S	68	5	2.59	E	200M arc	WGS 84
5	16	31.44	S	68	4	42.5	E	200M arc	WGS 84
5	17	28.33	S	68	4	22.7	E	200M arc	WGS 84
5	18	25.33	S	68	4	3.18	E	200M arc	WGS 84
5	19	22.41	S	68	3	43.94	E	200M arc	WGS 84
5	20	19.6	S	68	3	24.99	E	200M arc	WGS 84
5	21	16.87	S	68	3	6.31	E	200M arc	WGS 84
5	22	14.24	S	68	2	47.93	E	200M arc	WGS 84
5	23	11.7	S	68	2	29.82	E	200M arc	WGS 84
5	24	9.26	S	68	2	12.01	E	200M arc	WGS 84
5	25	6.89	S	68	1	54.49	E	200M arc	WGS 84
5	26	4.62	S	68	1	37.24	E	200M arc	WGS 84
5	27	2.43	S	68	1	20.28	E	200M arc	WGS 84
5	28	0.33	S	68	1	3.62	E	200M arc	WGS 84
5	28	58.3	S	68	0	47.23	E	200M arc	WGS 84
5	29	56.36	S	68	0	31.14	E	200M arc	WGS 84
5	30	54.5	S	68	0	15.33	E	200M arc	WGS 84
5	31	52.71	S	67	59	59.82	E	200M arc	WGS 84
5	32	51.01	S	67	59	44.59	E	200M arc	WGS 84
5	33	49.37	S	67	59	29.65	E	200M arc	WGS 84
5	34	47.82	S	67	59	15	E	200M arc	WGS 84
5	35	46.33	S	67	59	0.65	E	200M arc	WGS 84
5	36	44.92	S	67	58	46.59	E	200M arc	WGS 84
5	37	43.58	S	67	58	32.81	E	200M arc	WGS 84
5	38	42.3	S	67	58	19.33	E	200M arc	WGS 84
5	39	41.08	S	67	58	6.14	E	200M arc	WGS 84
5	40	39.94	S	67	57	53.24	E	200M arc	WGS 84
5	40	50.13	S	67	57	51.04	E	200M arc	WGS 84
5	40	59.61	S	67	57	48.98	E	200M arc	WGS 84
5	41	58.53	S	67	57	36.38	E	200M arc	WGS 84
5	42	57.51	S	67	57	24.06	E	200M arc	WGS 84
5	43	56.55	S	67	57	12.05	E	200M arc	WGS 84
5	44	55.65	S	67	57	0.32	E	200M arc	WGS 84
5	45	54.8	S	67	56	48.89	E	200M arc	WGS 84
5	46	54.02	S	67	56	37.75	E	200M arc	WGS 84
5	47	53.29	S	67	56	26.91	E	200M arc	WGS 84
5	48	52.61	S	67	56	16.36	E	200M arc	WGS 84
5	49	51.98	S	67	56	6.11	E	200M arc	WGS 84
5	50	51.41	S	67	55	56.16	E	200M arc	WGS 84
5	51	50.89	S	67	55	46.5	E	200M arc	WGS 84
5	52	50.41	S	67	55	37.13	E	200M arc	WGS 84
5	53	49.98	S	67	55	28.05	E	200M arc	WGS 84
5	54	49.59	S	67	55	19.28	E	200M arc	WGS 84
5	55	49.24	S	67	55	10.81	E	200M arc	WGS 84
5	56	48.94	S	67	55	2.64	E	200M arc	WGS 84
5	57	48.67	S	67	54	54.75	E	200M arc	WGS 84
5	58	48.45	S	67	54	47.17	E	200M arc	WGS 84
5	59	48.26	S	67	54	39.88	E	200M arc	WGS 84
6	0	48.11	S	67	54	32.89	E	200M arc	WGS 84
6	1	47.99	S	67	54	26.21	E	200M arc	WGS 84
6	2	47.9	S	67	54	19.81	E	200M arc	WGS 84
6	3	47.85	S	67	54	13.71	E	200M arc	WGS 84

6	4	47.83	S	67	54	7.92	E	200M arc	WGS 84
6	5	47.83	S	67	54	2.43	E	200M arc	WGS 84
6	6	47.86	S	67	53	57.23	E	200M arc	WGS 84
6	7	47.92	S	67	53	52.33	E	200M arc	WGS 84
6	8	48	S	67	53	47.73	E	200M arc	WGS 84
6	9	48.09	S	67	53	43.43	E	200M arc	WGS 84
6	10	48.22	S	67	53	39.43	E	200M arc	WGS 84
6	11	48.36	S	67	53	35.73	E	200M arc	WGS 84
6	12	48.52	S	67	53	32.33	E	200M arc	WGS 84
6	13	48.69	S	67	53	29.23	E	200M arc	WGS 84
6	14	48.88	S	67	53	26.43	E	200M arc	WGS 84
6	15	49.08	S	67	53	23.93	E	200M arc	WGS 84
6	16	49.3	S	67	53	21.73	E	200M arc	WGS 84
6	17	49.52	S	67	53	19.83	E	200M arc	WGS 84
6	18	49.76	S	67	53	18.23	E	200M arc	WGS 84
6	19	50	S	67	53	16.93	E	200M arc	WGS 84
6	20	50.24	S	67	53	15.93	E	200M arc	WGS 84
6	21	50.5	S	67	53	15.23	E	200M arc	WGS 84
6	22	50.75	S	67	53	14.83	E	200M arc	WGS 84
6	23	51	S	67	53	14.74	E	200M arc	WGS 84
6	24	51.26	S	67	53	14.94	E	200M arc	WGS 84
6	25	51.51	S	67	53	15.45	E	200M arc	WGS 84
6	26	51.76	S	67	53	16.25	E	200M arc	WGS 84
6	27	52	S	67	53	17.35	E	200M arc	WGS 84
6	28	52.24	S	67	53	18.76	E	200M arc	WGS 84
6	29	52.47	S	67	53	20.47	E	200M arc	WGS 84
6	30	52.69	S	67	53	22.47	E	200M arc	WGS 84
6	31	52.9	S	67	53	24.78	E	200M arc	WGS 84
6	32	53.1	S	67	53	27.4	E	200M arc	WGS 84
6	33	53.28	S	67	53	30.3	E	200M arc	WGS 84
6	34	53.45	S	67	53	33.51	E	200M arc	WGS 84
6	35	53.6	S	67	53	37.03	E	200M arc	WGS 84
6	36	53.73	S	67	53	40.83	E	200M arc	WGS 84
6	37	11.75	S	67	53	42.04	E	200M arc	WGS 84
6	37	16.83	S	67	53	42.37	E	200M arc	WGS 84
6	38	16.94	S	67	53	46.48	E	200M arc	WGS 84
6	39	17.03	S	67	53	50.89	E	200M arc	WGS 84
6	40	17.1	S	67	53	55.6	E	200M arc	WGS 84
6	41	17.15	S	67	54	0.62	E	200M arc	WGS 84
6	42	17.17	S	67	54	5.93	E	200M arc	WGS 84
6	43	17.16	S	67	54	11.54	E	200M arc	WGS 84
6	44	17.12	S	67	54	17.45	E	200M arc	WGS 84
6	45	17.05	S	67	54	23.66	E	200M arc	WGS 84
6	46	16.96	S	67	54	30.18	E	200M arc	WGS 84
6	47	16.82	S	67	54	36.98	E	200M arc	WGS 84
6	48	16.66	S	67	54	44.09	E	200M arc	WGS 84
6	48	34.38	S	67	54	46.26	E	200M arc	WGS 84
6	48	35.78	S	67	54	46.43	E	200M arc	WGS 84
6	49	35.57	S	67	54	53.84	E	200M arc	WGS 84
6	50	35.33	S	67	55	1.54	E	200M arc	WGS 84
6	51	35.05	S	67	55	9.55	E	200M arc	WGS 84
6	52	34.73	S	67	55	17.86	E	200M arc	WGS 84

6	53	34.37	S	67	55	26.46	E	200M arc	WGS 84
6	54	33.96	S	67	55	35.36	E	200M arc	WGS 84
6	55	33.51	S	67	55	44.56	E	200M arc	WGS 84
6	56	33.01	S	67	55	54.06	E	200M arc	WGS 84
6	57	32.46	S	67	56	3.86	E	200M arc	WGS 84
6	58	31.86	S	67	56	13.95	E	200M arc	WGS 84
6	59	31.22	S	67	56	24.34	E	200M arc	WGS 84
7	0	30.51	S	67	56	35.03	E	200M arc	WGS 84
7	1	29.76	S	67	56	46.02	E	200M arc	WGS 84
7	2	28.95	S	67	56	57.3	E	200M arc	WGS 84
7	3	28.08	S	67	57	8.88	E	200M arc	WGS 84
7	4	27.15	S	67	57	20.75	E	200M arc	WGS 84
7	5	26.17	S	67	57	32.92	E	200M arc	WGS 84
7	6	25.11	S	67	57	45.39	E	200M arc	WGS 84
7	7	24	S	67	57	58.15	E	200M arc	WGS 84
7	8	22.83	S	67	58	11.21	E	200M arc	WGS 84
7	9	21.59	S	67	58	24.55	E	200M arc	WGS 84
7	10	20.28	S	67	58	38.2	E	200M arc	WGS 84
7	11	18.9	S	67	58	52.14	E	200M arc	WGS 84
7	12	17.46	S	67	59	6.38	E	200M arc	WGS 84
7	13	15.94	S	67	59	20.9	E	200M arc	WGS 84
7	14	14.34	S	67	59	35.73	E	200M arc	WGS 84
7	15	12.67	S	67	59	50.84	E	200M arc	WGS 84
7	16	10.93	S	68	0	6.24	E	200M arc	WGS 84
7	17	9.11	S	68	0	21.94	E	200M arc	WGS 84
7	18	7.21	S	68	0	37.93	E	200M arc	WGS 84
7	19	5.22	S	68	0	54.2	E	200M arc	WGS 84
7	20	3.16	S	68	1	10.78	E	200M arc	WGS 84
7	21	1.01	S	68	1	27.64	E	200M arc	WGS 84
7	21	58.78	S	68	1	44.79	E	200M arc	WGS 84
7	22	56.46	S	68	2	2.24	E	200M arc	WGS 84
7	23	54.05	S	68	2	19.97	E	200M arc	WGS 84
7	24	51.55	S	68	2	37.99	E	200M arc	WGS 84
7	25	46.94	S	68	2	55.65	E	200M arc	WGS 84
7	26	6.64	S	68	3	0.22	E	200M arc	WGS 84
7	27	5.26	S	68	3	14.15	E	200M arc	WGS 84
7	28	3.82	S	68	3	28.38	E	200M arc	WGS 84
7	29	2.3	S	68	3	42.9	E	200M arc	WGS 84
7	30	0.71	S	68	3	57.71	E	200M arc	WGS 84
7	30	59.04	S	68	4	12.83	E	200M arc	WGS 84
7	31	57.3	S	68	4	28.22	E	200M arc	WGS 84
7	32	55.48	S	68	4	43.91	E	200M arc	WGS 84
7	33	53.59	S	68	4	59.89	E	200M arc	WGS 84
7	34	51.61	S	68	5	16.17	E	200M arc	WGS 84
7	35	49.54	S	68	5	32.74	E	200M arc	WGS 84
7	36	47.4	S	68	5	49.59	E	200M arc	WGS 84
7	37	45.17	S	68	6	6.74	E	200M arc	WGS 84
7	38	42.86	S	68	6	24.18	E	200M arc	WGS 84
7	39	40.46	S	68	6	41.91	E	200M arc	WGS 84
7	40	37.97	S	68	6	59.92	E	200M arc	WGS 84
7	41	35.38	S	68	7	18.23	E	200M arc	WGS 84
7	42	32.71	S	68	7	36.82	E	200M arc	WGS 84

7	43	29.94	S	68	7	55.71	E	200M arc	WGS 84
7	44	27.07	S	68	8	14.88	E	200M arc	WGS 84
7	45	24.12	S	68	8	34.34	E	200M arc	WGS 84
7	46	21.05	S	68	8	54.08	E	200M arc	WGS 84
7	47	17.9	S	68	9	14.11	E	200M arc	WGS 84
7	48	14.64	S	68	9	34.42	E	200M arc	WGS 84
7	49	11.28	S	68	9	55.02	E	200M arc	WGS 84
7	50	7.82	S	68	10	15.91	E	200M arc	WGS 84
7	51	4.24	S	68	10	37.08	E	200M arc	WGS 84
7	52	0.57	S	68	10	58.53	E	200M arc	WGS 84
7	52	56.78	S	68	11	20.27	E	200M arc	WGS 84
7	53	52.9	S	68	11	42.29	E	200M arc	WGS 84
7	54	4.87	S	68	11	47.03	E	200M arc	WGS 84
7	54	57.39	S	68	12	7.95	E	200M arc	WGS 84
7	55	53.27	S	68	12	30.54	E	200M arc	WGS 84
7	56	49.04	S	68	12	53.41	E	200M arc	WGS 84
7	57	44.69	S	68	13	16.55	E	200M arc	WGS 84
7	58	40.24	S	68	13	39.98	E	200M arc	WGS 84
7	59	35.66	S	68	14	3.68	E	200M arc	WGS 84
8	0	30.97	S	68	14	27.67	E	200M arc	WGS 84
8	1	26.14	S	68	14	51.93	E	200M arc	WGS 84
8	2	21.21	S	68	15	16.47	E	200M arc	WGS 84
8	3	16.15	S	68	15	41.29	E	200M arc	WGS 84
8	4	10.96	S	68	16	6.38	E	200M arc	WGS 84
8	5	5.65	S	68	16	31.75	E	200M arc	WGS 84
8	6	0.21	S	68	16	57.4	E	200M arc	WGS 84
8	6	54.64	S	68	17	23.32	E	200M arc	WGS 84
8	7	48.94	S	68	17	49.51	E	200M arc	WGS 84
8	8	43.11	S	68	18	15.98	E	200M arc	WGS 84
8	9	37.15	S	68	18	42.73	E	200M arc	WGS 84
8	10	31.05	S	68	19	9.74	E	200M arc	WGS 84
8	11	24.82	S	68	19	37.03	E	200M arc	WGS 84
8	12	18.45	S	68	20	4.59	E	200M arc	WGS 84
8	13	11.94	S	68	20	32.42	E	200M arc	WGS 84
8	14	5.3	S	68	21	0.51	E	200M arc	WGS 84
8	14	58.5	S	68	21	28.88	E	200M arc	WGS 84
8	15	51.58	S	68	21	57.51	E	200M arc	WGS 84
8	16	44.5	S	68	22	26.41	E	200M arc	WGS 84
8	17	37.28	S	68	22	55.58	E	200M arc	WGS 84
8	18	29.91	S	68	23	25.02	E	200M arc	WGS 84
8	19	22.4	S	68	23	54.72	E	200M arc	WGS 84
8	19	35.25	S	68	24	2.05	E	200M arc	WGS 84
8	20	24.14	S	68	24	30.05	E	200M arc	WGS 84
8	21	16.33	S	68	25	0.28	E	200M arc	WGS 84
8	22	8.37	S	68	25	30.78	E	200M arc	WGS 84
8	23	0.25	S	68	26	1.53	E	200M arc	WGS 84
8	23	51.98	S	68	26	32.55	E	200M arc	WGS 84
8	24	43.55	S	68	27	3.83	E	200M arc	WGS 84
8	25	34.96	S	68	27	35.37	E	200M arc	WGS 84
8	26	26.22	S	68	28	7.17	E	200M arc	WGS 84
8	27	17.32	S	68	28	39.23	E	200M arc	WGS 84
8	28	8.25	S	68	29	11.54	E	200M arc	WGS 84

