

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

Case No. 28

**DISPUTE CONCERNING DELIMITATION OF THE MARITIME  
BOUNDARY BETWEEN MAURITIUS AND MALDIVES IN THE INDIAN  
OCEAN**

REPUBLIC OF MAURITIUS / REPUBLIC OF MALDIVES



WRITTEN OBSERVATIONS OF THE REPUBLIC OF MAURITIUS ON THE  
PRELIMINARY OBJECTIONS RAISED BY THE REPUBLIC OF MALDIVES

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## CHAPTER 1 INTRODUCTION

1.1 In accordance with the Special Chamber's Order of 19 December 2019, the Republic of Mauritius submits these Written Observations on the Preliminary Objections filed by the Republic of the Maldives on 18 December 2019 in respect of the dispute submitted to the Special Chamber by the Special Agreement concluded on 24 September 2019.

1.2 For the reasons set out below, the Special Chamber plainly has jurisdiction under Part XV of the United Nations Convention on the Law of the Sea ("UNCLOS"), and the Preliminary Objections offer no basis for it to decline to exercise that jurisdiction. For the Special Chamber to decline to exercise jurisdiction would place it in direct conflict with the International Court of Justice and United Nations General Assembly Resolution 73/295. The Special Chamber must reject all the Preliminary Objections and proceed to delimit the maritime boundary between Mauritius and the Maldives.

1.3 These Written Observations are set out in four Chapters. **Chapter 1** serves as an Introduction.

1.4 **Chapter 2** addresses the facts relevant to the principal contention on which the Maldives' Preliminary Objections are based. It shows that, contrary to the view expressed by the Maldives, following the ICJ's Advisory Opinion of 25 February 2019 and UN General Assembly Resolution 73/295, Mauritius is recognised under international law, by the ICJ and the UN, as the coastal State that is opposite or adjacent to the Maldives for purposes of this maritime boundary delimitation. The United Kingdom has no sovereignty, or sovereign rights or other material rights, in respect of any part of the territory of Mauritius, a State that obtained independence in 1968 and whose territory includes, and has always included, the Chagos Archipelago. It follows that the United Kingdom has no rights that could in any way be affected by a delimitation of the maritime boundary between Mauritius and the Maldives.

1.5 The argument of the Maldives in its Preliminary Objections is predicated on a view that the United Kingdom has a claim to sovereignty, or sovereign rights, over the Chagos Archipelago. Such a claim is wholly dependent on the lawfulness of the United Kingdom's detachment of the Chagos Archipelago from Mauritius in 1965, and its creation of a new colony which it named the "British Indian Ocean Territory." The United Kingdom, however, undertook these acts in manifest breach of international law, as the ICJ has found. In conformity with the Court's Advisory Opinion, the United Kingdom's actions were condemned by the UN General Assembly for violating Mauritius' rights to self-determination and territorial integrity. The existence of the ICJ Advisory Opinion and the UN General Assembly Resolution are matters of fact, which, as shown below, are determinative of the legal issues raised by the Maldives' Preliminary Objections.

1.6 Following the ICJ's Advisory Opinion and UN General Assembly Resolution 73/295, it is now beyond doubt that the United Kingdom's detachment of the Chagos Archipelago violated international law, and that it has no sovereignty or sovereign rights in regard to the Archipelago. Any assertion of such rights by the United Kingdom is manifestly contrary to international law. It is unarguable. The ICJ has decisively rejected any claim to the lawfulness of the United Kingdom's actions. Not a single member of the Court considered those actions

to be lawful, and not a single one questioned the conclusion that the Archipelago has always been – and remains – an integral part of Mauritius’ territory. Specifically, the Court determined, *inter alia*, that:

- “at the time of its detachment from Mauritius” the “Chagos Archipelago was clearly an integral part of that non-self-governing territory;”
- the United Kingdom’s purported detachment of the Chagos Archipelago “was not based on the free and genuine expression of the will of the people concerned;”
- at the time of the purported detachment, “obligations arising under international law and reflected in the resolutions adopted by the General Assembly during the process of decolonization of Mauritius require[d] the United Kingdom, as the administering Power, to respect the territorial integrity of that country, including the Chagos Archipelago;”
- the “detachment” was therefore “unlawful” such that “the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968;”
- “the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State;”
- this “unlawful act” is “of a continuing character” and “the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible;” and
- “all Member States [of the United Nations] are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.”<sup>1</sup>

1.7 These are authoritative legal determinations made by the principal judicial organ of the United Nations. For the Special Chamber to accede to the arguments of the Maldives would, in effect, amount to a decision that the ICJ got the law wrong, or that its findings can be ignored, and that it is, somehow, open to the United Kingdom to maintain a claim to sovereignty over the Chagos Archipelago.

1.8 On 22 May 2019, the General Assembly welcomed and endorsed the ICJ’s Advisory Opinion. By an overwhelming majority, it confirmed that the Chagos Archipelago is an integral part of Mauritius, and demanded that the United Kingdom terminate its unlawful administration within six months, that is, no later than 22 November 2019. The United Kingdom failed to do so. Regrettably, the United Kingdom continues to be an illegal occupier of the Chagos Archipelago, just as South Africa was an illegal occupier of South West Africa (Namibia) after the ICJ’s 1971 Advisory Opinion.<sup>2</sup> No lawful claim of sovereignty or sovereign rights can emanate from such unlawful status. For the ITLOS Special Chamber to accede to the request

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<sup>1</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, ICJ Reports 2019, paras. 170, 172-174, 177-178, 183(5).