8	28	59.04	S	68	29	44.12	E	200M arc	WGS 84
8	29	49.65	S	68	30	16.95	E	200M arc	WGS 84
8	30	40.09	S	68	30	50.04	E	200M arc	WGS 84
8	31	30.38	S	68	31	23.38	E	200M arc	WGS 84
8	32	20.49	S	68	31	56.98	E	200M arc	WGS 84
8	33	10.44	S	68	32	30.83	E	200M arc	WGS 84
8	34	0.21	S	68	33	4.92	E	200M arc	WGS 84
8	34	49.82	S	68	33	39.28	E	200M arc	WGS 84
8	35	39.25	S	68	34	13.88	E	200M arc	WGS 84
8	36	28.51	S	68	34	48.74	E	200M arc	WGS 84
8	37	17.59	S	68	35	23.83	E	200M arc	WGS 84
8	38	6.51	S	68	35	59.19	E	200M arc	WGS 84
8	38	55.24	S	68	36	34.79	E	200M arc	WGS 84
8	39	11.25	S	68	36	46.57	E	200M arc	WGS 84
8	39	56.06	S	68	37	19.67	E	200M arc	WGS 84
8	40	44.44	S	68	37	55.76	E	200M arc	WGS 84
8	41	32.63	S	68	38	32.09	E	200M arc	WGS 84
8	42	20.64	S	68	39	8.67	E	200M arc	WGS 84
8	43	8.47	S	68	39	45.49	E	200M arc	WGS 84
8	43	56.12	S	68	40	22.56	E	200M arc	WGS 84
8	44	43.57	S	68	40	59.86	E	200M arc	WGS 84
8	45	30.84	S	68	41	37.41	E	200M arc	WGS 84
8	46	17.93	S	68	42	15.2	E	200M arc	WGS 84
8	47	4.82	S	68	42	53.22	E	200M arc	WGS 84
8	47	51.52	S	68	43	31.48	E	200M arc	WGS 84
8	48	38.04	S	68	44	9.98	E	200M arc	WGS 84
8	49	24.36	S	68	44	48.71	E	200M arc	WGS 84
8	50	10.48	S	68	45	27.68	E	200M arc	WGS 84
8	50	56.41	S	68	46	6.89	E	200M arc	WGS 84
8	51	42.14	S	68	46	46.32	E	200M arc	WGS 84
8	52	27.67	S	68	47	25.99	E	200M arc	WGS 84
8	53	13.01	S	68	48	5.88	E	200M arc	WGS 84
8	53	58.15	S	68	48	46.01	E	200M arc	WGS 84
8	54	43.08	S	68	49	26.36	E	200M arc	WGS 84
8	55	27.82	S	68	50	6.95	E	200M arc	WGS 84
8	56	12.35	S	68	50	47.76	E	200M arc	WGS 84
8	56	56.67	S	68	51	28.79	E	200M arc	WGS 84
8	57	40.79	S	68	52	10.06	E	200M arc	WGS 84
8	58	24.71	S	68	52	51.54	E	200M arc	WGS 84
8	59	8.42	S	68	53	33.25	E	200M arc	WGS 84
8	59	51.91	S	68	54	15.18	E	200M arc	WGS 84
9	0	35.2	S	68	54	57.32	E	200M arc	WGS 84
9	1	18.28	S	68	55	39.7	E	200M arc	WGS 84
9	2	1.14	S	68	56	22.28	E	200M arc	WGS 84
9	2	43.79	S	68	57	5.09	E	200M arc	WGS 84
9	3	26.22	S	68	57	48.11	E	200M arc	WGS 84
9	4	8.45	S	68	58	31.35	E	200M arc	WGS 84
9	4	50.45	S	68	59	14.79	E	200M arc	WGS 84
9	5	32.24	S	68	59	58.46	E	200M arc	WGS 84
9	6	13.81	S	69	0	42.34	E	200M arc	WGS 84
9	6	55.16	S	69	1	26.42	E	200M arc	WGS 84
9	7	36.29	S	69	2	10.72	E	200M arc	WGS 84

9	8	17.19	S	69	2	55.23	E	200M arc	WGS 84
9	8	57.87	S	69	3	39.94	E	200M arc	WGS 84
9	9	38.33	S	69	4	24.86	E	200M arc	WGS 84
9	10	18.57	S	69	5	9.99	E	200M arc	WGS 84
9	10	58.57	S	69	5	55.32	E	200M arc	WGS 84
9	11	38.36	S	69	6	40.86	E	200M arc	WGS 84
9	12	17.91	S	69	7	26.59	E	200M arc	WGS 84
9	12	57.23	S	69	8	12.52	E	200M arc	WGS 84
9	13	36.33	S	69	8	58.66	E	200M arc	WGS 84
9	14	15.19	S	69	9	45	E	200M arc	WGS 84
9	14	53.83	S	69	10	31.54	E	200M arc	WGS 84
9	15	32.22	S	69	11	18.26	E	200M arc	WGS 84
9	16	10.39	S	69	12	5.18	E	200M arc	WGS 84
9	16	48.32	S	69	12	52.3	E	200M arc	WGS 84
9	17	26.01	S	69	13	39.61	E	200M arc	WGS 84
9	18	3.47	S	69	14	27.12	E	200M arc	WGS 84
9	18	40.69	S	69	15	14.81	E	200M arc	WGS 84
9	19	17.67	S	69	16	2.69	E	200M arc	WGS 84
9	19	54.41	S	69	16	50.76	E	200M arc	WGS 84
9	20	30.9	S	69	17	39.02	E	200M arc	WGS 84
9	21	7.17	S	69	18	27.47	E	200M arc	WGS 84
9	21	43.18	S	69	19	16.09	E	200M arc	WGS 84
9	22	18.96	S	69	20	4.9	E	200M arc	WGS 84
9	22	25.68	S	69	20	14.14	E	200M arc	WGS 84
9	22	51.77	S	69	20	49.78	E	200M arc	WGS 84
9	23	27.29	S	69	21	38.77	E	200M arc	WGS 84
9	24	2.58	S	69	22	27.95	E	200M arc	WGS 84
9	24	37.62	S	69	23	17.3	E	200M arc	WGS 84
9	25	12.41	S	69	24	6.83	E	200M arc	WGS 84
9	25	46.95	S	69	24	56.54	E	200M arc	WGS 84
9	26	21.24	S	69	25	46.42	E	200M arc	WGS 84
9	26	55.29	S	69	26	36.48	E	200M arc	WGS 84
9	27	29.08	S	69	27	26.72	E	200M arc	WGS 84
9	28	2.62	S	69	28	17.12	E	200M arc	WGS 84
9	28	35.91	S	69	29	7.7	E	200M arc	WGS 84
9	29	8.95	S	69	29	58.44	E	200M arc	WGS 84
9	29	41.73	S	69	30	49.35	E	200M arc	WGS 84
9	30	14.26	S	69	31	40.43	E	200M arc	WGS 84
9	30	46.54	S	69	32	31.68	E	200M arc	WGS 84
9	31	18.55	S	69	33	23.09	E	200M arc	WGS 84
9	31	50.31	S	69	34	14.66	E	200M arc	WGS 84
9	32	21.81	S	69	35	6.4	E	200M arc	WGS 84
9	32	53.05	S	69	35	58.29	E	200M arc	WGS 84
9	33	24.03	S	69	36	50.34	E	200M arc	WGS 84
9	33	54.75	S	69	37	42.55	E	200M arc	WGS 84
9	34	25.21	S	69	38	34.92	E	200M arc	WGS 84
9	34	55.41	S	69	39	27.45	E	200M arc	WGS 84
9	35	25.35	S	69	40	20.12	E	200M arc	WGS 84
9	35	55.02	S	69	41	12.95	E	200M arc	WGS 84
9	36	24.43	S	69	42	5.93	E	200M arc	WGS 84
9	36	53.57	S	69	42	59.06	E	200M arc	WGS 84
9	37	22.45	S	69	43	52.34	E	200M arc	WGS 84

9	37	51.06	S	69	44	45.76	E	200M arc	WGS 84
9	38	19.4	S	69	45	39.33	E	200M arc	WGS 84
9	38	47.47	S	69	46	33.05	E	200M arc	WGS 84
9	39	15.28	S	69	47	26.91	E	200M arc	WGS 84
9	39	42.81	S	69	48	20.91	E	200M arc	WGS 84
9	40	10.08	S	69	49	15.05	E	200M arc	WGS 84
9	40	37.08	S	69	50	9.33	E	200M arc	WGS 84
9	41	3.8	S	69	51	3.75	E	200M arc	WGS 84
9	41	30.25	S	69	51	58.3	E	200M arc	WGS 84
9	41	38.76	S	69	52	16	E	200M arc	WGS 84
9	41	39.34	S	69	52	17.2	E	200M arc	WGS 84
9	42	5.52	S	69	53	11.89	E	200M arc	WGS 84
9	42	31.42	S	69	54	6.71	E	200M arc	WGS 84
9	42	57.06	S	69	55	1.67	E	200M arc	WGS 84
9	43	22.41	S	69	55	56.75	E	200M arc	WGS 84
9	43	47.49	S	69	56	51.97	E	200M arc	WGS 84
9	44	12.29	S	69	57	47.31	E	200M arc	WGS 84
9	44	28.86	S	69	58	24.76	E	200M arc	WGS 84
9	44	56.72	S	69	58	51.11	E	200M arc	WGS 84
9	45	40.45	S	69	59	32.88	E	200M arc	WGS 84
9	46	23.97	S	70	0	14.87	E	200M arc	WGS 84
9	47	7.28	S	70	0	57.09	E	200M arc	WGS 84
9	47	50.38	S	70	1	39.53	E	200M arc	WGS 84
9	48	33.26	S	70	2	22.19	E	200M arc	WGS 84
9	49	15.94	S	70	3	5.07	E	200M arc	WGS 84
9	49	58.39	S	70	3	48.16	E	200M arc	WGS 84
9	50	40.64	S	70	4	31.47	E	200M arc	WGS 84
9	51	22.66	S	70	5	15	E	200M arc	WGS 84
9	52	4.47	S	70	5	58.74	E	200M arc	WGS 84
9	52	46.07	S	70	6	42.69	E	200M arc	WGS 84
9	53	27.43	S	70	7	26.85	E	200M arc	WGS 84
9	54	8.58	S	70	8	11.22	E	200M arc	WGS 84
9	54	49.51	S	70	8	55.81	E	200M arc	WGS 84
9	55	30.22	S	70	9	40.6	E	200M arc	WGS 84
9	56	10.7	S	70	10	25.6	E	200M arc	WGS 84
9	56	50.95	S	70	11	10.81	E	200M arc	WGS 84
9	57	30.99	S	70	11	56.22	E	200M arc	WGS 84
9	58	10.79	S	70	12	41.84	E	200M arc	WGS 84
9	58	50.37	S	70	13	27.66	E	200M arc	WGS 84
9	59	29.71	S	70	14	13.67	E	200M arc	WGS 84
10	0	8.83	S	70	14	59.9	E	200M arc	WGS 84
10	0	47.71	S	70	15	46.32	E	200M arc	WGS 84
10	1	26.37	S	70	16	32.94	E	200M arc	WGS 84
10	2	4.79	S	70	17	19.76	E	200M arc	WGS 84
10	2	42.97	S	70	18	6.77	E	200M arc	WGS 84
10	3	20.93	S	70	18	53.97	E	200M arc	WGS 84
10	3	58.65	S	70	19	41.37	E	200M arc	WGS 84
10	4	36.12	S	70	20	28.96	E	200M arc	WGS 84
10	5	13.37	S	70	21	16.75	E	200M arc	WGS 84
10	5	50.37	S	70	22	4.72	E	200M arc	WGS 84
10	6	27.13	S	70	22	52.88	E	200M arc	WGS 84
10	7	3.65	S	70	23	41.24	E	200M arc	WGS 84

10	7	39.94	S	70	24	29.77	E	200M arc	WGS 84
10	8	15.97	S	70	25	18.5	E	200M arc	WGS 84
10	8	51.77	S	70	26	7.4	E	200M arc	WGS 84
10	9	27.32	S	70	26	56.49	E	200M arc	WGS 84
10	9	33.62	S	70	27	5.25	E	200M arc	WGS 84
10	10	7.12	S	70	27	52.01	E	200M arc	WGS 84
10	10	42.18	S	70	28	41.47	E	200M arc	WGS 84
10	11	16.98	S	70	29	31.09	E	200M arc	WGS 84
10	11	51.55	S	70	30	20.9	E	200M arc	WGS 84
10	12	25.86	S	70	31	10.88	E	200M arc	WGS 84
10	12	59.93	S	70	32	1.05	E	200M arc	WGS 84
10	13	33.74	S	70	32	51.38	E	200M arc	WGS 84
10	14	7.31	S	70	33	41.89	E	200M arc	WGS 84
10	14	40.62	S	70	34	32.56	E	200M arc	WGS 84
10	15	13.67	S	70	35	23.41	E	200M arc	WGS 84
10	15	46.48	S	70	36	14.43	E	200M arc	WGS 84
10	16	19.03	S	70	37	5.61	E	200M arc	WGS 84
10	16	51.32	S	70	37	56.96	E	200M arc	WGS 84
10	17	23.36	S	70	38	48.48	E	200M arc	WGS 84
10	17	55.14	S	70	39	40.16	E	200M arc	WGS 84
10	18	26.66	S	70	40	32	E	200M arc	WGS 84
10	18	57.91	S	70	41	24	E	200M arc	WGS 84
10	19	28.92	S	70	42	16.16	E	200M arc	WGS 84
10	19	59.66	S	70	43	8.49	E	200M arc	WGS 84
10	20	30.14	S	70	44	0.97	E	200M arc	WGS 84
10	21	0.36	S	70	44	53.6	E	200M arc	WGS 84
10	21	30.31	S	70	45	46.38	E	200M arc	WGS 84
10	22	0	S	70	46	39.32	E	200M arc	WGS 84
10	22	29.43	S	70	47	32.42	E	200M arc	WGS 84
10	22	58.59	S	70	48	25.66	E	200M arc	WGS 84
10	23	27.48	S	70	49	19.06	E	200M arc	WGS 84
10	23	56.12	S	70	50	12.59	E	200M arc	WGS 84
10	24	24.48	S	70	51	6.28	E	200M arc	WGS 84
10	24	52.57	S	70	52	0.11	E	200M arc	WGS 84
10	25	20.39	S	70	52	54.09	E	200M arc	WGS 84
10	25	47.95	S	70	53	48.21	E	200M arc	WGS 84
10	26	15.24	S	70	54	42.46	E	200M arc	WGS 84
10	26	42.25	S	70	55	36.86	E	200M arc	WGS 84
10	27	8.99	S	70	56	31.4	E	200M arc	WGS 84
10	27	35.46	S	70	57	26.07	E	200M arc	WGS 84
10	28	1.66	S	70	58	20.88	E	200M arc	WGS 84
10	28	27.57	S	70	59	15.82	E	200M arc	WGS 84
10	28	53.23	S	71	0	10.9	E	200M arc	WGS 84
10	29	18.6	S	71	1	6.11	E	200M arc	WGS 84
10	29	43.69	S	71	2	1.44	E	200M arc	WGS 84
10	30	8.51	S	71	2	56.9	E	200M arc	WGS 84
10	30	33.06	S	71	3	52.49	E	200M arc	WGS 84
10	30	57.33	S	71	4	48.21	E	200M arc	WGS 84
10	31	21.31	S	71	5	44.05	E	200M arc	WGS 84
10	31	45.02	S	71	6	40.01	E	200M arc	WGS 84
10	32	8.45	S	71	7	36.09	E	200M arc	WGS 84
10	32	31.61	S	71	8	32.3	E	200M arc	WGS 84

10	32	54.47	S	71	9	28.63	E	200M arc	WGS 84
10	33	17.06	S	71	10	25.07	E	200M arc	WGS 84
10	33	39.36	S	71	11	21.62	E	200M arc	WGS 84
10	34	1.39	S	71	12	18.29	E	200M arc	WGS 84
10	34	23.13	S	71	13	15.08	E	200M arc	WGS 84
10	34	44.58	S	71	14	11.97	E	200M arc	WGS 84
10	35	5.76	S	71	15	8.97	E	200M arc	WGS 84
10	35	26.64	S	71	16	6.08	E	200M arc	WGS 84
10	35	47.25	S	71	17	3.29	E	200M arc	WGS 84
10	36	7.56	S	71	18	0.62	E	200M arc	WGS 84
10	36	27.59	S	71	18	58.05	E	200M arc	WGS 84
10	36	47.34	S	71	19	55.57	E	200M arc	WGS 84
10	37	6.8	S	71	20	53.2	E	200M arc	WGS 84
10	37	25.96	S	71	21	50.94	E	200M arc	WGS 84
10	37	44.85	S	71	22	48.77	E	200M arc	WGS 84
10	38	3.44	S	71	23	46.69	E	200M arc	WGS 84
10	38	21.74	S	71	24	44.71	E	200M arc	WGS 84
10	38	39.75	S	71	25	42.82	E	200M arc	WGS 84
10	38	57.48	S	71	26	41.03	E	200M arc	WGS 84
10	39	1.74	S	71	26	55.2	E	200M arc	WGS 84
10	39	17.07	S	71	27	46.51	E	200M arc	WGS 84
10	39	34.21	S	71	28	44.9	E	200M arc	WGS 84
10	39	51.06	S	71	29	43.37	E	200M arc	WGS 84
10	40	7.62	S	71	30	41.93	E	200M arc	WGS 84
10	40	23.89	S	71	31	40.57	E	200M arc	WGS 84
10	40	39.86	S	71	32	39.29	E	200M arc	WGS 84
10	40	55.54	S	71	33	38.1	E	200M arc	WGS 84
10	41	10.92	S	71	34	36.99	E	200M arc	WGS 84
10	41	26.01	S	71	35	35.95	E	200M arc	WGS 84
10	41	40.81	S	71	36	35	E	200M arc	WGS 84
10	41	55.32	S	71	37	34.11	E	200M arc	WGS 84
10	42	9.52	S	71	38	33.31	E	200M arc	WGS 84
10	42	23.43	S	71	39	32.57	E	200M arc	WGS 84
10	42	37.05	S	71	40	31.91	E	200M arc	WGS 84
10	42	50.37	S	71	41	31.32	E	200M arc	WGS 84
10	43	3.39	S	71	42	30.79	E	200M arc	WGS 84
10	43	16.12	S	71	43	30.33	E	200M arc	WGS 84
10	43	28.55	S	71	44	29.93	E	200M arc	WGS 84
10	43	40.68	S	71	45	29.6	E	200M arc	WGS 84
10	43	52.52	S	71	46	29.33	E	200M arc	WGS 84
10	44	4.05	S	71	47	29.13	E	200M arc	WGS 84
10	44	15.29	S	71	48	28.97	E	200M arc	WGS 84
10	44	26.22	S	71	49	28.88	E	200M arc	WGS 84
10	44	36.86	S	71	50	28.84	E	200M arc	WGS 84
10	44	47.2	S	71	51	28.86	E	200M arc	WGS 84
10	44	57.24	S	71	52	28.92	E	200M arc	WGS 84
10	45	6.98	S	71	53	29.04	E	200M arc	WGS 84
10	45	16.42	S	71	54	29.21	E	200M arc	WGS 84
10	45	25.56	S	71	55	29.43	E	200M arc	WGS 84
10	45	34.4	S	71	56	29.69	E	200M arc	WGS 84
10	45	42.94	S	71	57	30	E	200M arc	WGS 84
10	45	51.18	S	71	58	30.34	E	200M arc	WGS 84

10	45	59.11	S	71	59	30.74	E	200M arc	WGS 84
10	46	6.75	S	72	0	31.17	E	200M arc	WGS 84
10	46	14.08	S	72	1	31.65	E	200M arc	WGS 84
10	46	21.11	S	72	2	32.15	E	200M arc	WGS 84
10	46	27.1	S	72	3	25.83	E	200M arc	WGS 84
10	46	28.44	S	72	3	38.16	E	200M arc	WGS 84
10	46	34.87	S	72	4	38.73	E	200M arc	WGS 84
10	46	40.99	S	72	5	39.34	E	200M arc	WGS 84
10	46	46.82	S	72	6	39.99	E	200M arc	WGS 84
10	46	52.34	S	72	7	40.66	E	200M arc	WGS 84
10	46	57.56	S	72	8	41.36	E	200M arc	WGS 84
10	47	2.46	S	72	9	42.08	E	200M arc	WGS 84
10	47	7.08	S	72	10	42.82	E	200M arc	WGS 84
10	47	11.38	S	72	11	43.6	E	200M arc	WGS 84
10	47	15.39	S	72	12	44.39	E	200M arc	WGS 84
10	47	19.09	S	72	13	45.21	E	200M arc	WGS 84
10	47	22.49	S	72	14	46.04	E	200M arc	WGS 84
10	47	25.58	S	72	15	46.89	E	200M arc	WGS 84
10	47	25.77	S	72	15	50.85	E	200M arc	WGS 84
10	47	26.42	S	72	16	4.11	E	200M arc	WGS 84
10	47	29.21	S	72	17	4.97	E	200M arc	WGS 84
10	47	31.7	S	72	18	5.85	E	200M arc	WGS 84
10	47	33.88	S	72	19	6.73	E	200M arc	WGS 84
10	47	35.77	S	72	20	7.64	E	200M arc	WGS 84
10	47	37.34	S	72	21	8.54	E	200M arc	WGS 84
10	47	38.61	S	72	22	9.46	E	200M arc	WGS 84
10	47	39.58	S	72	23	10.38	E	200M arc	WGS 84
10	47	40.24	S	72	24	11.31	E	200M arc	WGS 84
10	47	40.59	S	72	25	12.23	E	200M arc	WGS 84
10	47	40.65	S	72	26	13.17	E	200M arc	WGS 84
10	47	40.4	S	72	27	14.1	E	200M arc	WGS 84
10	47	39.85	S	72	28	15.02	E	200M arc	WGS 84
10	47	39.47	S	72	28	44.35	E	200M arc	WGS 84
10	47	38.95	S	72	29	18.85	E	200M arc	WGS 84
10	47	37.8	S	72	30	19.77	E	200M arc	WGS 84
10	47	36.32	S	72	31	20.68	E	200M arc	WGS 84
10	47	34.56	S	72	32	21.59	E	200M arc	WGS 84
10	47	32.49	S	72	33	22.48	E	200M arc	WGS 84
10	47	30.11	S	72	34	23.36	E	200M arc	WGS 84
10	47	27.43	S	72	35	24.23	E	200M arc	WGS 84
10	47	24.45	S	72	36	25.09	E	200M arc	WGS 84
10	47	21.16	S	72	37	25.92	E	200M arc	WGS 84
10	47	17.56	S	72	38	26.75	E	200M arc	WGS 84
10	47	13.67	S	72	39	27.54	E	200M arc	WGS 84
10	47	9.47	S	72	40	28.33	E	200M arc	WGS 84
10	47	4.97	S	72	41	29.08	E	200M arc	WGS 84
10	47	0.17	S	72	42	29.82	E	200M arc	WGS 84
10	46	55.06	S	72	43	30.53	E	200M arc	WGS 84
10	46	49.65	S	72	44	31.2	E	200M arc	WGS 84
10	46	43.94	S	72	45	31.86	E	200M arc	WGS 84
10	46	37.92	S	72	46	32.48	E	200M arc	WGS 84
10	46	31.61	S	72	47	33.07	E	200M arc	WGS 84

10	46	24.99	S	72	48	33.63	E	200M arc	WGS 84
10	46	18.07	S	72	49	34.15	E	200M arc	WGS 84
10	46	10.84	S	72	50	34.63	E	200M arc	WGS 84
10	46	3.32	S	72	51	35.08	E	200M arc	WGS 84
10	45	55.49	S	72	52	35.49	E	200M arc	WGS 84
10	45	47.36	S	72	53	35.85	E	200M arc	WGS 84
10	45	38.93	S	72	54	36.18	E	200M arc	WGS 84
10	45	30.2	S	72	55	36.46	E	200M arc	WGS 84
10	45	21.17	S	72	56	36.69	E	200M arc	WGS 84
10	45	11.84	S	72	57	36.88	E	200M arc	WGS 84
10	45	2.21	S	72	58	37.01	E	200M arc	WGS 84
10	44	52.28	S	72	59	37.1	E	200M arc	WGS 84
10	44	42.05	S	73	0	37.14	E	200M arc	WGS 84
10	44	31.52	S	73	1	37.12	E	200M arc	WGS 84
10	44	20.68	S	73	2	37.05	E	200M arc	WGS 84
10	44	9.55	S	73	3	36.91	E	200M arc	WGS 84
10	43	58.13	S	73	4	36.73	E	200M arc	WGS 84
10	43	46.4	S	73	5	36.48	E	200M arc	WGS 84
10	43	34.38	S	73	6	36.17	E	200M arc	WGS 84
10	43	22.06	S	73	7	35.8	E	200M arc	WGS 84
10	43	9.44	S	73	8	35.36	E	200M arc	WGS 84
10	42	56.53	S	73	9	34.85	E	200M arc	WGS 84
10	42	43.32	S	73	10	34.29	E	200M arc	WGS 84
10	42	29.8	S	73	11	33.65	E	200M arc	WGS 84
10	42	16	S	73	12	32.94	E	200M arc	WGS 84
10	42	1.9	S	73	13	32.16	E	200M arc	WGS 84
10	41	47.51	S	73	14	31.3	E	200M arc	WGS 84
10	41	32.82	S	73	15	30.38	E	200M arc	WGS 84
10	41	17.83	S	73	16	29.37	E	200M arc	WGS 84
10	41	2.55	S	73	17	28.29	E	200M arc	WGS 84
10	40	46.97	S	73	18	27.12	E	200M arc	WGS 84
10	40	40.33	S	73	18	51.9	E	200M arc	WGS 84
10	40	29.96	S	73	19	30.16	E	200M arc	WGS 84
10	40	13.8	S	73	20	28.84	E	200M arc	WGS 84
10	39	57.35	S	73	21	27.42	E	200M arc	WGS 84
10	39	40.6	S	73	22	25.93	E	200M arc	WGS 84
10	39	23.57	S	73	23	24.34	E	200M arc	WGS 84
10	39	6.24	S	73	24	22.67	E	200M arc	WGS 84
10	38	48.63	S	73	25	20.91	E	200M arc	WGS 84
10	38	30.71	S	73	26	19.06	E	200M arc	WGS 84
10	38	25.57	S	73	26	35.59	E	200M arc	WGS 84
10	38	10.83	S	73	27	22.51	E	200M arc	WGS 84
10	37	52.35	S	73	28	20.47	E	200M arc	WGS 84
10	37	33.57	S	73	29	18.34	E	200M arc	WGS 84
10	37	14.5	S	73	30	16.1	E	200M arc	WGS 84
10	36	55.15	S	73	31	13.76	E	200M arc	WGS 84
10	36	35.51	S	73	32	11.34	E	200M arc	WGS 84
10	36	15.59	S	73	33	8.79	E	200M arc	WGS 84
10	35	55.37	S	73	34	6.16	E	200M arc	WGS 84
10	35	34.87	S	73	35	3.41	E	200M arc	WGS 84
10	35	14.09	S	73	36	0.57	E	200M arc	WGS 84
10	34	53.02	S	73	36	57.6	E	200M arc	WGS 84

10	34	31.66	S	73	37	54.54	E	200M arc	WGS 84
10	34	10.03	S	73	38	51.37	E	200M arc	WGS 84
10	33	48.11	S	73	39	48.07	E	200M arc	WGS 84
10	33	25.9	S	73	40	44.67	E	200M arc	WGS 84
10	33	8.52	S	73	41	28.41	E	200M arc	WGS 84
10	33	1.27	S	73	41	46.55	E	200M arc	WGS 84
10	32	38.5	S	73	42	42.91	E	200M arc	WGS 84
10	32	15.45	S	73	43	39.15	E	200M arc	WGS 84
10	31	52.12	S	73	44	35.29	E	200M arc	WGS 84
10	31	28.51	S	73	45	31.29	E	200M arc	WGS 84
10	31	4.63	S	73	46	27.18	E	200M arc	WGS 84
10	30	40.46	S	73	47	22.94	E	200M arc	WGS 84
10	30	16.02	S	73	48	18.57	E	200M arc	WGS 84
10	29	51.3	S	73	49	14.08	E	200M arc	WGS 84
10	29	26.31	S	73	50	9.47	E	200M arc	WGS 84
10	29	1.03	S	73	51	4.72	E	200M arc	WGS 84
10	28	35.48	S	73	51	59.85	E	200M arc	WGS 84
10	28	9.66	S	73	52	54.83	E	200M arc	WGS 84
10	27	43.56	S	73	53	49.69	E	200M arc	WGS 84
10	27	17.19	S	73	54	44.41	E	200M arc	WGS 84
10	26	50.55	S	73	55	39	E	200M arc	WGS 84
10	26	23.63	S	73	56	33.45	E	200M arc	WGS 84
10	25	56.45	S	73	57	27.76	E	200M arc	WGS 84
10	25	28.99	S	73	58	21.93	E	200M arc	WGS 84
10	25	1.26	S	73	59	15.95	E	200M arc	WGS 84
10	24	33.27	S	74	0	9.84	E	200M arc	WGS 84
10	24	5.01	S	74	1	3.58	E	200M arc	WGS 84
10	23	36.47	S	74	1	57.17	E	200M arc	WGS 84
10	23	7.67	S	74	2	50.62	E	200M arc	WGS 84
10	22	38.61	S	74	3	43.92	E	200M arc	WGS 84
10	22	9.28	S	74	4	37.07	E	200M arc	WGS 84
10	21	39.68	S	74	5	30.06	E	200M arc	WGS 84
10	21	9.82	S	74	6	22.9	E	200M arc	WGS 84
10	20	39.71	S	74	7	15.59	E	200M arc	WGS 84
10	20	9.32	S	74	8	8.13	E	200M arc	WGS 84
10	19	38.67	S	74	9	0.5	E	200M arc	WGS 84
10	19	7.76	S	74	9	52.72	E	200M arc	WGS 84
10	18	36.59	S	74	10	44.79	E	200M arc	WGS 84
10	18	5.17	S	74	11	36.68	E	200M arc	WGS 84
10	17	33.49	S	74	12	28.42	E	200M arc	WGS 84
10	17	1.54	S	74	13	20	E	200M arc	WGS 84
10	16	29.34	S	74	14	11.41	E	200M arc	WGS 84
10	15	56.88	S	74	15	2.65	E	200M arc	WGS 84
10	15	24.17	S	74	15	53.73	E	200M arc	WGS 84
10	14	51.21	S	74	16	44.64	E	200M arc	WGS 84
10	14	17.99	S	74	17	35.38	E	200M arc	WGS 84
10	13	44.52	S	74	18	25.95	E	200M arc	WGS 84
10	13	10.8	S	74	19	16.34	E	200M arc	WGS 84
10	12	36.83	S	74	20	6.56	E	200M arc	WGS 84
10	12	2.6	S	74	20	56.62	E	200M arc	WGS 84
10	11	28.13	S	74	21	46.48	E	200M arc	WGS 84
10	10	53.4	S	74	22	36.18	E	200M arc	WGS 84

10	10	18.43	S	74	23	25.69	E	200M arc	WGS 84
10	9	43.22	S	74	24	15.03	E	200M arc	WGS 84
10	9	7.75	S	74	25	4.19	E	200M arc	WGS 84
10	8	32.05	S	74	25	53.16	E	200M arc	WGS 84
10	7	56.1	S	74	26	41.95	E	200M arc	WGS 84
10	7	19.91	S	74	27	30.55	E	200M arc	WGS 84
10	6	43.47	S	74	28	18.97	E	200M arc	WGS 84
10	6	6.8	S	74	29	7.2	E	200M arc	WGS 84
10	5	52.14	S	74	29	26.35	E	200M arc	WGS 84
10	5	19.45	S	74	30	8.86	E	200M arc	WGS 84
10	4	42.3	S	74	30	56.71	E	200M arc	WGS 84
10	4	4.9	S	74	31	44.37	E	200M arc	WGS 84
10	3	27.28	S	74	32	31.85	E	200M arc	WGS 84
10	2	49.41	S	74	33	19.12	E	200M arc	WGS 84
10	2	11.31	S	74	34	6.21	E	200M arc	WGS 84
10	1	32.97	S	74	34	53.09	E	200M arc	WGS 84
10	0	54.4	S	74	35	39.78	E	200M arc	WGS 84
10	0	15.6	S	74	36	26.28	E	200M arc	WGS 84
9	59	36.56	S	74	37	12.57	E	200M arc	WGS 84
9	58	57.3	S	74	37	58.66	E	200M arc	WGS 84
9	58	17.81	S	74	38	44.55	E	200M arc	WGS 84
9	57	38.09	S	74	39	30.24	E	200M arc	WGS 84
9	56	58.14	S	74	40	15.73	E	200M arc	WGS 84
9	56	17.97	S	74	41	1.01	E	200M arc	WGS 84
9	55	37.57	S	74	41	46.09	E	200M arc	WGS 84
9	54	56.95	S	74	42	30.95	E	200M arc	WGS 84
9	54	16.09	S	74	43	15.61	E	200M arc	WGS 84
9	53	35.03	S	74	44	0.06	E	200M arc	WGS 84
9	52	53.74	S	74	44	44.3	E	200M arc	WGS 84
9	52	12.23	S	74	45	28.33	E	200M arc	WGS 84
9	51	30.5	S	74	46	12.15	E	200M arc	WGS 84
9	50	48.55	S	74	46	55.75	E	200M arc	WGS 84
9	50	6.38	S	74	47	39.14	E	200M arc	WGS 84
9	49	24	S	74	48	22.31	E	200M arc	WGS 84
9	48	41.41	S	74	49	5.26	E	200M arc	WGS 84
9	48	0.45	S	74	49	46.16	E	200M arc	WGS 84
9	47	52.49	S	74	49	54.08	E	200M arc	WGS 84
9	47	9.46	S	74	50	36.6	E	200M arc	WGS 84
9	46	26.23	S	74	51	18.9	E	200M arc	WGS 84
9	45	42.79	S	74	52	0.97	E	200M arc	WGS 84
9	44	59.13	S	74	52	42.83	E	200M arc	WGS 84
9	44	15.28	S	74	53	24.46	E	200M arc	WGS 84
9	43	31.2	S	74	54	5.87	E	200M arc	WGS 84
9	42	46.94	S	74	54	47.05	E	200M arc	WGS 84
9	42	2.46	S	74	55	28	E	200M arc	WGS 84
9	41	17.77	S	74	56	8.73	E	200M arc	WGS 84
9	40	32.89	S	74	56	49.24	E	200M arc	WGS 84
9	40	20.65	S	74	57	0.2	E	200M arc	WGS 84
9	40	18.52	S	74	57	2.2	E	200M arc	WGS 84
9	39	34.25	S	74	57	43.37	E	200M arc	WGS 84
9	38	49.77	S	74	58	24.32	E	200M arc	WGS 84
9	38	5.09	S	74	59	5.05	E	200M arc	WGS 84