<sup>2</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion of 21 June 1971, ICJ Reports 1971, p. 16, para. 118.

of the Maldives would, in effect, give recognition to an unarguable claim to sovereignty or sovereign rights.

1.9 **Chapter 3** responds to the Maldives' specific objections to jurisdiction and admissibility. **Section I** demonstrates that, in light of the ICJ's Advisory Opinion, there exists no dispute over territorial sovereignty that could prevent the Special Chamber from delimiting the maritime boundary between Mauritius and the Maldives. The legal status of the Chagos Archipelago was authoritatively and definitely settled by the Court's determination that the United Kingdom's detachment of the Archipelago from Mauritius was unlawful, and that its administration is a continuing wrongful act under international law that must be terminated as rapidly as possible.

1.10 **Section II** shows that the United Kingdom is not an indispensable party to these proceedings because, as the ICJ determined, the United Kingdom has no sovereignty, or sovereign rights, in respect of any part of the Chagos Archipelago. The *Monetary Gold* principle can have no application in circumstances where a third State has no rights.

1.11 **Section III** addresses the Maldives' misconceived assertion that there is no dispute between the Parties as to the course of their maritime boundary. There is plainly a dispute: this is manifested, *inter alia*, in the Parties' respective national maritime laws and their submissions to the United Nations, which evidence their overlapping maritime claims. Further, the Maldives has, in the course of the Parties' maritime boundary negotiations, explicitly acknowledged the existence of a boundary dispute.

1.12 **Section IV** refutes the Maldives' argument that Mauritius has not fulfilled what the Maldives erroneously describes as the "procedural precondition" contained in Articles 74 and 83 of UNCLOS. These provisions, the Maldives asserts, require that Mauritius must negotiate with the Maldives prior to commencing proceedings to delimit the maritime boundary under Part XV of the Convention. There is no such requirement. Articles 74 and 83 set out substantive obligations. The only procedural precondition for exercise of the Special Chamber's jurisdiction is contained in Article 283. Mauritius has scrupulously complied with the requirements of Article 283, and the Maldives has not asserted otherwise.

1.13 In any event, the Parties indisputably engaged in negotiations to delimit their maritime boundary, including in a meeting held on 21 October 2010 in Malé, the Maldives. The joint minutes of those negotiations describe it as a "Meeting on Maritime Delimitation." No further meetings have occurred because the Maldives has refused to engage with Mauritius, despite being requested by Mauritius to do so. Mauritius conveyed its most recent invitation to participate in negotiations to delimit the maritime boundary by diplomatic note on 7 March 2019, which proposed that the negotiations take place during the second week of April 2019 and requested an early confirmation by the Maldives. Mauritius is still waiting for a response.

1.14 **Section V** refutes the Maldives' regrettable claim that Mauritius has somehow committed an abuse of process by commencing the present proceedings. In fact, insofar as there may be any abuse of process, it has been committed by the Maldives, which has presented preliminary objections that are premised on a rejection of the ICJ Advisory Opinion and UN General Assembly Resolution 73/295. In making this argument, the Maldives invites the Special Chamber to ignore both and violates the determinations of the Court and the UN General Assembly that all UN Members States must cooperate to complete the decolonisation

of Mauritius. With this argument, the Maldives attempts to thwart completion of the decolonisation of Mauritius, in violation of its obligations under international law, as reflected in the Advisory Opinion and UN General Assembly Resolution 73/295. That amounts to an abuse of process by the Maldives.

1.15 The Written Observations conclude with Mauritius' Submissions in **Chapter 4**.

## CHAPTER 2

### THE UNITED KINGDOM HAS NO RIGHT TO CLAIM SOVEREIGNTY OR SOVEREIGN RIGHTS OVER THE CHAGOS ARCHIPELAGO

2.1 The Maldives describes the “core” of its Preliminary Objections as the supposed “unresolved sovereignty dispute between Mauritius and the United Kingdom” over the Chagos Archipelago.<sup>3</sup> As evidence for that purported dispute, the Maldives relies upon statements by the United Kingdom, made after the ICJ Advisory Opinion and UN General Assembly Resolution 73/295, by which it asserts that it has sovereignty over the Archipelago notwithstanding these two conclusive developments. The Maldives refers to one statement made in the House of Commons on 30 April 2019 by the United Kingdom’s Minister of State for Europe and the Americas (“we have no doubt about our sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814”),<sup>4</sup> and another made on 5 November 2019 by the Minister of State for Foreign and Commonwealth Affairs to the British Parliament (“[t]he UK has no doubt of our sovereignty over the British Indian Ocean Territory”).<sup>5</sup>

2.2 Based on these statements by the United Kingdom, the Maldives adopts the position that “the Special Chamber is not in position to pronounce itself on the sovereignty dispute between the UK and Mauritius without the consent of the UK to resolve the sovereignty dispute before the Special Chamber.”<sup>6</sup>