9	37	20.21	S	74	59	45.54	E	200M arc	WGS 84
9	36	35.12	S	75	0	25.81	E	200M arc	WGS 84
9	35	49.84	S	75	1	5.85	E	200M arc	WGS 84
9	35	4.36	S	75	1	45.65	E	200M arc	WGS 84
9	34	18.67	S	75	2	25.23	E	200M arc	WGS 84
9	33	32.8	S	75	3	4.57	E	200M arc	WGS 84
9	32	46.72	S	75	3	43.67	E	200M arc	WGS 84
9	32	0.45	S	75	4	22.55	E	200M arc	WGS 84
9	31	13.99	S	75	5	1.17	E	200M arc	WGS 84
9	30	27.34	S	75	5	39.58	E	200M arc	WGS 84
9	29	40.49	S	75	6	17.73	E	200M arc	WGS 84
9	28	53.46	S	75	6	55.66	E	200M arc	WGS 84
9	28	6.23	S	75	7	33.33	E	200M arc	WGS 84
9	27	18.82	S	75	8	10.77	E	200M arc	WGS 84
9	26	31.23	S	75	8	47.97	E	200M arc	WGS 84
9	25	43.45	S	75	9	24.93	E	200M arc	WGS 84
9	24	55.48	S	75	10	1.64	E	200M arc	WGS 84
9	24	7.33	S	75	10	38.11	E	200M arc	WGS 84
9	23	19.01	S	75	11	14.33	E	200M arc	WGS 84
9	22	30.5	S	75	11	50.31	E	200M arc	WGS 84
9	21	41.81	S	75	12	26.03	E	200M arc	WGS 84
9	20	52.95	S	75	13	1.52	E	200M arc	WGS 84
9	20	3.91	S	75	13	36.75	E	200M arc	WGS 84
9	19	14.69	S	75	14	11.74	E	200M arc	WGS 84
9	18	46.9	S	75	14	31.32	E	200M arc	WGS 84
9	18	13.15	S	75	14	55.01	E	200M arc	WGS 84
9	17	23.59	S	75	15	29.5	E	200M arc	WGS 84
9	16	33.85	S	75	16	3.73	E	200M arc	WGS 84
9	15	43.95	S	75	16	37.7	E	200M arc	WGS 84
9	14	53.88	S	75	17	11.42	E	200M arc	WGS 84
9	14	3.64	S	75	17	44.89	E	200M arc	WGS 84
9	13	13.23	S	75	18	18.1	E	200M arc	WGS 84
9	12	22.66	S	75	18	51.06	E	200M arc	WGS 84
9	11	31.93	S	75	19	23.76	E	200M arc	WGS 84
9	10	41.03	S	75	19	56.2	E	200M arc	WGS 84
9	9	49.97	S	75	20	28.38	E	200M arc	WGS 84
9	8	58.75	S	75	21	0.3	E	200M arc	WGS 84
9	8	21.4	S	75	21	23.36	E	200M arc	WGS 84
9	8	6.27	S	75	21	32.64	E	200M arc	WGS 84
9	7	14.74	S	75	22	4.04	E	200M arc	WGS 84
9	6	23.05	S	75	22	35.19	E	200M arc	WGS 84
9	5	31.21	S	75	23	6.06	E	200M arc	WGS 84
9	4	39.21	S	75	23	36.68	E	200M arc	WGS 84
9	3	47.06	S	75	24	7.03	E	200M arc	WGS 84
9	2	54.76	S	75	24	37.11	E	200M arc	WGS 84
9	2	2.31	S	75	25	6.94	E	200M arc	WGS 84
9	1	9.71	S	75	25	36.49	E	200M arc	WGS 84
9	0	16.97	S	75	26	5.78	E	200M arc	WGS 84
8	59	24.08	S	75	26	34.8	E	200M arc	WGS 84
8	58	31.04	S	75	27	3.55	E	200M arc	WGS 84
8	57	37.87	S	75	27	32.03	E	200M arc	WGS 84
8	56	44.54	S	75	28	0.25	E	200M arc	WGS 84

8	55	51.09	S	75	28	28.19	E	200M arc	WGS 84
8	54	57.49	S	75	28	55.86	E	200M arc	WGS 84
8	54	3.76	S	75	29	23.26	E	200M arc	WGS 84
8	53	9.89	S	75	29	50.39	E	200M arc	WGS 84
8	52	15.88	S	75	30	17.24	E	200M arc	WGS 84
8	51	30.72	S	75	30	39.44	E	200M arc	WGS 84
8	51	17.11	S	75	30	46.09	E	200M arc	WGS 84
8	50	22.84	S	75	31	12.4	E	200M arc	WGS 84
8	49	28.44	S	75	31	38.43	E	200M arc	WGS 84
8	48	33.92	S	75	32	4.19	E	200M arc	WGS 84
8	47	39.26	S	75	32	29.66	E	200M arc	WGS 84
8	46	44.48	S	75	32	54.87	E	200M arc	WGS 84
8	45	49.57	S	75	33	19.8	E	200M arc	WGS 84
8	44	54.54	S	75	33	44.45	E	200M arc	WGS 84
8	43	59.38	S	75	34	8.82	E	200M arc	WGS 84
8	43	4.11	S	75	34	32.91	E	200M arc	WGS 84
8	42	8.71	S	75	34	56.73	E	200M arc	WGS 84
8	41	13.21	S	75	35	20.25	E	200M arc	WGS 84
8	40	17.58	S	75	35	43.51	E	200M arc	WGS 84
8	39	21.83	S	75	36	6.48	E	200M arc	WGS 84
8	38	25.98	S	75	36	29.17	E	200M arc	WGS 84
8	37	30	S	75	36	51.57	E	200M arc	WGS 84
8	36	33.92	S	75	37	13.69	E	200M arc	WGS 84
8	35	37.73	S	75	37	35.54	E	200M arc	WGS 84
8	34	41.43	S	75	37	57.09	E	200M arc	WGS 84
8	33	45.03	S	75	38	18.36	E	200M arc	WGS 84
8	32	48.51	S	75	38	39.35	E	200M arc	WGS 84
8	31	51.9	S	75	39	0.06	E	200M arc	WGS 84
8	30	55.19	S	75	39	20.47	E	200M arc	WGS 84
8	29	58.37	S	75	39	40.6	E	200M arc	WGS 84
8	29	1.45	S	75	40	0.44	E	200M arc	WGS 84
8	28	4.43	S	75	40	20	E	200M arc	WGS 84
8	27	7.32	S	75	40	39.27	E	200M arc	WGS 84
8	26	10.11	S	75	40	58.25	E	200M arc	WGS 84
8	25	12.81	S	75	41	16.93	E	200M arc	WGS 84
8	24	15.41	S	75	41	35.34	E	200M arc	WGS 84
8	23	17.93	S	75	41	53.45	E	200M arc	WGS 84
8	22	20.35	S	75	42	11.27	E	200M arc	WGS 84
8	21	22.69	S	75	42	28.81	E	200M arc	WGS 84
8	20	24.94	S	75	42	46.05	E	200M arc	WGS 84
8	19	27.1	S	75	43	3	E	200M arc	WGS 84
8	18	29.19	S	75	43	19.66	E	200M arc	WGS 84
8	17	31.18	S	75	43	36.03	E	200M arc	WGS 84
8	16	33.1	S	75	43	52.11	E	200M arc	WGS 84
8	15	34.94	S	75	44	7.89	E	200M arc	WGS 84
8	14	36.7	S	75	44	23.38	E	200M arc	WGS 84
8	13	38.38	S	75	44	38.58	E	200M arc	WGS 84
8	12	39.99	S	75	44	53.48	E	200M arc	WGS 84
8	11	41.53	S	75	45	8.09	E	200M arc	WGS 84
8	10	42.99	S	75	45	22.4	E	200M arc	WGS 84
8	9	44.38	S	75	45	36.42	E	200M arc	WGS 84
8	8	45.71	S	75	45	50.14	E	200M arc	WGS 84

8	7	46.96	S	75	46	3.58	E	200M arc	WGS 84
8	6	48.15	S	75	46	16.71	E	200M arc	WGS 84
8	5	49.27	S	75	46	29.55	E	200M arc	WGS 84
8	4	50.33	S	75	46	42.1	E	200M arc	WGS 84
8	3	51.33	S	75	46	54.34	E	200M arc	WGS 84
8	2	52.27	S	75	47	6.3	E	200M arc	WGS 84
8	1	53.15	S	75	47	17.95	E	200M arc	WGS 84
8	0	53.97	S	75	47	29.3	E	200M arc	WGS 84
7	59	54.74	S	75	47	40.36	E	200M arc	WGS 84
7	58	55.45	S	75	47	51.12	E	200M arc	WGS 84
7	57	56.11	S	75	48	1.59	E	200M arc	WGS 84
7	56	56.72	S	75	48	11.75	E	200M arc	WGS 84
7	55	57.28	S	75	48	21.61	E	200M arc	WGS 84
7	54	57.79	S	75	48	31.19	E	200M arc	WGS 84
7	53	58.25	S	75	48	40.45	E	200M arc	WGS 84
7	52	58.66	S	75	48	49.43	E	200M arc	WGS 84
7	51	59.04	S	75	48	58.09	E	200M arc	WGS 84
7	50	59.37	S	75	49	6.47	E	200M arc	WGS 84
7	49	59.66	S	75	49	14.55	E	200M arc	WGS 84
7	48	59.91	S	75	49	22.31	E	200M arc	WGS 84
7	48	0.12	S	75	49	29.79	E	200M arc	WGS 84
7	47	0.3	S	75	49	36.96	E	200M arc	WGS 84
7	46	0.44	S	75	49	43.84	E	200M arc	WGS 84
7	45	0.55	S	75	49	50.41	E	200M arc	WGS 84
7	44	0.62	S	75	49	56.68	E	200M arc	WGS 84
7	43	0.66	S	75	50	2.66	E	200M arc	WGS 84
7	42	0.68	S	75	50	8.33	E	200M arc	WGS 84
7	41	0.67	S	75	50	13.7	E	200M arc	WGS 84
7	40	0.63	S	75	50	18.77	E	200M arc	WGS 84
7	39	0.57	S	75	50	23.54	E	200M arc	WGS 84
7	38	0.48	S	75	50	28.01	E	200M arc	WGS 84
7	37	0.37	S	75	50	32.18	E	200M arc	WGS 84
7	36	0.24	S	75	50	36.04	E	200M arc	WGS 84
7	35	0.1	S	75	50	39.61	E	200M arc	WGS 84
7	33	59.94	S	75	50	42.87	E	200M arc	WGS 84
7	32	59.76	S	75	50	45.84	E	200M arc	WGS 84
7	31	59.56	S	75	50	48.5	E	200M arc	WGS 84
7	30	59.36	S	75	50	50.86	E	200M arc	WGS 84
7	29	59.14	S	75	50	52.92	E	200M arc	WGS 84
7	28	58.91	S	75	50	54.68	E	200M arc	WGS 84
7	27	58.68	S	75	50	56.13	E	200M arc	WGS 84
7	26	58.44	S	75	50	57.29	E	200M arc	WGS 84
7	25	58.2	S	75	50	58.14	E	200M arc	WGS 84
7	24	57.94	S	75	50	58.69	E	200M arc	WGS 84
7	24	0.27	S	75	50	58.94	E	200M arc	WGS 84
7	23	12.82	S	75	51	0.07	E	200M arc	WGS 84
7	22	12.58	S	75	51	1.23	E	200M arc	WGS 84
7	21	12.33	S	75	51	2.09	E	200M arc	WGS 84
7	20	12.08	S	75	51	2.65	E	200M arc	WGS 84
7	19	11.83	S	75	51	2.9	E	200M arc	WGS 84
7	18	19.18	S	75	51	2.88	E	200M arc	WGS 84
7	18	6.68	S	75	51	2.84	E	200M arc	WGS 84

7	17	6.43	S	75	51	2.5	E	200M arc	WGS 84
7	16	6.18	S	75	51	1.86	E	200M arc	WGS 84
7	15	5.94	S	75	51	0.9	E	200M arc	WGS 84
7	14	5.7	S	75	50	59.66	E	200M arc	WGS 84
7	13	5.46	S	75	50	58.1	E	200M arc	WGS 84
7	12	5.24	S	75	50	56.25	E	200M arc	WGS 84
7	11	5.03	S	75	50	54.1	E	200M arc	WGS 84
7	10	4.82	S	75	50	51.64	E	200M arc	WGS 84
7	9	4.64	S	75	50	48.9	E	200M arc	WGS 84
7	8	4.46	S	75	50	45.84	E	200M arc	WGS 84
7	7	4.3	S	75	50	42.48	E	200M arc	WGS 84
7	6	4.16	S	75	50	38.83	E	200M arc	WGS 84
7	5	5.41	S	75	50	34.97	E	200M arc	WGS 84
7	5	0.59	S	75	50	34.64	E	200M arc	WGS 84
7	4	0.48	S	75	50	30.39	E	200M arc	WGS 84
7	3	0.4	S	75	50	25.83	E	200M arc	WGS 84
7	2	0.35	S	75	50	20.98	E	200M arc	WGS 84
7	1	0.32	S	75	50	15.82	E	200M arc	WGS 84
7	0	0.31	S	75	50	10.37	E	200M arc	WGS 84
6	59	0.33	S	75	50	4.61	E	200M arc	WGS 84
6	58	0.38	S	75	49	58.56	E	200M arc	WGS 84
6	57	0.46	S	75	49	52.21	E	200M arc	WGS 84
6	56	0.58	S	75	49	45.56	E	200M arc	WGS 84
6	55	2.6	S	75	49	38.83	E	200M arc	WGS 84
6	54	57.61	S	75	49	38.24	E	200M arc	WGS 84
6	53	57.79	S	75	49	31	E	200M arc	WGS 84
6	52	58.01	S	75	49	23.45	E	200M arc	WGS 84
6	52	1.81	S	75	49	16.08	E	200M arc	WGS 84
6	51	52.07	S	75	49	14.78	E	200M arc	WGS 84
6	50	52.36	S	75	49	6.64	E	200M arc	WGS 84
6	49	52.7	S	75	48	58.21	E	200M arc	WGS 84
6	48	53.09	S	75	48	49.47	E	200M arc	WGS 84
6	47	53.51	S	75	48	40.44	E	200M arc	WGS 84
6	46	53.99	S	75	48	31.11	E	200M arc	WGS 84
6	45	54.5	S	75	48	21.48	E	200M arc	WGS 84
6	44	55.07	S	75	48	11.56	E	200M arc	WGS 84
6	43	55.69	S	75	48	1.34	E	200M arc	WGS 84
6	42	56.36	S	75	47	50.83	E	200M arc	WGS 84
6	41	57.08	S	75	47	40.02	E	200M arc	WGS 84
6	40	57.86	S	75	47	28.92	E	200M arc	WGS 84
6	39	58.69	S	75	47	17.52	E	200M arc	WGS 84
6	38	59.59	S	75	47	5.83	E	200M arc	WGS 84
6	38	0.54	S	75	46	53.84	E	200M arc	WGS 84
6	37	1.55	S	75	46	41.56	E	200M arc	WGS 84
6	36	2.62	S	75	46	28.98	E	200M arc	WGS 84
6	35	3.76	S	75	46	16.11	E	200M arc	WGS 84
6	34	4.96	S	75	46	2.95	E	200M arc	WGS 84
6	33	6.22	S	75	45	49.5	E	200M arc	WGS 84
6	32	7.56	S	75	45	35.75	E	200M arc	WGS 84
6	31	8.96	S	75	45	21.72	E	200M arc	WGS 84
6	30	10.44	S	75	45	7.39	E	200M arc	WGS 84
6	29	11.99	S	75	44	52.77	E	200M arc	WGS 84

6	28	13.61	S	75	44	37.86	E	200M arc	WGS 84
6	27	15.3	S	75	44	22.66	E	200M arc	WGS 84
6	27	6.26	S	75	44	20.27	E	200M arc	WGS 84
6	26	55.22	S	75	44	17.37	E	200M arc	WGS 84
6	26	44.03	S	75	44	14.42	E	200M arc	WGS 84
6	25	55.37	S	75	44	1.45	E	200M arc	WGS 84
6	24	57.22	S	75	43	45.68	E	200M arc	WGS 84
6	23	59.15	S	75	43	29.61	E	200M arc	WGS 84
6	23	1.16	S	75	43	13.25	E	200M arc	WGS 84
6	22	3.24	S	75	42	56.61	E	200M arc	WGS 84
6	21	5.43	S	75	42	39.67	E	200M arc	WGS 84
6	20	7.68	S	75	42	22.46	E	200M arc	WGS 84
6	19	10.03	S	75	42	4.95	E	200M arc	WGS 84
6	18	12.47	S	75	41	47.16	E	200M arc	WGS 84
6	17	14.99	S	75	41	29.09	E	200M arc	WGS 84
6	16	17.61	S	75	41	10.72	E	200M arc	WGS 84
6	15	20.31	S	75	40	52.07	E	200M arc	WGS 84
6	14	23.12	S	75	40	33.14	E	200M arc	WGS 84
6	13	26.01	S	75	40	13.92	E	200M arc	WGS 84
6	12	29	S	75	39	54.42	E	200M arc	WGS 84
6	11	32.09	S	75	39	34.64	E	200M arc	WGS 84
6	10	35.28	S	75	39	14.58	E	200M arc	WGS 84
6	9	38.58	S	75	38	54.23	E	200M arc	WGS 84
6	8	41.97	S	75	38	33.6	E	200M arc	WGS 84
6	8	18.13	S	75	38	24.78	E	200M arc	WGS 84
6	8	17.64	S	75	38	24.84	E	200M arc	WGS 84
6	7	17.9	S	75	38	32.68	E	200M arc	WGS 84
6	6	18.12	S	75	38	40.23	E	200M arc	WGS 84
6	5	18.31	S	75	38	47.49	E	200M arc	WGS 84
6	4	18.45	S	75	38	54.44	E	200M arc	WGS 84
6	3	18.56	S	75	39	1.09	E	200M arc	WGS 84
6	2	18.65	S	75	39	7.45	E	200M arc	WGS 84
6	1	18.7	S	75	39	13.5	E	200M arc	WGS 84
6	0	18.72	S	75	39	19.26	E	200M arc	WGS 84
5	59	18.71	S	75	39	24.72	E	200M arc	WGS 84
5	58	18.68	S	75	39	29.87	E	200M arc	WGS 84
5	57	18.62	S	75	39	34.73	E	200M arc	WGS 84
5	56	18.54	S	75	39	39.29	E	200M arc	WGS 84
5	55	18.43	S	75	39	43.55	E	200M arc	WGS 84
5	54	18.31	S	75	39	47.51	E	200M arc	WGS 84
5	53	18.16	S	75	39	51.16	E	200M arc	WGS 84
5	52	18	S	75	39	54.52	E	200M arc	WGS 84
5	51	17.82	S	75	39	57.58	E	200M arc	WGS 84
5	50	17.63	S	75	40	0.34	E	200M arc	WGS 84
5	49	17.43	S	75	40	2.8	E	200M arc	WGS 84
5	48	17.21	S	75	40	4.95	E	200M arc	WGS 84
5	47	16.98	S	75	40	6.81	E	200M arc	WGS 84
5	46	16.75	S	75	40	8.37	E	200M arc	WGS 84
5	45	16.5	S	75	40	9.62	E	200M arc	WGS 84
5	44	16.25	S	75	40	10.57	E	200M arc	WGS 84
5	43	16	S	75	40	11.23	E	200M arc	WGS 84
5	42	15.74	S	75	40	11.58	E	200M arc	WGS 84

5	41	15.49	S	75	40	11.64	E	200M arc	WGS 84
5	40	15.23	S	75	40	11.4	E	200M arc	WGS 84
5	39	14.98	S	75	40	10.85	E	200M arc	WGS 84
5	38	14.73	S	75	40	10.01	E	200M arc	WGS 84
5	37	14.49	S	75	40	8.86	E	200M arc	WGS 84
5	36	14.25	S	75	40	7.41	E	200M arc	WGS 84
5	35	14.02	S	75	40	5.67	E	200M arc	WGS 84
5	34	13.79	S	75	40	3.62	E	200M arc	WGS 84
5	33	13.58	S	75	40	1.28	E	200M arc	WGS 84
5	32	13.39	S	75	39	58.63	E	200M arc	WGS 84
5	31	13.2	S	75	39	55.69	E	200M arc	WGS 84
5	30	13.04	S	75	39	52.45	E	200M arc	WGS 84
5	29	12.88	S	75	39	48.9	E	200M arc	WGS 84
5	28	12.75	S	75	39	45.06	E	200M arc	WGS 84
5	27	12.64	S	75	39	40.91	E	200M arc	WGS 84
5	26	12.54	S	75	39	36.47	E	200M arc	WGS 84
5	25	12.47	S	75	39	31.73	E	200M arc	WGS 84
5	24	12.43	S	75	39	26.69	E	200M arc	WGS 84
5	23	12.42	S	75	39	21.35	E	200M arc	WGS 84
5	22	12.42	S	75	39	15.72	E	200M arc	WGS 84
5	21	12.46	S	75	39	9.78	E	200M arc	WGS 84
5	20	12.52	S	75	39	3.54	E	200M arc	WGS 84
5	19	12.63	S	75	38	57.02	E	200M arc	WGS 84
5	18	12.76	S	75	38	50.19	E	200M arc	WGS 84
5	17	12.93	S	75	38	43.05	E	200M arc	WGS 84
5	16	13.13	S	75	38	35.63	E	200M arc	WGS 84
5	15	13.38	S	75	38	27.91	E	200M arc	WGS 84
5	14	13.66	S	75	38	19.89	E	200M arc	WGS 84
5	13	13.98	S	75	38	11.58	E	200M arc	WGS 84
5	12	14.35	S	75	38	2.96	E	200M arc	WGS 84
5	11	14.75	S	75	37	54.05	E	200M arc	WGS 84
5	10	15.21	S	75	37	44.85	E	200M arc	WGS 84
5	9	15.7	S	75	37	35.35	E	200M arc	WGS 84
5	8	16.25	S	75	37	25.55	E	200M arc	WGS 84
5	7	16.85	S	75	37	15.46	E	200M arc	WGS 84
5	6	17.5	S	75	37	5.07	E	200M arc	WGS 84
5	5	18.2	S	75	36	54.39	E	200M arc	WGS 84
5	4	18.97	S	75	36	43.42	E	200M arc	WGS 84
5	3	33.16	S	75	36	34.69	E	200M arc	WGS 84
5	3	4.09	S	75	36	32.27	E	200M arc	WGS 84
5	2	4.06	S	75	36	26.95	E	200M arc	WGS 84
5	1	4.07	S	75	36	21.34	E	200M arc	WGS 84
5	0	4.11	S	75	36	15.43	E	200M arc	WGS 84
4	59	4.17	S	75	36	9.22	E	200M arc	WGS 84
4	58	4.27	S	75	36	2.71	E	200M arc	WGS 84
4	57	4.4	S	75	35	55.91	E	200M arc	WGS 84
4	56	4.56	S	75	35	48.8	E	200M arc	WGS 84
4	55	4.76	S	75	35	41.4	E	200M arc	WGS 84
4	54	5	S	75	35	33.71	E	200M arc	WGS 84
4	53	5.28	S	75	35	25.71	E	200M arc	WGS 84
4	52	5.6	S	75	35	17.43	E	200M arc	WGS 84
4	51	5.96	S	75	35	8.84	E	200M arc	WGS 84

4	50	6.36	S	75	34	59.95	E	200M arc	WGS 84
4	49	6.81	S	75	34	50.78	E	200M arc	WGS 84
4	48	7.31	S	75	34	41.3	E	200M arc	WGS 84
4	47	7.86	S	75	34	31.54	E	200M arc	WGS 84
4	46	8.45	S	75	34	21.47	E	200M arc	WGS 84
4	45	9.1	S	75	34	11.11	E	200M arc	WGS 84
4	44	9.79	S	75	34	0.46	E	200M arc	WGS 84
4	43	10.55	S	75	33	49.5	E	200M arc	WGS 84
4	42	11.36	S	75	33	38.26	E	200M arc	WGS 84
4	41	12.21	S	75	33	26.73	E	200M arc	WGS 84
4	40	13.14	S	75	33	14.89	E	200M arc	WGS 84
4	39	14.12	S	75	33	2.77	E	200M arc	WGS 84
4	38	15.17	S	75	32	50.35	E	200M arc	WGS 84
4	37	16.27	S	75	32	37.64	E	200M arc	WGS 84
4	36	17.45	S	75	32	24.64	E	200M arc	WGS 84
4	35	18.68	S	75	32	11.35	E	200M arc	WGS 84
4	34	19.98	S	75	31	57.76	E	200M arc	WGS 84
4	33	21.36	S	75	31	43.89	E	200M arc	WGS 84
4	32	22.8	S	75	31	29.72	E	200M arc	WGS 84
4	31	24.32	S	75	31	15.26	E	200M arc	WGS 84
4	30	25.9	S	75	31	0.51	E	200M arc	WGS 84
4	29	27.56	S	75	30	45.48	E	200M arc	WGS 84
4	28	29.3	S	75	30	30.15	E	200M arc	WGS 84
4	27	31.12	S	75	30	14.53	E	200M arc	WGS 84
4	26	33.02	S	75	29	58.63	E	200M arc	WGS 84
4	25	34.99	S	75	29	42.45	E	200M arc	WGS 84
4	24	37.04	S	75	29	25.96	E	200M arc	WGS 84
4	23	39.18	S	75	29	9.19	E	200M arc	WGS 84
4	22	41.41	S	75	28	52.14	E	200M arc	WGS 84
4	21	43.72	S	75	28	34.8	E	200M arc	WGS 84
4	20	46.11	S	75	28	17.18	E	200M arc	WGS 84
4	19	48.6	S	75	27	59.27	E	200M arc	WGS 84
4	18	51.18	S	75	27	41.07	E	200M arc	WGS 84
4	17	53.85	S	75	27	22.59	E	200M arc	WGS 84
4	16	56.61	S	75	27	3.82	E	200M arc	WGS 84
4	15	59.46	S	75	26	44.77	E	200M arc	WGS 84
4	15	2.42	S	75	26	25.44	E	200M arc	WGS 84
4	14	5.46	S	75	26	5.83	E	200M arc	WGS 84
4	13	8.61	S	75	25	45.93	E	200M arc	WGS 84
4	12	11.87	S	75	25	25.75	E	200M arc	WGS 84
4	11	15.22	S	75	25	5.3	E	200M arc	WGS 84
4	10	18.66	S	75	24	44.56	E	200M arc	WGS 84
4	9	22.22	S	75	24	23.54	E	200M arc	WGS 84
4	8	25.88	S	75	24	2.24	E	200M arc	WGS 84
4	7	29.66	S	75	23	40.66	E	200M arc	WGS 84
4	6	33.54	S	75	23	18.8	E	200M arc	WGS 84
4	5	37.52	S	75	22	56.67	E	200M arc	WGS 84
4	4	41.63	S	75	22	34.26	E	200M arc	WGS 84
4	3	45.85	S	75	22	11.57	E	200M arc	WGS 84
4	2	50.17	S	75	21	48.61	E	200M arc	WGS 84
4	1	54.61	S	75	21	25.37	E	200M arc	WGS 84
4	0	59.18	S	75	21	1.86	E	200M arc	WGS 84

4	0	3.85	S	75	20	38.06	E	200M arc	WGS 84
3	59	8.66	S	75	20	14	E	200M arc	WGS 84
3	58	13.57	S	75	19	49.67	E	200M arc	WGS 84
3	57	18.61	S	75	19	25.06	E	200M arc	WGS 84
3	56	23.78	S	75	19	0.17	E	200M arc	WGS 84
3	55	29.08	S	75	18	35.02	E	200M arc	WGS 84
3	54	39.8	S	75	18	12.08	E	200M arc	WGS 84
3	54	32.06	S	75	18	8.46	E	200M arc	WGS 84
3	53	37.6	S	75	17	42.77	E	200M arc	WGS 84
3	52	43.28	S	75	17	16.81	E	200M arc	WGS 84
3	51	49.08	S	75	16	50.57	E	200M arc	WGS 84
3	50	55.02	S	75	16	24.08	E	200M arc	WGS 84
3	50	1.09	S	75	15	57.31	E	200M arc	WGS 84
3	49	7.3	S	75	15	30.27	E	200M arc	WGS 84
3	48	13.64	S	75	15	2.98	E	200M arc	WGS 84
3	47	20.12	S	75	14	35.42	E	200M arc	WGS 84
3	46	26.73	S	75	14	7.58	E	200M arc	WGS 84
3	45	33.49	S	75	13	39.49	E	200M arc	WGS 84
3	44	40.39	S	75	13	11.13	E	200M arc	WGS 84
3	43	47.43	S	75	12	42.51	E	200M arc	WGS 84
3	42	54.61	S	75	12	13.63	E	200M arc	WGS 84
3	42	1.95	S	75	11	44.49	E	200M arc	WGS 84
3	41	9.42	S	75	11	15.09	E	200M arc	WGS 84
3	40	17.05	S	75	10	45.43	E	200M arc	WGS 84
3	39	24.82	S	75	10	15.5	E	200M arc	WGS 84
3	38	32.74	S	75	9	45.33	E	200M arc	WGS 84
3	37	40.82	S	75	9	14.89	E	200M arc	WGS 84
3	36	49.04	S	75	8	44.2	E	200M arc	WGS 84
3	35	57.43	S	75	8	13.25	E	200M arc	WGS 84
3	35	5.97	S	75	7	42.05	E	200M arc	WGS 84
3	34	14.66	S	75	7	10.59	E	200M arc	WGS 84
3	33	23.52	S	75	6	38.88	E	200M arc	WGS 84
3	32	32.53	S	75	6	6.91	E	200M arc	WGS 84
3	32	13.8	S	75	5	55.08	E	200M arc	WGS 84
3	31	37.82	S	75	5	32.24	E	200M arc	WGS 84
3	31	21.86	S	75	5	22.05	E	200M arc	WGS 84
3	31	14.61	S	75	5	17.48	E	200M arc	WGS 84
3	30	23.78	S	75	4	45.27	E	200M arc	WGS 84
3	29	33.11	S	75	4	12.8	E	200M arc	WGS 84
3	28	42.61	S	75	3	40.08	E	200M arc	WGS 84
3	27	56.82	S	75	3	10.1	E	200M arc	WGS 84

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

Ref. 4780/04 (NY/UN/562)

14 April 2004

The Permanent Mission of the Republic of Mauritius to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to bring to his attention, in his capacity as depositary of the 1982 United Nations Convention on the Law of the Sea ("the Convention"), the following statement of the position of the Government of the Republic of Mauritius with respect to the deposit by the United Kingdom of Great Britain and Northern Ireland to the United Nations Secretariat of a list of geographical coordinates of points pursuant to article 75, paragraphs 2, of the Convention, as reported in Circular Note M.Z.N. 46.2004-LOS (Maritime Zone Notification) dated 12 March 2004.

The Government of the Republic of Mauritius wishes to protest strongly against this declaration inasmuch as it considers that, by depositing the list of geographical coordinates of points defining the outer limits of the so-called Environment (Protection and Preservation) Zone with the Secretary-General of the United Nations pursuant to article 75, paragraph 2, of the Convention, the United Kingdom of Great Britain and Northern Ireland is purporting to exercise over that zone rights which only a coastal state may have over its exclusive economic zone.

The Government of the Republic of Mauritius wishes to reiterate in very emphatic terms that it does not recognize the so-called "British Indian Ocean Territory" which was established by the unlawful excision in 1965 of the Chagos Archipelago from the territory of Mauritius, in breach of the United Nations General Charter, as applied and interpreted in accordance with resolution 1514 (XV) of 14 December 1960, resolution 2066 (XX) of 16 December 1965, and resolution 2357 (XXII) of 19 December 1967.