2.3 This proposition is based entirely on the unilateral statements of the United Kingdom, and totally ignores the existence and effect of the ICJ Advisory Opinion and UN General Assembly Resolution 73/295. Such an approach is flawed and unsustainable. The factual predicate for the United Kingdom’s sovereignty claim is its purported detachment of the Chagos Archipelago from the territory of Mauritius on 8 November 1965, and the subsequent establishment of a new colony which it named the “British Indian Ocean Territory,” and the lawfulness of both acts. However, as detailed below, the ICJ determined in its Advisory Opinion of 25 February 2019 that the United Kingdom’s detachment of the Archipelago was unlawful and without legal consequences, having violated fundamental rules of international law, including the right to self-determination and the corollary right to territorial integrity, which were a part of customary international law at the time the purported detachment occurred. As the detachment of the Chagos Archipelago from Mauritius is, in the view of the ICJ, unlawful and without legal effect, it follows that the United Kingdom has no rights in respect of the Chagos Archipelago, which the Court found to be an integral part of the territory of Mauritius. The United Kingdom’s administration of the Archipelago was thus determined by the ICJ to be a continuing wrongful act under international law that must be brought to an end as rapidly as possible. Put simply, in the view of the ICJ, there is no doubt that the Chagos

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<sup>3</sup> Written Preliminary Objections of the Republic of the Maldives (18 December 2019) (“Preliminary Objections”), para. 5.

<sup>4</sup> *Ibid.*, para. 26, *quoting* Foreign and Commonwealth Office of the United Kingdom, “British Indian Ocean Territory: Written Statement,” Doc. HCWS1528 (30 April 2019) (Preliminary Objections, Annex 21).

<sup>5</sup> *Ibid.*, para. 6, *quoting* Foreign and Commonwealth Office of the United Kingdom, “British Indian Ocean Territory: Written Statement,” Doc. HCWS90 (5 November 2019) (Preliminary Objections, Annex 3).

<sup>6</sup> *Ibid.*



Archipelago is under the sovereignty of Mauritius. Not a single judge of the ICJ expressed a contrary view.

## **I. The Chagos Archipelago Is, and Has Always Been, an Integral Part of Mauritius**

2.4 The Chagos Archipelago was an integral part of Mauritius throughout the colonial period. The relevant facts were set out by the ICJ in its Advisory Opinion, as follows.

2.5 After a period of occupation by the Netherlands from 1638 to 1710, France established the first colonial administration in Mauritius, then named *Ile de France*, in 1715.<sup>7</sup> In 1814, France, by the Treaty of Paris, ceded Mauritius and all its dependencies to the United Kingdom.<sup>8</sup> These dependencies included the Chagos Archipelago, which the United Kingdom administered as a “dependency of the colony of Mauritius.”<sup>9</sup> The ICJ determined that:

From as early as 1826, the islands of the Chagos Archipelago were listed by Governor Lowry-Cole as dependencies of Mauritius. The islands were also described in several ordinances, including those made by Governors of Mauritius in 1852 and 1872, as dependencies of Mauritius. The Mauritius Constitution Order of 26 February 1964 ... promulgated by the United Kingdom Government, defined the colony of Mauritius in section 90 (1) as ‘the island of Mauritius and the Dependencies of Mauritius.’<sup>10</sup>

2.6 The United Kingdom included the Chagos Archipelago in its reports to the United Nations concerning Mauritius pursuant to its reporting obligations under Article 73(e) of the Charter of the United Nations. The ICJ found that:

The information submitted by the United Kingdom was included in several reports of the Fourth Committee (Special Political and Decolonization Committee) of the General Assembly. In many of these reports, the islands of the Chagos Archipelago, and sometimes the Chagos Archipelago itself, are referred to as dependencies of Mauritius. In its 1947 Report, Mauritius is described as comprising the island of Mauritius and its dependencies among which are mentioned ... the Oil Islands group [*i.e.*, the Chagos Archipelago] of which the principal island is Diego Garcia. The Report of 1948 collectively referred to all of the islands of “Mauritius.” The Report of 1949 states that “there are dependent upon Mauritius a number of islands

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<sup>7</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, ICJ Reports 2019, para. 27.

<sup>8</sup> *Ibid.*, para. 27.

<sup>9</sup> *Ibid.*, para. 28.

<sup>10</sup> *Ibid.*

scattered over the Indian Ocean [including the] Chagos Archipelago....<sup>11</sup>

2.7 In light of these facts, the ICJ concluded that the Chagos Archipelago was an integral part of Mauritius:

Following the conclusion of the 1814 Treaty of Paris, the “island of Mauritius and the Dependencies of Mauritius [*l’île Maurice et les dépendances de Maurice*”], including the Chagos Archipelago, were administered without interruption by the United Kingdom. This is how the whole of Mauritius, including its dependencies, came to appear on the list of non-self-governing territories drawn up by the General Assembly (resolution 66 (I) of 14 December 1946). It was on this basis that the United Kingdom regularly provided the General Assembly with information relating to the existence of conditions in that territory, in accordance with Article 73 of the Charter. Therefore, *at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory.*<sup>12</sup>

## **II. The United Kingdom’s Detachment of the Chagos Archipelago from Mauritius Violated International Law**

2.8 On 8 November 1965, the United Kingdom purported to detach the Chagos Archipelago from Mauritius and establish it as a new colony, which it named the “British Indian Ocean Territory.”<sup>13</sup> It undertook these actions despite the fact that five years earlier, on 14 December 1960, the General Assembly had adopted Resolution 1514 (XV). This Resolution, known as the “Declaration on the granting of independence to colonial countries and peoples,” recognised the right of all colonised peoples to self-determination, and prohibited administering powers from dismembering colonial territories absent the consent of the inhabitants. In particular, the Resolution declared, *inter alia*, that:

[a]ll peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development

and that:

[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is

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<sup>11</sup> *Ibid.*, para. 29.

<sup>12</sup> *Ibid.*, para. 170 (emphasis added).

<sup>13</sup> *Ibid.*, para. 33.

incompatible with the purposes and principles of the Charter of the United Nations.<sup>14</sup>

2.9 The right of self-determination, and the concomitant right of territorial integrity, evolved during the post-World War II period, and gathered widespread acceptance and recognition during the 1950s, such that, by the time of the adoption of Resolution 1514 (XV), it had crystallised into a rule of customary international law. Accordingly, the international community expressly condemned the United Kingdom's detachment of the Chagos Archipelago as a violation of international law, including the right of self-determination and obligation not to dismember colonial territories, as set out in Resolution 1514 (XV). In particular, on 16 December 1965, the General Assembly adopted Resolution 2066 (XX) on the "Question of Mauritius." As the ICJ observed, Resolution 2066 (XX) expressed deep concern about the detachment of certain islands from the territory of Mauritius and called upon the United Kingdom to "take no action which would dismember the Territory of Mauritius and violate its territorial integrity."<sup>15</sup>

2.10 The following year, on 20 December 1966, the General Assembly adopted Resolution 2232 (XXI), which concerned Mauritius, among other territories. The resolution reiterated that "any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories ... is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514 (XV)."<sup>16</sup>

2.11 On 10 May 1967, Sub-Committee I of the Committee of Twenty-Four reported: "By creating a new territory, the British Indian Ocean Territory, composed of islands detached from Mauritius ... the administering Power continues to violate the territorial integrity of th[is] Non-Self Governing Territor[y] and to defy resolutions 2066 (XX) and 2232 (XXI) of the General Assembly."<sup>17</sup>

2.12 In June 1967, the Committee of Twenty-Four examined the report of Subcommittee I and adopted a resolution on Mauritius, in which it "[d]eplore[d] the dismemberment of Mauritius ... by the administering Power which violates [its] territorial integrity, in contravention of General Assembly resolutions 2066 (XX) and 2232 (XXI) and call[ed] upon the administering Power to return ... the islands detached therefrom."<sup>18</sup>

2.13 The international community has continued to condemn the unlawful detachment for more than five decades. This is reflected in resolutions and declarations adopted by the

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<sup>14</sup> U.N. General Assembly, 15th Session, *Declaration on the granting of independence to colonial countries and peoples*, U.N. Doc. A/RES/1514(XV) (14 Dec. 1960), paras. 2 and 6.

<sup>15</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, ICJ Reports 2019, para. 34.

<sup>16</sup> *Ibid.*, para. 35.

<sup>17</sup> *Ibid.*, para. 38.

<sup>18</sup> *Ibid.*, para. 39.

Organisation of African Unity<sup>19</sup> and subsequently the African Union;<sup>20</sup> the Non-Aligned Movement;<sup>21</sup> the Group of 77 and China;<sup>22</sup> the Africa-South America Summit;<sup>23</sup> and the African, Caribbean, and Pacific Group of States.<sup>24</sup>

2.14 For at least a time, the Maldives itself accepted that Mauritius has sovereign rights in the Chagos Archipelago, and engaged in maritime boundary negotiations with Mauritius on that basis. In February 2010, the Minister of Foreign Affairs of the Maldives proposed to Mauritius' Minister of Foreign Affairs, Regional Integration and International Trade that the

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<sup>19</sup> Organization of African Unity, Assembly of Heads of State and Government, 17th Ordinary Session, *Resolution on Diego Garcia*, AHG/Res.99 (XVII) (1-4 July 1980); Organization of African Unity, Assembly of Heads of State and Government, 36th Ordinary Session, *Decision on Chagos Archipelago*, AHG/Dec.159 (XXXVI) (10-12 July 2000); Organization of African Unity, Council of Ministers, 74th Ordinary Session, *Decision on the Chagos Archipelago Including Diego Garcia*, CM/Dec.26 (LXXIV) (5-8 July 2001) (Annexes 118, 140, 144, respectively, in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Republic of Mauritius (1 March 2018) available at <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-03-EN.pdf>).

<sup>20</sup> Assembly of the African Union, 15th Ordinary Session, *Decision on the Sovereignty of the Republic of Mauritius Over the Chagos Archipelago*, Assembly/AU/Dec.331(XV) (27 July 2010); African Union, Assembly of Heads of State and Government, 16th Ordinary Session, *Resolution adopted at the 16th Ordinary Session*, Assembly/AU/Res.1(XVI) (30-31 Jan. 2011); Assembly of the African Union, 21st Ordinary Session, *Solemn Declaration on the 50th Anniversary of the OAU/AU*, Assembly/AU/2(XXI)Rev.1 (26 May 2013); Assembly of the African Union, 21st Ordinary Session, *Declaration on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa*, Assembly/AU/Decl.1(XXI) (26-27 May 2013); Assembly of the African Union, 25th Ordinary Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/901 (XXVII), Assembly/AU/Rev.1 (XXV) (14-15 June 2015); Executive Council of the African Union, 30th Ordinary Session, *Decision on the 2016 Annual Report of the Chairperson of the AU Commission*, Doc. EX.CL/994 (XXX) (27 Jan. 2017); African Union, 28th Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/994 (XXX), Assembly/AU/Res.1 (XXVIII) (30-31 Jan. 2017) (Annexes 156, 158, 165, 164, 175, 189, 190, respectively, in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Republic of Mauritius (1 March 2018) available at <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-03-EN.pdf>). See also Assembly of the African Union, 30<sup>th</sup> Ordinary Session of the Assembly, *Decision on Chagos Archipelago*, Assembly/AU/Dec.684 (XXX) (28-29 January 2018) (Written Observations, Annex 1); Assembly of the African Union, 32<sup>th</sup> Ordinary Session of the Assembly, *Decision on Decolonisation of Chagos Archipelago*, Assembly/AU/Dec.747 (XXXII) (10-11 February 2019) (Written Observations, Annex 2); Assembly of the African Union, 33<sup>rd</sup> Ordinary Session of the Assembly, *Draft Decision on Decolonisation of Mauritius*, Assembly/AU/Draft/Dec.43 (XXXIII) (8-9 February 2020) (Written Observations, Annex 3).