The Government of the Republic of Mauritius has, over the years, consistently asserted, and hereby reasserts, its complete and full sovereignty over the Chagos Archipelago, including its maritime zones, which forms part of the national territory of Mauritius.

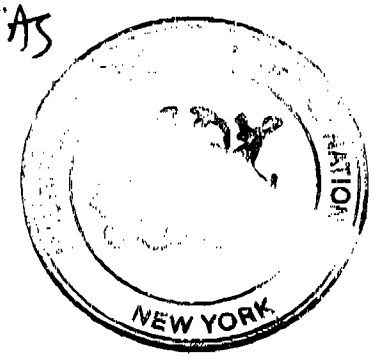
211 East 43rd Street • New York, N.Y. 10017 • Tel: (212) 949-0190 • Fax: (212) 697-3829

The Government of the Republic of Mauritius therefore unequivocally protests against the deposit of the charts and coordinates of the so-called Environment (Protection and Preservation) Zone by the United Kingdom pursuant to Article 75, paragraph 2 of the Convention and against the exercise by the United Kingdom of Great Britain and Northern Ireland of any sovereignty, rights or jurisdiction within the territory of Mauritius.

The Government of the Republic of Mauritius would appreciate if the above declaration could be duly recorded, circulated and published in the Law of the Sea Bulletin No.54, the Law of the Sea Information Circular and any other relevant publication issued by the United Nations.

The Permanent Mission of the Republic of Mauritius to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

AS



Secretary-General
of the United Nations
New York

Copy to: (i) **Mr Iqbal S. Riza**
Chef de Cabinet
Under-Secretary-General
Executive Office of the Secretary-General

(ii) The Legal Counsel
Office of Legal Affairs
United Nations

(iii) Division for Ocean Affairs and the Law of the Sea
United Nations
(Attn. Mr Vladimir Jares)

United Nations Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE: M.Z.N.63.2008.LOS (Maritime Zone Notification) 27 June 2008

United Nations Convention on the Law of the Sea concluded at Montego Bay, Jamaica, on 10 December 1982

Deposit by the Republic of Mauritius of charts and lists of geographical coordinates of points, pursuant to article 16, paragraph 2, and article 47, paragraph 9, of the Convention

The Secretary-General of the United Nations communicates the following:

On 20 June 2008, the Republic of Mauritius deposited with the Secretary-General, in accordance with article 16, paragraph 2, and article 47, paragraph 9, of the Convention, charts and lists of geographical coordinates of points, as follows:

(1) Charts:

Chart entitled "Mauritius: Basepoints and Straight Baselines", Scale 1:180,000; Datum WGS 84; January 2007;

Chart entitled "Rodrigues: Basepoints", Scale 1:100,000; Datum WGS 84; January 2007;

Chart entitled "Agalega: Basepoints", Scale 1:60,000; Datum WGS 84; January 2007;

Chart entitled "Saint Brandon: Basepoints and Archipelagic Baselines", Scale 1:160,000; Datum WGS 84; January 2007;

Chart entitled "Tromelin: Basepoints", Scale 1:12,500; Datum WGS 84; January 2007.

(2) The lists of geographical coordinates of points representing the basepoints and defining the baselines from which the maritime zones of Mauritius shall be measured, as contained in the "Regulations made by the Prime Minister under sections 4, 5 and 27 of the Maritime Zones Act 2005"; together with an illustrative map entitled "Chagos Archipelago: Archipelagic Baselines"; February 2007.

The charts and lists of geographical coordinates, as deposited by Mauritius may be consulted at the Secretariat of the United Nations (Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, DC2-0450, telephone: (212) 963-3962 or fax: (212) 963-5847). The "Regulations made by the Prime Minister under sections 4, 5 and 27 of the Maritime Zones Act 2005" will be published in *Law of the Sea Bulletin* No. 67.

V. M.

United Nations Nations Unies

HEADQUARTERS • SIEGE NEW YORK, NY 10017

TEL.: 1 (212) 963.1234 • FAX: 1 (212) 963.4879

REFERENCE: M.Z.N.63.2008.LOS (Notification Zone Maritime) Le 27 juin 2008

Convention des Nations Unies sur le droit de la mer
conclue à Montego Bay, Jamaïque,
le 10 décembre 1982

Dépôt par la République de Maurice de cartes marines
et de listes de coordonnées géographiques de points,
conformément au paragraphe 2 de l'article 16,
et au paragraphe 9 de l'article 47, de la Convention

Le Secrétaire général des Nations Unies communique ce qui suit:

Le 20 juin 2008, la République de Maurice a déposé auprès du Secrétaire général, conformément au paragraphe 2 de l'article 16, et au paragraphe 9 de l'article 47, de la Convention, des cartes marines et des listes de coordonnées géographiques de points, comme suit:

(1) Cartes marines:

Carte marine intitulée "Île Maurice: Points de base et les lignes de base droites", Échelle 1/180,000; système géodésique WGS 84; janvier 2007;

Carte marine intitulée "Rodrigues: Points de base", Échelle 1/100,000; système géodésique WGS 84; janvier 2007;

Carte marine intitulée "Agalega: Points de base", Échelle 1/60,000; système géodésique WGS 84; janvier 2007;

Carte marine intitulée "Saint Brandon: Points de base et les lignes de base archipélagiques", Échelle 1/160,000; système géodésique WGS 84; janvier 2007;

Carte marine intitulée "Tromelin: Points de base", Échelle 1/12,500; système géodésique WGS 84; janvier 2007.

(2) Les listes de coordonnées géographiques des points indiquant les points de base et définissant les lignes de base à partir desquelles la largeur des zones maritimes de la République de Maurice est mesurée, telles que contenues dans le "Règlement établi par le Premier ministre conformément aux sections 4, 5 et 27 de la Loi sur les zones maritimes 2005"; accompagnées d'une carte illustrative intitulée "Archipel Chagos: Lignes de base archipélagiques"; février 2007.

Les cartes marines et les listes de coordonnées géographiques de points, telles que déposées par la République de Maurice, peuvent être consultées au Secrétariat des Nations Unies (Division des affaires maritimes et du droit de la mer du Bureau des affaires juridiques, DC2-0450, téléphone (212) 963-3962 ou télécopie: (212) 963-5847). Le "Règlement établi par le Premier ministre conformément aux sections 4, 5 et 27 de la Loi portant sur les zones maritimes 2005" paraîtra dans le *Bulletin du droit de la mer* no. 67.

Maritime Zones (Baselines and Delineating Lines) Regulations 2005

GN No. 126 of 2005

THE MARITIME ZONES ACT 2005

Regulations made by the Prime Minister under sections 4, 5 and 27 of the Maritime Zones Act 2005

1. These **regulations** may be cited as the **Maritime Zones (Baselines and Delineating Lines) Regulations 2005**.

2. In these **regulations** -

"Act" means the **Maritime Zones** Act 2005.

3. For the purposes of section 4 of the Act, the lists of geographical co-ordinates of points set out in the First Schedule shall be the baselines from which the **maritime zones** of Mauritius shall be determined.

4. For the purposes of section 5 of the Act, the lists of geographical co-ordinates of points set out in the Second Schedule shall be the closing lines to delimit the internal waters of Mauritius.

Made by the Minister on 5th August 2005.

FIRST SCHEDULE

(regulation 3)

ISLAND OF MAURITIUS

Basepoints

No.	Location	WGS 84 geographical coordinates	
		Latitude South	**Longitude East**
M1	Ile des Roches	20° 17' 34.8"	57° 49' 22.9"
M2	un-named reef point	20° 16' 09.6"	57° 49' 27.1"
M3	Serpent Island east	19° 49' 05.8"	57° 48' 30.3"
M4	Serpent Island	19° 49' 00.0"	57° 48' 30.2"
M5	Serpent Island	19° 48' 57.0"	57°48' 27.3"
M6	Serpent Island North west	19° 48' 57.1"	57° 48' 15.1"

M7	Pigeon House Rock	19° 51' 43.2"	57° 39' 26.1"
M8	Canonniers Pt reef point	19° 59' 56.1"	57° 32' 47.4"
M9	Batterie des Grenadiers reef point	20° 02' 57.3"	57° 31' 17.5"
M10	Pointe Piments reef point	20° 04' 33.7"	57° 30' 30.9"
M11	Baie du Tombeau north terminal point	20° 06' 08.7"	57° 30' 51.5"
M12	Baie du Tombeau South terminal point	20° 06' 28.6"	57° 30' 42.4"
M13	Pte. Roche Noire reef point	20° 07' 31.2"	57° 29' 28.1"
M14	Grande Riviere NW Bay reef point	20° 09' 18.1"	57° 27' 55.9"
M15	Pointe aux Sables reef point	20° 10' 05.7"	57° 26' 10.0"
M16	Pointe Petite Riviere reef point	20° 11' 48.5"	57° 24' 14.2"
M17	Petite Riviere Bay north terminal point	20° 12' 48.9"	57° 23' 55.3"
M18	Petite Riviere Bay south terminal point	20° 12' 54.9"	57° 23' 55.3"
M19	Albion reef point	20°12' 58.3"	57°23' 33.1"
M20	un-named reef point	20° 13' 26.1"	57° 23' 12.7"
M21	Pointe Moyenne reef point	20° 14' 33.4"	57° 22' 49.3"
M22	Flic en Flac north reef point	20° 16' 19.2"	57° 22' 00.1"
M23	Flic en Flac south reef point	20° 16' 54.9"	57° 21' 38.4"
M24	Wolmar north reef point	20° 17' 29.9"	57° 21' 28.7"
M25	Wolmar south reef point	20°18' 13.3"	57°21' 35.9"
M26	Tamarin Bay north terminal point	20° 18' 58.8"	57° 21' 46.0"
M27	Tamarin Bay south terminal point	20° 19' 58.7"	57° 21' 52.0"
M28	La Preneuse reef point	20° 21' 24.3"	57° 21' 04.8"
M29	Hermione Spit reef point	20° 22' 06.3"	57° 21' 07.9"
M30	Un-named reef point	20° 22' 25.8"	57° 20' 35.3"
M31	Un-named reef point	20° 22' 53.4"	57° 20' 09.4"
M32	Un-named reef point	20° 23' 37.1"	57° 19' 46.6"
M33	Un-named reef point	20° 24' 13.1"	57° 19' 28.2"
M34	Un-named reef point	20° 24' 58.8"	57° 19' 08.3"
M35	Un-named reef point	20° 26' 36.9"	57° 18' 27.1"
M36	Berjaya reef point 1	20° 27' 47.8"	57° 18' 08.3"
M37	Berjaya reef point 2	20° 28' 21.2"	57° 18' 07.0"
M38	Berjaya reef point 3	20° 28' 54.5"	57° 18' 18.4"
M39	un-named reef point	20° 29' 17.8"	57° 19' 42.3"
M40	Baie du Cap west terminal point	20° 29' 40.8"	57° 21' 41.2"
M41	Baie du Cap east terminal point	20° 30' 01.4"	57° 22' 07.8"
M42	St. Martin reef point	20° 30' 46.7"	57° 23' 36.2"
M43	un-named reef point	20° 30' 55.0"	57° 23' 57.2"
M44	Bel Ombre reef point	20° 31' 02.6"	57° 25' 08.6"
M45	un-named reef point	20° 31' 24.8"	57° 29' 09.8"

M46	Surinam reef point	20° 31' 40.4"	57° 30' 40.5"
M47	River Savanne west terminal point	20° 31' 23.1"	57° 31' 01.6"
M48	River Savanne east terminal point	20° 31' 23.1"	57° 31' 16.1"
M49	Gris Gris rock	20° 31' 33.8"	57° 31' 51.5"
M50	Union Ducray mainland	20° 31' 14.6"	57° 32' 56.7"
M51	Rivière Gros Ruisseau mainland	20° 31' 01.3"	57° 34' 05.4"
M52	Rivière Dragon reef point	20° 30' 53.0"	57° 35' 02.3"
M53	Rivière Tabac rock	20° 29' 47.9"	57° 37' 42.3"
M54	Le Souffleur reef point	20° 29' 22.6"	57° 39' 12.0"
M55	Virginia mainland	20° 28' 47.1"	57°40' 18.7"
M56	Le Bouchon 3 rock	20° 28' 25.3"	57° 41' 07.6"
M57	Le Bouchon 2 rock	20° 28' 23.3"	57°41' 10.9"
M58	Pointe Vacoas mainland	20° 27' 24.1"	57° 42' 03.5"
M59	Ile des Deux Cocos south	20° 27' 09.4"	57° 42' 39.0"
M60	un-named reef point	20° 27' 19.0"	57° 42' 54.3"
M61	Pointe d'Esny 7 reef point	20° 26' 37.8"	57° 44' 03.0"
M62	Pointe d'Esny 1 reef point	20° 26' 31.9"	57° 44" 13.2"
M63	Un-named reef point	20° 25' 20.8"	57° 45' 33.3"
M64	Laverdie Point reef point	20° 24' 57.3"	57° 45' 49.8"
M65	Ile aux Fouquets 1 rock	20° 23' 47.2"	57° 46' 41.5"
M66	Ile aux Fous	20° 22' 58.8"	57° 47' 15.8"
M67	Rocher des Oiseaux	20° 22' 48.8"	57° 47' 23.3"
M68	un-named reef point	20° 22' 19.8"	57° 47' 53.8"
M69	un-named reef point	20° 21' 47.3"	57° 48' 28.3"
M70	un-named reef point	20° 21' 01.8"	57° 48' 55.3"
M71	un-named reef point	20° 20' 19.8"	57° 49' 18.8"
M72	un-named reef point	20° 19' 40.8"	57° 49' 28.3"
M73	un-named reef point	20° 19' 13.8"	57° 49' 29.8"

AGALEGA

Basepoints

No.	**Location**	**WGS 84 geographical coordinates**	
		Latitude South	**Longitude East**
A1	North Island reef point	10° 25' 37.3"	56° 38' 48.4"
A2	North Island reef point	10° 25' 27.4"	56° 38' 46.4"
A3	North Island reef point	10° 25' 05.1"	56° 38' 37.7"
A4	North Island reef point	10° 24' 57.5"	56° 38' 33.4"

A5	North Island reef point	10° 24' 43.9"	56° 38' 22.3"
A6	North Island reef point	10° 24' 21.9"	56° 38' 03.0"
A7	North Island reef point	10° 23' 19.7"	56° 37' 27.5"
A8	North Island reef point	10° 22' 51.5"	56° 37' 08.4"
A9	North Island reef point	10° 22' 17.7"	56° 36' 50.2"
A10	North Island reef point	10° 21' 57.3"	56° 36'43. 2"
A11	North Island reef point	10° 21' 41.9"	56° 36' 37.4"
A12	North Island reef point	10° 21' 32.4"	56° 36' 32.9"
A13	North Island reef point	10° 21' 08.2"	56° 36' 20.6"
A14	North Island reef point	10° 21' 02.8"	56° 36' 17.4"
A15	North Island reef point	10° 20' 52.2"	56° 36' 09.6"
A16	North Island reef point	10° 20' 36.3"	56° 35' 58.3"
A17	North Island reef point	10° 20' 31.5"	56° 35' 53.4"
A18	North Island reef point	10° 20' 23.9"	56° 35' 44.5"
A19	North Island reef point	10° 20' 14.5"	56° 35' 32.8"
A20	North Island reef point	10° 20' 11.6"	56° 35' 27.3"
A21	North Island reef point	10° 20' 10.2"	56° 35' 22.2"
A22	North Island reef point	10° 20' 10.8"	56° 35' 16.8"
A23	North Island reef point	10° 20' 12.2"	56° 35' 14.5"
A24	North Island normal basepoint	10° 20' 15.2"	56° 35' 11.6"
A25	North Island normal basepoint	10° 20' 22.1"	56° 35' 09.0"
A26	North Island normal basepoint	10° 20' 25.5"	56° 35' 09.2"
A27	North Island normal basepoint	10° 20 '43.5"	56° 35' 07.7"
A28	North Island reef point	10° 21' 01.1"	56° 35' 04.3"
A29	North Island reef point	10° 21' 10.4"	56° 35' 07.4"
A30	North Island reef point	10° 21' 18.6"	56° 35' 10.3"
A31	North Island reef point	10° 21' 28.3"	56° 35' 15.1"
A32	North Island reef point	10° 21' 33.6"	56° 35' 18.8"
A33	North Island reef point	10° 21' 46.4"	56° 35' 28.7"
A34	North Island reef point	10° 22' 09.3"	56° 35' 42.5"
A35	North Island reef point	10° 22' 21.5"	56° 35' 48.0"
A36	North Island reef point	10° 22' 50.8"	56° 35' 59.5"
A37	North Island reef point	10° 23' 03.8"	56° 36' 05.9"
A38	North Island reef point	10° 23' 10.9"	56° 36' 11.3"
A39	North Island reef point	10° 23' 53.0"	56° 36' 35.4"
A40	North Island reef point	10° 24' 08.7"	56° 36' 44.0"
A41	North Island reef point	10° 24' 31.4"	56° 37' 01.0"
A42	North Island reef point	10° 24' 35.1"	56° 37' 04.2"
A43	North Island reef point	10° 25' 04.1"	56° 37' 29.1"