<sup>21</sup> Non-Aligned Movement, *Extracts from Selected Non-Aligned Movement Declarations* (1964-2012); Non-Aligned Movement, 17th Mid-Term Ministerial Meeting of the Non-Aligned Movement, *Final Document: Chagos Archipelago* (26-29 May 2014); Non-Aligned Movement, 17th Summit of Heads of State and Government of the Non-Aligned Movement, *Final Document: Chagos Archipelago* (17-18 September 2016); Chair of the Coordinating Bureau of the Non-Aligned Movement *Political Declaration of New York* (20 September 2017); *Note Verbale* from the High Commission of India in Port Louis to the Mauritius Ministry of Foreign Affairs, POR/162/1/97 (9 May 1997) (Annexes 21, 172, 25, 194, 139, respectively, in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Republic of Mauritius (1 March 2018) available at <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-01-EN.pdf>; <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-03-EN.pdf>; <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-04-EN.pdf>). See also Non-Aligned Movement, *Extract from Final Document Adopted by 18<sup>th</sup> Mid-term Ministerial Meeting of the Non-Aligned Movement* (5-6 April 2018) (Written Observations, Annex 4); Non-Aligned Movement, Ministerial Meeting of the Coordinating Bureau of the Non-Aligned Movement, *Extracts from Final Document* (20-21 July 2019) (Written Observations, Annex 5); Non-Aligned Movement, 18<sup>th</sup> Summit of Heads of State and Government of the Non-Aligned Movement, *Extracts from Final Document* (25-26 October 2019) (Written Observations, Annex 6).

two States hold discussions on the delimitation of their Exclusive Economic Zones.<sup>25</sup> Mauritius accepted the invitation by diplomatic note dated 21 September 2010, which stated that Mauritius “is agreeable to holding formal talks with the Government of the Republic of Maldives for the delimitation of the exclusive economic zones (EEZs) of Mauritius and Maldives.”<sup>26</sup>

2.15 Formal discussions between Mauritius and the Maldives were held on 21 October 2010 in Malé, the Maldives. The jointly signed minutes of the negotiations are entitled: “*First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius.*” The minutes record that the

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<sup>22</sup> U.N. Conference on Trade and Development, 13th Session, *Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIII (extract)* (21-26 April 2012) (Annex 174 in *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Memorial of the Republic of Mauritius (1 August 2012) available at [https://files.pca-cpa.org/pcadocs/mu-uk/Annexes%20to%20Reply/MR%20Annexes%20147-185%20\(Partial\).pdf](https://files.pca-cpa.org/pcadocs/mu-uk/Annexes%20to%20Reply/MR%20Annexes%20147-185%20(Partial).pdf)); Ministers for Foreign Affairs of the Member States of the Group of 77, *Ministerial Declarations adopted at the Thirty-Sixth and Thirty-Seventh Annual Meetings of Ministers for Foreign Affairs of the Member States of the Group of 77* (28 September 2012 & 26 September 2013); Group of 77 and China, Summit of Heads of State and Government of the Group of 77, *Declaration: For a New World Order for Living Well* (14-15 June 2014); Group of 77 and China, 38th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (26 September 2014); Group of 77 and China, 14th Session, *Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIV*, TD/507 (17-22 July 2016); Group of 77 and China, 40th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (23 September 2016); Group of 77 and China, 41st Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (22 September 2017) (Annexes 162, 173, 174, 181, 183, 195, respectively, in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Republic of Mauritius (1 March 2018) available at <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-04-EN.pdf>). See also Group of 77 and China, 42<sup>nd</sup> Annual Meeting of Ministers of Foreign Affairs, *Ministerial Declaration* (27 September 2018) (Written Observations, Annex 7); Group of 77 and China, 43<sup>rd</sup> Annual Meeting of Ministers of Foreign Affairs, *Ministerial Declaration* (27 September 2019) (Written Observations, Annex 8).

<sup>23</sup> Africa-South America Summit, 2nd Summit, *Declaration of Nueva Esparta* (26-27 September 2009); Africa-South America Summit, 3rd Summit, *Malabo Declaration* (20-22 Feb. 2013) (Annexes 155 and 163, respectively, in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Republic of Mauritius (1 March 2018) available at <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-04-EN.pdf>).

<sup>24</sup> African, Caribbean and Pacific Group of States, *Declaration of the 8th Summit of Heads of State and Government of the ACP Group of States: Port Moresby Declaration* (31 May-1 June 2016); African, Caribbean and Pacific Group of States, 104th Session of the ACP Council of Ministers, *Support for the Claim of Sovereignty of Mauritius over the Chagos Archipelago*, Decision No. 7/CIV/16 (29-30 Nov. 2016) (Annexes 179 and 187, respectively, in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the Republic of Mauritius (1 March 2018) available at <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-04-EN.pdf>. See also African, Caribbean and Pacific Group of States, 109<sup>th</sup> Session of the ACP Council of Ministers, *The Decolonisation of Mauritius*, Resolution ACP/25/007/19 (21-22 May 2019) (Written Observations, Annex 9); African, Caribbean and Pacific Group of States, *Declaration of the 9<sup>th</sup> Summit of Heads of State and Government of the ACP Group of States: Nairobi Nguvu Ya Pamoja Declaration* (9-10 December 2019) (Written Observations, Annex 10).

<sup>25</sup> Letter from Dr. the Hon. Arvin Boolell (Minister of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius), to H.E. Dr. A. Shaheed (Minister of Foreign Affairs, Republic of Maldives) (2 March 2010) (Written Observations, Annex 11).

<sup>26</sup> Diplomatic Note from Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to Ministry of Foreign Affairs, Republic of Maldives (21 September 2010) (Written Observations, Annex 12).

parties met to “discuss a potential overlap of the extended continental shelf and to exchange views on maritime boundary delimitation between the two respective States.”<sup>27</sup>

2.16 Likewise, the Joint Communiqué following the State Visit to Mauritius of the President of the Maldives in March 2011 records that the Prime Minister of Mauritius and the President of the Maldives “expressed their strong opposition to the purported establishment” by the United Kingdom of a marine protected area around the Chagos Archipelago and “agreed to take a collective stand vis-à-vis the UK Government on the Marine Protected Area,” which would “take into account the interests of the two island nations in respect of their extended continental shelf and their respective Exclusive Economic Zones.”<sup>28</sup> The Joint Communiqué further memorialises that “Both leaders agreed to make bilateral arrangements on the overlapping area of extended continental shelf of the two States around the Chagos Archipelago.”<sup>29</sup>

2.17 Faced with the United Kingdom’s persistent and continuing defiance of its international legal obligations, and a refusal to terminate its colonial occupation of Mauritian territory, the UN General Assembly adopted Resolution 71/292 on 22 June 2017. In accordance with Article 96 of the Charter of the United Nations, this Resolution requested that the ICJ render an Advisory Opinion on the following questions:

- a. Was the process of decolonisation of Mauritius lawfully completed when Mauritius was granted independence in 1968, following the separation of the Chagos Archipelago from Mauritius and having regard to international law, including obligations reflected in General Assembly resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967?
- b. What are the consequences under international law, including obligations reflected in the above-mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?<sup>30</sup>

2.18 The United Kingdom opposed adoption of the resolution, on the grounds that it sought to refer to the Court a bilateral dispute over territorial sovereignty between the United Kingdom

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<sup>27</sup> First Meeting on Maritime Boundary Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius (21 October 2010) (Written Observations, Annex 13).

<sup>28</sup> Joint Communiqué (12 March 2011) (Written Observations, Annex 14).

<sup>29</sup> *Ibid.*

<sup>30</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, ICJ Reports 2019, para. 132.

and Mauritius.<sup>31</sup> The UN General Assembly, by an overwhelming majority, rejected that claim by the United Kingdom and adopted the resolution.<sup>32</sup>

2.19 The Court provided its response to the two questions in its Advisory Opinion of 25 February 2019. In so doing, the Court considered and rejected the United Kingdom's argument that it should not exercise jurisdiction because the matter allegedly concerned a bilateral dispute over sovereignty between the United Kingdom and Mauritius. The Court dismissed this argument on the basis that:

the questions put to it by the General Assembly relate to the decolonization of Mauritius. The General Assembly has not sought the Court's opinion to resolve a territorial dispute between two States. Rather, the purpose of the request is for the General Assembly to receive the Court's assistance so that it may be guided in the discharge of its functions relating to the decolonization of Mauritius.<sup>33</sup>

2.20 The Court went on to observe that "the General Assembly has a long and consistent record in seeking to bring colonialism to an end,"<sup>34</sup> and that "the opinion has been requested on the matter of decolonization which is of particular concern to the United Nations. The issues raised by the request are located in the broader frame of reference of decolonization, including the General Assembly's role therein, from which those issues are inseparable."<sup>35</sup> It concluded that "the fact that the Court may have to pronounce on legal issues on which divergent views by have been expressed ... does not mean that, by replying to the request, the Court is dealing with a bilateral dispute."<sup>36</sup> Accordingly, the Court concluded that it could not decline to exercise its discretion to provide the opinion sought by the General Assembly.<sup>37</sup> In proceeding in this way, the Court made clear that the issue of decolonisation took precedence over, and trumped, the approach on which the United Kingdom's view was premised.

2.21 The Court proceeded fully and comprehensively to address the two questions submitted by the General Assembly. It began by considering the international legal obligations that applied to the United Kingdom as an administering Power at the time of the purported detachment in 1965, at the moment of Mauritius' attainment of independence in 1968, and subsequently. It concluded that application of those international legal obligations admitted of

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<sup>31</sup> United Nations General Assembly, Debate of 22 June 2017, U/N/ Doc. A/71/PV.88 available at <https://undocs.org/en/A/71/PV.88>.