A44	North Island reef point	10° 25' 20.1"	56° 37' 40.0"
A45	North Island reef point	10° 25' 41.9"	56° 37' 54.7"
A46	North Island reef point	10° 25' 47.5"	56° 38' 00.0"
A47	South Island reef point	10° 26' 41.4"	56° 39' 10.8"
A48	South Island reef point	10° 27' 03.6"	56° 39' 34.7"
A49	South Island reef point	10° 27' 26.5"	56° 40' 07.6"
A50	South Island reef point	10° 28' 46.5"	56° 40' 39.5"
A51	South Island reef point	10° 29' 06.5"	56° 40' 43.7"
A52	South Island reef point	10° 29' 13.7"	56° 40' 45.6"
A53	South Island reef point	10° 29' 21.2"	56° 40' 52.4”
A54	South Island reef point	10° 29' 26.7"	56° 40' 58.6"
A55	South Island reef point	10° 29' 32.0"	56°41' 08.1"
A56	South Island reef point	10°29' 34.8"	56°41' 17.0"
A57	South Island reef point	10° 29' 36.98"	56° 41' 39.81"
A58	South Island reef point	10° 29' 36.16"	56° 41' 42.08"
A59	South Island reef point	10° 29' 35.27"	56° 41' 43.08"
A60	South Island reef point	10° 29' 29.60"	56° 41' 50.24"
A61	South Island reef point	10° 29' 14.29"	56° 42' 06.88"
A62	South Island reef point	10° 28' 51.6"	56° 42' 15.3"
A63	South Island reef point	10° 28' 36.4"	56° 42' 19.8"
A64	South Island reef point	10° 28' 24.2"	56° 42' 19.9"
A65	South Island reef point	10° 28' 18.8"	56° 42' 19.2"
A66	South Island reef point	10° 28' 04.3"	56° 42' 14.4"
A67	South Island reef point	10° 27' 55.4"	56°42' 11.0"
A68	South Island reef point	10° 27' 41.7"	56°41' 59.3"
A69	South Island reef point	10° 27' 31.9"	56° 41' 46.3"
A70	South Island reef point	10°27' 22.8"	56°41' 24.3"
A71	South Island reef point	10° 27' 11.31"	56° 40' 57.31"
A72	South Island reef point	10° 26' 35.38"	56° 39' 38.37"

SAINT BRANDON (CARGADOS CARAJOS SHOALS)

Basepoints

No.	**Location**	**WGS 84 geographical coordinates**	
		Latitude South	**Longitude East**
B1	Pointe Requin reef point	16° 49' 30.5"	59° 28' 09.3"
B2	east side main reef point	16° 49' 34.7"	59° 28' 09.4"
B3	east side main reef point	16° 49' 50.5"	59° 28' 24.0"

B4	east side main reef point	16° 50' 03.6"	59° 28' 55.0"
B5	east side main reef point	16° 50' 05.8"	59° 29' 31.5"
B6	east side main reef point	16° 50' 02.8"	59° 29' 58.8"
B7	east side main reef point	16° 49' 45.5"	59° 30' 45.5"
B8	east side main reef point	16° 49' 24.3"	59° 31' 27.3"
B9	east side main reef point	16° 48' 48.0"	59° 33' 07.9"
B10	east side main reef point	16° 48' 38.1"	59° 33' 43.8"
B11	east side main reef point	16° 48' 24.7"	59° 34' 17.0"
B12	east side main reef point	16° 48' 00.1"	59° 34' 47.3"
B13	east side main reef point	16° 47' 26.1"	59° 35' 10.1"
B14	east side main reef point	16° 46' 40.5"	59° 35' 39.8"
B15	east side main reef point	16° 45' 30.5"	59° 36' 36.5"
B16	east side main reef point	16° 45' 13.2"	59° 36' 51.1"
B17	east side main reef point	16° 44' 02.2"	59° 38' 03.0"
B18	east side main reef point	16° 43' 00.7"	59° 39' 18.6"
B19	east side main reef point	16° 42' 53.1"	59° 39' 25.0"
B20	east side main reef point	16° 42' 15.0"	59° 40' 02.5"
B21	east side main reef point	16° 42' 04.3"	59° 40' 10.7"
B22	east side main reef point	16° 40' 40.8"	59° 41' 11.5"
B23	east side main reef point	16° 40' 19.2"	59° 41' 30.4"
B24	east side main reef point	16° 39' 55.2"	59° 41' 40.6"
B25	east side main reef point	16° 39' 01.5"	59° 41' 48.8"
B26	east side main reef point	16° 37' 53.7"	59° 42' 06.7"
B27	east side main reef point	16° 36' 37.5"	59° 42' 33.0"
B28	east side main reef point	16° 35' 48.6"	59° 42' 41.8"
B29	east side main reef point	16° 35' 05.9"	59° 42' 40.9"
B30	east side main reef point	16° 34' 33.9"	59° 42' 41.6"
B31	main reef closing line terminal	16° 33' 52.8"	59° 42' 36.6"
B32	main reef closing line terminal	16° 32' 25.2"	59° 42' 42.5"
B33	east side main reef point	16° 31' 26.6"	59° 43' 03.9"
B34	east side main reef point	16° 31' 12.7"	59° 43' 07.6"
B35	east side main reef point	16° 30' 50.3"	59° 43' 07.9"
B36	east side main reef point	16° 30' 11.0"	59° 42' 59.3"
B37	east side main reef point	16° 29' 41.0"	59° 42' 50.9"
B38	east side main reef point	16° 29' 15.7"	59° 42' 40.4"
B39	main reef closing line terminal	16° 28' 58.2"	59° 42' 16.2"
B40	main reef closing line terminal	16° 28' 43.0"	59° 41' 46.2"
B41	main reef closing line terminal	16 28' 12.7"	59° 41' 12.5"
B42	main reef closing line terminal	16 27' 40.2"	59° 40' 31.9"

B43	North Island north-east reef point	16 22' 59.4"	59° 38' 47.6"
B44	Albatross Island reef point	16 14' 34.0"	59° 35' 55.7"
B45	Albatross Island reef point	16 14' 23.4"	59° 35' 54.5"
B46	Albatross Island reef point	16 14' 16.6"	59° 35' 49.6"
B47	Albatross Island reef point	16 14' 09.8"	59° 35' 45.2"
B48	Albatross Island reef point	16 14' 07.7"	59° 35' 36.2"
B49	Albatross Island reef point	16 14' 09.7"	59° 35' 23.5"
B50	Albatross Island reef point	16 14' 13.9"	59° 35' 15.1"
B51	Albatross Island reef point	16 14' 15.8"	59° 35' 11.0"
B52	Albatross Island reef point	16 14' 19.8"	59° 35' 07.1"
B53	Albatross Island reef point	16 14' 26.4"	59° 35' 06.4"
B54	Albatross Island reef point	16 14' 36.8"	59° 35' 09.7"
B55	Sirene Island north-west reef point	16 28' 01.7"	59° 34' 26.9"
B56	Perle Breaker low tide elevation	16 30' 47.6"	59° 31' 38.2"
B57	Perle Island north-west reef point	16 32' 47.8"	59° 29' 59.3"
B58	Perle Island west reef point	16 32' 52.8"	59° 29' 53.7"
B59	Fregate Island west reef point	16 36' 00.0"	59° 30' 28.7"
B60	Fregate Island west reef point	16 36' 05.0"	59° 30' 28.8"

CHAGOS ARCHIPELAGO

Basepoints

No.	**Location**	**WGS 84 geographical coordinates**	
		Latitude South	**Longitude East**
	Diego Garcia		
C1	South Point reef point	07° 26' 44.0"	72° 25' 55.0"
C2	un-named reef point	07° 26' 39.0"	72° 26' 12.0"
C3	un-named reef point	07° 26' 22.5"	72° 26' 31.5"
C4	un-named reef point	07° 26' 12.0"	72° 26' 36.0"
C5	un-named reef point	07° 24' 31.0"	72° 27' 37.5"
C6	un-named reef point	07° 23' 57.5"	72° 28' 32.0"
C7	un-named reef point	07° 23' 43.5"	72° 28' 53.5"
C8	un-named reef point	07° 23' 30.0"	72° 29' 07.5"
C9	un-named reef point	07° 23' 18.0"	72° 29' 21.5"
C10	un-named reef point	07° 23' 10.0"	72°29' 29.0"
C11	Horsborough Point reef point	07° 22' 52.0"	72° 29' 41.0"
C12	un-named reef point	07° 22' 18.0"	72° 29' 21.5"
C13	un-named reef point	07° 18' 48.0"	72° 29' 30.0"

C14	un-named reef point	07° 18' 18.0"	72° 29' 43.5"
C15	un-named reef point	07° 18' 07.0"	72° 29' 46.5"
C16	un-named reef point	07° 17' 48.0"	72° 29' 45.5"
C17	Cust Point reef point	07° 17' 23.5"	72° 29' 38.5"
C18	un-named reef point	07° 14' 26.5"	72° 26' 58.5"
C19	un-named reef point	07° 14' 15.0"	72° 26' 46.0"
C20	un-named reef point	07° 14' 00.0"	72° 26' 21.0"
C21	un-named reef point	07° 13' 55.0"	72° 26' 07.0"
C22	Barton Point reef point terminal point	07° 13' 54.0"	72° 25' 45.5"
C23	East Island east reef point terminal point	07° 13' 31.5"	72° 25' 21.5"
C24	un-named reef point	07° 13' 30.0"	72° 25' 12.0"
C25	East Island west reef point terminal point	07° 13' 36.5"	72° 24' 57.0"
C26	Middle Island east reef point terminal point	07° 13' 37.5"	72° 24' 34.0"
C27	un-named reef point	07° 13' 37.5"	72° 24' 29,0"
C28	un-named reef point	07° 13' 42.5"	72° 24' 21.0"
C29	un-named reef point	07° 14' 02.0"	72° 23' 57.0"
C30	Spurs Reef west terminal point	07° 14' 07.5"	72° 23' 53.0"
C31	West Island north reef point terminal point	07° 14' 49.5"	72° 23' 05.0"
C32	un-named reef point	07° 15' 51.5"	72° 21' 40.0"
C33	un-named reef point	07° 15' 57.5"	72° 21' 25.5"
C34	un-named reef point	07° 16' 08.0"	72° 21' 11.0"
C35	Simpson Point reef point	07° 16' 16.0"	72° 21' 08.5"
C36	un-named reef point	07° 16' 24.0"	72° 21' 10.0"
C37	un-named reef point	07° 16' 34.0"	72° 21' 18.0"
C38	un-named reef point	07° 16' 43.0"	72° 21' 27.5"
C39	un-named reef point	07° 16' 52.0"	72° 21' 42.5"
C40	un-named reef point	07° 16' 56.0"	72° 21' 51.5"
C41	un-named reef point	07° 24' 22.5"	72° 25' 02.5"
C42	un-named reef point	07° 24' 49.5"	72° 25' 03.5"
C43	un-named reef point	07° 26' 16.0"	72° 25' 13.5"
C44	un-named reef point	07° 26' 28.0"	72° 25' 14.5"
C45	un-named reef point	07° 26' 36.5"	72° 25' 18.0"
C46	un-named reef point	07° 26' 41.0"	72° 25' 24.0"
C47	un-named reef point	07° 26' 43.0"	72° 25' 31.5"

No.	Location	WGS 84 geographical coordinates	
		Latitude South	Longitude East
	Egmont Islands, Danger Island, Eagle Islands & Three Brothers Island		
		Egmont Islands	
C48	Ile Sudest reef point south east	06° 41' 42"	71° 23' 42"
C49	Ile Sudest reef point east	06° 41' 28"	71° 23' 51"
C50	Ile Sudest closing line terminal east	06° 39' 42"	71° 22' 55"
C51	Ile Sudest closing line terminal centre	06° 38' 55"	71° 21 '48"
C52	Ile Sudest closing line terminal west	06° 38' 12"	71° 20' 04"
		Danger Island	
C53	reef point south east	06° 23' 55"	71°14' 35"
C54	reef point north east	06° 22' 55"	71°14' 30"
		Eagle Islands	
C55	South Island reef point south east	06° 14' 10"	71° 17' 50"
C55A	North Island north east	06° 11' 15"	71° 20' 30"
		Three Brothers Island	
C56	reef point south	06° 10' 45"	71° 32' 40"
C57	reef point south east	06° 10' 45"	71° 33' 00"
C58	reef point east	06° 10' 10"	71° 32' 40"
C59	reef point east	06° 09' 00"	71° 31' 20"
C60	reef point north east	06° 08' 10"	71° 30' 10"
C61	reef point north west	06° 08' 10"	71° 30' 00"
		Eagle Islands	
C62	North Island reef point north	06° 10' 10"	71° 20' 15"
C63	North Island reef point north west	06° 10' 55"	71° 19' 30"
C64	South Island reef point north west	06° 13' 50"	71° 17' 15"
		DANGER ISLAND	
C65	reef point north west	06° 22' 55"	71°14' 00"
C66	reef point south west	06° 23' 55"	71° 14' 15"
C67	reef south of Danger Island west	06° 26' 50"	71° 14' 10"
		EGMONT ISLANDS	
C68	Ile Sipaille reef point west	06° 39' 06"	71° 18' 34"

C69	lle Sipaille reef point west	06° 39' 30"	71° 18' 42"
C70	lle Lubine reef point south	06° 40' 20"	71° 19' 37"
C71	lle Sudest reef point west	06° 41' 06"	71° 22' 01"
C72	Ile Sudest reef point west	06° 41' 50"	71° 23' 28"
	PEROS BANHOS		
C73	Ile YeYe reef point north	05° 14' 18"	71° 57' 53"
C74	Moresby reef point north	05° 14' 07"	71° 49' 47"
C75	Moresby reef point north west	05° 14' 12"	71° 49' 07"
C76	lle Diamant reef point north west	05° 14' 51"	71° 45' 48"
C77	Grande lle Mapou reef point northwest	05° 15' 49"	71° 44' 51"
C78	lle Pierre reef point north west	05° 17' 04"	71° 44' 02"
C79	lle Pierre reef point south west	05° 18' 36"	71° 43' 51"
C80	lle Poule reef point west	05° 24' 30"	71° 44' 46"
	NELSONS ISLAND		
C81	reef point south west	05° 41' 05"	72° 18' 30"
C82	reef point east	05° 40' 55"	72° 19' 30"
	BLENHEIM REEF		
C83	reef point south east	05° 14' 00"	72° 29' 15"
C84	reef point east	05° 11' 40"	72° 29' 30"
C85	reef point north	05° 09' 10"	72° 28' 30"
	SALOMON ISLANDS		
C86	Ile de la Passe reef point north east	05° 17' 57.5"	72° 15' 18.0"

RODRIGUES ISLAND

Basepoints

No.	**Location**	**WGS 84 geographical coordinates**	
		Latitude South	**Longitude East**
R1	Grande Passe south west terminal point	19° 46' 09.7"	63° 27' 42.7"
R2	Grande Passe north east terminal point	19° 45' 52.0"	63° 28' 02.1"
R3	un-named reef point	19° 45' 35.6"	63° 28' 29.6"
R4	un-named reef point	19° 45' 25.6"	63° 28' 43.0
R5	un-named reef point	19° 45' 12.9"	63° 28' 53.5"
R6	un-named reef point	19° 44' 56.0"	63° 29' 03.1"