<sup>32</sup> The resolution was adopted by 94 votes to 15, with 65 abstentions. See <https://www.un.org/en/ga/71/resolutions.shtml>.

<sup>33</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, para. 86.

<sup>34</sup> *Ibid.*, para. 87.

<sup>35</sup> *Ibid.*, para. 88.

<sup>36</sup> *Ibid.*, para. 89.

<sup>37</sup> *Ibid.*, para. 90.

no doubt as to the consequence: The Chagos Archipelago is, and has always been, a part of the territory of Mauritius.

2.22 The Court observed:

The adoption of resolution 1514 (XV) of 14 December 1960 represents a defining moment in the consolidation of State practice on decolonization. Prior to that resolution, the General Assembly had affirmed on several occasions the right to self-determination (resolutions 637 (VII) of 16 December 1952, 738 (VIII) of 28 November 1953 and 1188 (XII) of 11 December 1957) and a number of non-self-governing territories had acceded to independence. General Assembly resolution 1514 (XV) clarifies the content and scope of the right to self-determination. The Court notes that the decolonization process accelerated in 1960, with 18 countries, including 17 in Africa, gaining independence. During the 1960s, the peoples of an additional 28 non-self-governing-territories exercised their right to self-determination and achieved independence. In the Court's view, there is a clear relationship between resolution 1514 (XV) and the process of decolonization following its adoption.<sup>38</sup>

The Court then concluded that:

although resolution 1514 (XV) is formally a recommendation, it has a declaratory character with regard to the right to self-determination as a customary norm, in view of its content and the conditions of its adoption. The resolution was adopted by 89 votes with 9 abstentions. None of the States participating in the vote contested the existence of the right of peoples to self-determination. Certain States justified their abstention on the basis of the time required for the implementation of such a right.<sup>39</sup>

2.23 With respect to the content of the law on self-determination and its relationship to territorial integrity, as reflected in Resolution 1514 (XV), the Court rejected the argument that “the customary status of the right to self-determination did not entail an obligation to implement that right within the boundaries of the non-self-governing territory.”<sup>40</sup> In that connection, the Court emphasised that:

the right to self-determination of the people concerned is defined by reference to the entirety of a non-self-governing territory ... Both State practice and *opinio juris* at the relevant time confirm the customary law character of the right to territorial integrity of

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<sup>38</sup> *Ibid.*, para. 150.

<sup>39</sup> *Ibid.*, para. 152.

<sup>40</sup> *Ibid.*, para. 159.



a non-self-governing territory as a corollary of the right to self-determination. No example has been brought to the attention of the Court in which, following the adoption of resolution 1514 (XV), the General Assembly or any other organ of the United Nations has considered as lawful the detachment by the administering Power of part of a non-self-governing territory, for the purpose of maintaining it under its colonial rule. States have consistently emphasized that respect for the territorial integrity of a non-self-governing territory is a key element of the exercise of the right to self-determination under international law. The Court considers that the peoples of non-self-governing territories are entitled to exercise their right to self-determination in relation to their territory as a whole, the integrity of which must be respected by the administering Power.<sup>41</sup>

2.24 In light of these legal obligations, the Court stated: “It follows that any detachment by the administering Power of part of a non-self-governing territory, unless based on the freely expressed and genuine will of the people of the territory concerned, is contrary to the right to self-determination.”<sup>42</sup>

2.25 The Court applied these rules to the United Kingdom’s purported detachment, concluding that the Chagos Archipelago was “clearly an integral part” of Mauritius.<sup>43</sup> The word “clearly” indicates that the Court had no difficulty reaching that conclusion. Indeed, no judge expressed a contrary view or suggested that a contrary view was even arguable. The United Kingdom’s position found no support at the Court.

2.26 The Court also held, again without a single dissenting vote on the substance, that the United Kingdom’s detachment of the Archipelago “was not based on the free and genuine expression of the will of the people concerned,”<sup>44</sup> and was therefore “unlawful.”<sup>45</sup> As a consequence, “the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.”<sup>46</sup>

2.27 The Court then addressed the second of the two questions put to it by the General Assembly, regarding the consequences under international law of the United Kingdom’s continued administration of the Chagos Archipelago. It concluded that, “having found that the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the United Kingdom’s continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State.”<sup>47</sup> The Court emphasised that the United Kingdom’s continued administration “is an

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<sup>41</sup> *Ibid.*, para. 160.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*, para. 170.

<sup>44</sup> *Ibid.*, para. 172.

<sup>45</sup> *Ibid.*, para. 174.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*, para. 177.

unlawful act of a continuing character” and that this condition of wrongfulness “arose as a result of the separation of the Chagos Archipelago from Mauritius.”<sup>48</sup>

2.28 Applying the law of state responsibility, the Court further held that “the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.”<sup>49</sup> Again, not a single judge expressed a contrary view. Self-evidently, a State that has no right to administer a territory has no sovereignty or other legal rights in relation to that territory. It certainly has no right to delimit a maritime boundary that relates to that territory.

2.29 The Court then went on to spell out the obligations of third States under international law. It held that: “[s]ince respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right,”<sup>50</sup> and all Member States of the United Nations “must co-operate with the United Nations to complete the decolonization of Mauritius.”<sup>51</sup> The words “all States” obviously includes the Maldives.