R7	un-named reef point	19° 44' 23.5"	63° 29' 23.2"
R8	un-named reef point	19° 43' 51.0"	63° 29' 34.5"
R9	Passe Onzaine south terminal point	19° 43' 24.0"	63° 29' 52.2"
R10	Passe Onzaine north terminal point	19° 43' 21.4"	63° 29' 53.2"
R11	un-named reef point	19° 43' 06.1"	63° 30' 03.1"
R12	un-named reef point	19° 42' 51.5"	63° 30' 07.8"
R13	un-named reef point	19° 42' 37.5"	63° 30' 09.7"
R14	un-named reef point	19° 42' 13.4"	63° 30" 08.3"
R15	Passe St. Francis south terminal point	19° 42' 04.5"	63° 30' 10.0"
R16	Passe St. Francis north terminal point	19° 41' 53.6"	63° 30' 12.4"
R17	un-named reef point	19° 41' 40.9"	63° 30' 13.9"
R18	un-named reef point	19° 41' 21.5"	63° 30' 13.7"
R19	un-named reef point	19° 41' 08.4"	63° 30' 10.6"
R20	Pointe Coton reef point	19° 40' 56.2"	63° 30' 01.9"
R21	un-named reef point	19° 40' 49.8"	63° 29' 52.4"
R22	un-named reef point	19° 40' 46.4"	63° 29' 42.8"
R23	reef closing line terminal point	19° 40' 32.8"	63° 29' 05.1"
R24	reef closing line terminal point	19° 40' 28.4"	63° 28' 59.6"
R25	reef closing line terminal point	19° 40' 14.1"	63° 28' 32.8"
R26	reef closing line terminal point	19° 40' 03.4"	63° 28' 00.5"
R27	reef closing line terminal point	19° 39' 48.7"	63° 27' 32.5"
R28	reef closing line terminal point	19° 39' 31.5"	63° 26' 48.4"
R29	reef closing line terminal point	19° 39' 30.9"	63° 26' 38.1"
R30	Mathurin Bay east terminal point	19° 39' 34.8"	63° 26' 24.4"
R31	Mathurin Bay west terminal point	19° 39' 18.7"	63° 24' 20.5"
R32	un-named reef point	19° 39' 12.0"	63° 23' 52.1"
R33	un-named reef point	19° 39' 10.0"	63° 23' 31.2"
R34	un-named reef point	19° 39' 12.3"	63° 23' 18.0"
R35	un-named reef point	19° 39' 22.7"	63°23' 11.1"
R36	un-named reef point	19° 39' 12.3"	63° 21' 54.2"
R37	un-named reef point	19° 39' 13.4"	63° 21' 43.2"
R38	un-named reef point	19° 39' 26.9"	63° 21' 25.9"
R39	un-named reef point	19° 39' 30.8"	63° 20" 55.0"
R40	un-named reef point	19° 39' 23.0"	63° 19' 57.9"
R41	un-named reef point	19° 39' 24.6"	63° 19' 09.8"
R42	un-named reef point	19° 39' 29.1"	63° 18' 57.1"
R43	un-named reef point	19° 39' 35.1"	63° 18' 45.4"
R44	un-named reef point	19° 39' 54.1"	63° 18' 30.2"
R45	un-named reef point	19° 40' 36.4"	63° 18' 12.9"

R46	un-named reef point	19° 40' 50.4"	63° 18' 05.5"
R47	un-named reef point	19° 41' 33.4"	63° 17' 50.0"
R48	un-named reef point	19° 42' 05.8"	63° 17' 47.6"
R49	un-named reef point	19° 42' 11.1"	63° 17' 44.4"
R50	un-named reef point	19° 42' 38.0"	63° 17' 34.5"
R51	un-named reef point	19° 43' 29.0"	63° 17' 24.7'
R52	un-named reef point	19° 44' 13.1"	63° 17' 24.0"
R53	un-named reef point	19° 44' 34.1"	63° 17' 20.2"
R54	un-named reef point	19° 44' 47.2"	63° 17' 21.4"
R55	un-named reef point	19° 45' 17.7"	63° 17' 35.9"
R56	un-named reef point	19° 46' 24.5"	63° 18' 45.8"
R57	un-named reef point	19° 46' 32.8"	63° 18' 50.3"
R58	un-named reef point	19° 48' 12.3"	63° 18' 49.2"
R59	un-named reef point	19° 48' 51.7"	63° 19' 08.9"
R60	un-named reef point	19° 48' 56.1"	63° 19' 11.3"
R61	un-named reef point	19° 49' 48.6"	63° 19' 57.0"
R62	un-named reef point	19° 49' 50.6"	63° 19' 59.7"
R63	un-named reef point	19° 50' 00.4"	63° 20' 23.4"
R64	un-named reef point	19° 50' 05.2"	63° 20' 40.5"
R65	un-named reef point	19° 50' 05.9"	63° 20' 48.8"
R66	un-named reef point	19° 50' 05.3"	63° 20' 57.6"
R67	un-named reef point	19° 50' 02.5"	63° 21' 11.7"
R68	un-named reef point	19° 50' 00.6"	63° 21' 30.9"
R69	un-named reef point	19° 49' 59.8"	63° 22' 24.9"
R70	un-named reef point	19° 49' 56.5"	63° 22' 59.6"
R71	un-named reef point	19° 49' 49.1"	63° 24' 11.8"
R72	un-named reef point	19° 49' 42.2"	63° 25' 20.9"
R73	un-named reef point	19° 49' 40.0"	63° 25' 25.0"
R74	un-named reef point	19° 49' 29.9"	63° 25' 37.0"
R75	un-named reef point	19°49' 22.7"	63°25' 42.2"
R76	un-named reef point	19° 49' 18.0"	63° 25' 44.2"
R77	un-named reef point	19° 48' 29.4"	63° 26' 02.8"
R78	un-named reef point	19° 48' 16.4"	63° 26' 06.9"
R79	un-named reef point	19° 47' 58.8"	63° 26' 13.9"
R80	un-named reef point	19° 47' 10.2"	63° 26' 28.5"
R81	un-named reef point	19° 47' 04.2"	63° 26' 25.8"

ILE TROMELIN

No.	Location	WGS 84 geographical coordinates	
		Latitude South	Longitude East
T1	reef point	15° 53' 54.9"	54° 31' 30.3"
T2	reef point	15° 53' 54.9"	54° 31' 35.6"
T3	reef point	15° 53' 51.6"	54° 31' 42.4"
T4	reef point	15° 53' 41.6"	54° 31' 46.9"
T5	reef point	15° 53' 37.4"	54° 31' 46.9"
T6	reef point	15° 53' 26.9"	54° 31' 43.7"
T7	reef point	15° 53' 18.3"	54° 31' 32.7"
T8	reef point	15° 53' 13.0"	54° 31' 20.4"
T9	reef point	15° 53' 02.7"	54° 31' 03.2"
T10	reef point	15° 53' 03.1"	54° 30' 56.8"
T11	reef point	15° 53' 19.0"	54° 31' 01.6"
T12	reef point	15° 53' 33.7"	54° 31' 08.7"
T13	reef point	15° 53' 50.4"	54° 31' 22.6"

SECOND SCHEDULE

(regulation 4)

ISLAND OF MAURITIUS

Closing line points delimiting internal waters

From			To			
Point	Latitude	Longitude	Point	Latitude	Longitude	
M47	20° 31' 23.1"	57" 31' 01.6"	M48	20° 31' 23.1"	57° 31' 16.1"	River closing line
M11	20° 06 08.7"	57°30' 51.5"	M12	20° 06’ 28.6"	57° 30' 42.4"	Bay closing line
M17	20° 12' 48.9"	57° 23' 55.3"	M18	20° 12' 54.9"	57° 23' 55.3"	Bay closing line
M26	20°18' 58.8"	57° 21' 46.0"	M27	20° 19’ 58.7"	57° 21' 52.0"	Bay closing line
M28	20° 21' 24.3"	57° 21' 04.8"	M29	20°22' 06.3"	57° 21' 07.9"	Bay closing line
M40	20° 29' 40.8"	57° 21' 41.2"	M41	20° 30' 01.4"	57° 22' 07.8"	Bay closing line

M58	20° 27' 24.1"	57° 42' 03.5"	M59	20° 27' 00.4"	57° 42' 39.0"	line
M13	20° 07' 31.2"	57° 29' 28.1"	M14	20° 09' 18.1"	57° 27' 55.9"	Reef closing line
M29	20° 22' 06.3"	57° 21' 07.9"	M30	20° 22' 25.8"	57° 20’ 35.3"	Reef closing line
M37	20° 28' 21.2"	57° 18' 07.0"	M38	20° 28' 54.5"	57° 18' 18.4"	Reef closing line
M64	20° 24' 57.3"	57° 45' 49.8"	M65	20° 23' 47.2"	57° 46' 41.5"	Reef closing line
M71	20° 20’ 19.8"	57° 49’ 18.8"	M72	20° 19 40.8"	57° 49’ 28.3"	Reef closing line
M73	20° 19’ 13.8"	57° 49’ 29.8"	M1	20° 17’ 34.8”	57° 49’ 22.9”	Reef closing line

RODRIGUES ISLAND

From			To			
Point	Latitude	Longitude	Point	Latitude	Longitude	
R30	19° 39' 34.8"	63° 26' 24.4"	R31	19° 39' 18.7"	63° 24' 20.5"	Historic bay closing line
R31	19° 46' 09.7"	63° 27' 42.7"	R2	19° 45' 52.0"	63° 28' 02.1"	Reef closing line
R9	19° 43' 24.0"	63° 29' 52.2"	R10	19° 43' 21.4"	63° 29' 53.2"	Reef closing line
R15	19° 42' 04.5"	63° 30' 10.0"	R16	19° 41' 53.6"	63° 30' 12.4"	Reef closing line
R23	19° 40' 32.8"	63° 29' 05.1"	R24	19° 40' 28.4"	63° 28' 59.6"	Reef closing line

ST BRANDON

From			To			
Point	Latitude	Longitude	Point	Latitude	Longitude	
B31	16° 33' 52.8"	59° 42' 36.6"	B32	16° 32' 25.2"	59° 42' 42.5"	Reef closing line
B39	16° 28' 58.2"	59° 42' 16.2"	B40	16° 28' 43.0"	59° 41' 46.2"	Reef closing line

B41	16° 28' 12.7"	59° 41' 12.5"	B42	16° 27' 40.2"	59° 40' 31.9"	Reef closing line

CHAGOS ARCHIPELAGO

	From			To		
Point	Latitude	Longitude	Point	Latitude	Longitude	

SALOMON ISLAND

S1	05° 18' 19.0"	72° 14' 38.5"	S2	05° 18' 39.0"	72° 13' 54.5"	Reef closing line

PEROS BANHOS ISLAND

	From			To		
Point	Latitude	Longitude	Point	Latitude	Longitude	
C75	05° 14' 12"	71° 49' 07"	P1	05° 14' 52.0"	71° 47' 45.0"	Reef closing line
P2	05° 22' 27.0"	71° 45' 07.5"	P3	05° 23' 33.0"	71° 45' 01.0"	Reef closing line
P4	05° 27' 29.0"	71° 49' 20.0"	P5	05° 25' 30.0"	71° 49' 59.0"	Reef closing line
P5	05° 25' 30.0"	71° 49' 59.0"	P6	05° 25' 42.0"	71° 52' 52.5"	Reef closing line
P6	05° 25' 42.0"	71° 52' 52.5"	P7	05° 23' 27.0"	71°57' 30.5"	Reef closing line
P8	05° 22' 19.5"	71° 58' 28.0"	P9	05° 20' 25.5"	71° 58' 41.0"	Reef closing line
P9	05° 20' 25.5"	71° 58' 41.0"	P10	05° 18' 52.0"	71° 58' 23.0"	Reef closing line
P11	05° 15' 10.0"	71° 56' 49.5"	P12	05° 15' 29.0"	71° 55' 46.5"	Reef closing line
P13	05° 15' 52.0"	71° 54' 51.0"	P14	05° 16' 05.0"	71° 53' 37.0"	Reef closing line

P15	05° 16' 06.5"	71° 53' 12.0"	P16	05° 16' 03.0"	71° 52' 29.0"	Reef closing line
P17	05° 16' 05.0"	71° 51' 45.0"	P18	05° 15' 14.5"	71° 50' 44.0"	Reef closing line
P18	05° 15' 14.5"	71° 50' 44.0"	P19	05° 15' 15.0"	71° 50' 21.5"	Reef closing line

EGMONT ISLANDS

C50	06° 39' 42"	71° 22' 55"	C51	06° 38' 55"	71° 21' 48"	Reef closing line
C51	06° 38' 55"	71° 21' 48"	C52	06° 38' 12"	71° 20' 04"	Reef closing line

DIEGO GARCIA

C22	07° 13' 54.0"	72° 25' 45.5"	C23	07° 13' 31.5"	72° 25' 21.5"	Reef closing line
C25	07° 13' 36.5"	72° 24' 57.0"	C26	07° 13' 37.5"	72° 24' 34.0"	Reef closing line
C30	07° 14' 07.5"	72° 23' 53.0"	C31	07° 14' 49.5"	72° 23' 05.0"	Reef closing line

All coordinates of the closing line points are expressed in WGS84 Datum and all closing lines have been computed as geodesics upon the WGS84 ellipsoid.

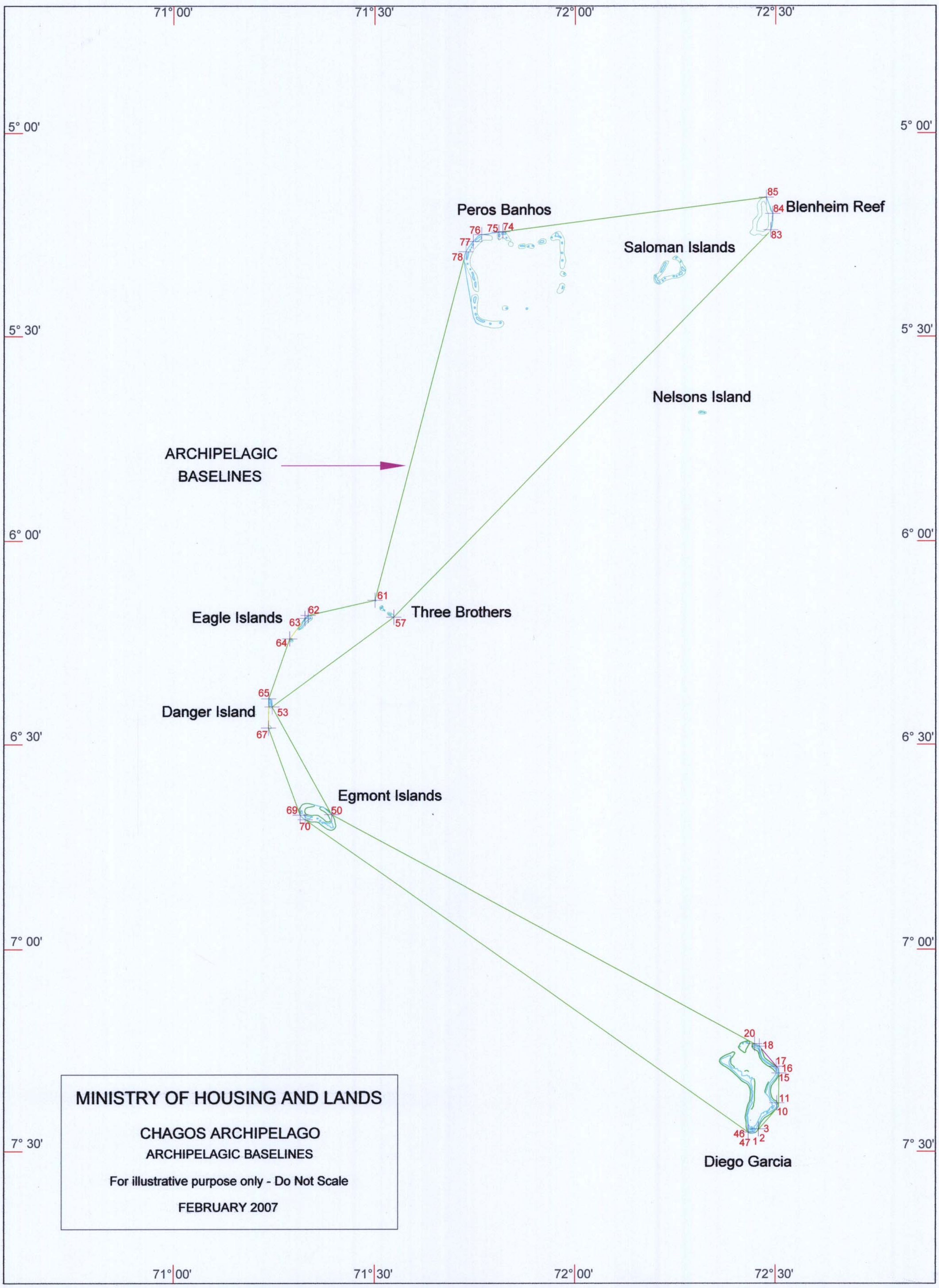
Related documents:

UNITED NATIONS—DOALOS/OLA
MUS-MZN63-2008-illustrative_map

REPUBLIC OF MAURITIUS

CHAGOS ARCHIPELAGO

ARCHIPELAGIC BASELINES



MINISTRY OF HOUSING AND LANDS

CHAGOS ARCHIPELAGO
ARCHIPELAGIC BASELINES

For illustrative purpose only - Do Not Scale

FEBRUARY 2007