2.30 On 22 May 2019, the General Assembly adopted Resolution 73/295. The Resolution welcomed the Advisory Opinion and observed that “respect for the Court and its functions, including in the exercise of its advisory jurisdiction, is essential to international law and justice and to an international order based on the rule of law.”<sup>52</sup>

2.31 The resolution affirmed, *inter alia*, that “in accordance with the advisory opinion of the Court:”

- “Because the detachment of the Chagos Archipelago was not based on the free and genuine expression of the will of the people of Mauritius, the decolonization of Mauritius has not been lawfully completed;”
- “The Chagos Archipelago forms an integral part of the territory of Mauritius;”
- “Since the decolonization of Mauritius was not conducted in a manner consistent with the right of peoples to self-determination, it follows that the continued administration of the Chagos Archipelago by the United Kingdom of Great Britain and Northern Ireland constitutes a wrongful act entailing the international responsibility of that State;” and
- “Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right and all Member States are

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<sup>48</sup> *Ibid.*

<sup>49</sup> *Ibid.*, para. 178.

<sup>50</sup> *Ibid.*, para. 180.

<sup>51</sup> *Ibid.*, para. 182.

<sup>52</sup> United Nations General Assembly, Resolution 73/295, *Advisory Opinion of the International Court of Justice on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, U.N. Doc. A/RES/73/295 (24 May 2019), preamble & para. 1 (Preliminary Objections, Annex 19).

under an obligation to cooperate with the United Nations in order to complete the decolonization of Mauritius.”<sup>53</sup>

2.32 The General Assembly “demand[ed]” that the United Kingdom “withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than six months from the adoption of the present resolution, thereby enabling Mauritius to complete the decolonization of its territory as rapidly as possible.”<sup>54</sup> The Resolution also “call[ed] upon” all Member States to “refrain from any action that will impede or delay the completion of the process of decolonization of Mauritius in accordance with the advisory opinion of the International Court of Justice and the present resolution.”<sup>55</sup>

2.33 The General Assembly further called upon the United Nations and its specialised agencies, as well as all other international, regional and intergovernmental organisations, including those established by treaty, to “recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the ‘British Indian Ocean Territory.’”<sup>56</sup>

2.34 The Resolution was adopted with 116 votes in favour, and only six votes against. The Maldives cast one of the six negative votes, with the United Kingdom.<sup>57</sup>

2.35 Notwithstanding the Court’s holding that the United Kingdom must end its administration of the Chagos Archipelago as rapidly as possible, and the UN General Assembly’s demand that this be accomplished within six months (*i.e.*, by no later than 22 November 2019), the United Kingdom has refused to cease its internationally wrongful conduct. Its unlawful colonial administration of the Chagos Archipelago, in violation of Mauritius’ sovereignty, continues. By its Preliminary Objections in these proceedings, the Maldives flouts both the ICJ’s Advisory Opinion and the General Assembly’s Resolution by seeking to aid and abet the United Kingdom’s continuing wrongful conduct.

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<sup>53</sup> *Ibid.*, para. 2(a-e).

<sup>54</sup> *Ibid.*, para. 3.

<sup>55</sup> *Ibid.*, para. 5.

<sup>56</sup> *Ibid.*, paras. 6-7.

<sup>57</sup> Australia, Hungary, Israel, the United Kingdom and the United States also voted against the Resolution.

### **CHAPTER 3**

## **THE SPECIAL CHAMBER SHOULD DISMISS THE MALDIVES' PRELIMINARY OBJECTIONS**

3.1 The Maldives asserts that the Special Chamber should decline to exercise jurisdiction for five reasons:

- a. delimiting the Parties' maritime boundary would require the Special Chamber to decide whether Mauritius has sovereignty over the Chagos Archipelago;
- b. the United Kingdom is an indispensable party to these proceedings;
- c. there is no dispute between Mauritius and the Maldives concerning maritime boundary delimitation;
- d. Mauritius has not fulfilled the "procedural precondition" of negotiating with the Maldives prior to commencing these proceedings; and
- e. the institution of these proceedings is an abuse of process.

3.2 For the reasons set out below, none of these objections has any merit.

#### **I. The Special Chamber Is Not Called Upon To Decide a Dispute Over Territorial Sovereignty**

3.3 The Maldives argues that "[d]etermining whether Mauritius is currently the State with the 'opposite or adjacent coast' to the Maldives would inevitably require this Tribunal to determine (either expressly or implicitly) the dispute between Mauritius and the United Kingdom regarding sovereignty over the Chagos Archipelago."<sup>58</sup> It contends that the Special Chamber has "no jurisdiction to determine such a disputed issue of sovereignty"<sup>59</sup> because a "dispute over territorial sovereignty is not a dispute 'concerning the interpretation or application' of UNCLOS."<sup>60</sup>

3.4 The Maldives' jurisdictional objection rests on a single premise: that the issue of sovereignty over the Chagos Archipelago is unresolved and is in dispute under international law.<sup>61</sup> In order to make this claim, the Maldives is required to argue that the Court's Advisory Opinion is either wrong or that it has no authority or effect. According to the Maldives, the Advisory Opinion leaves untouched what it refers to as the "bilateral sovereignty dispute" between Mauritius and the United Kingdom. This is said to be for two reasons. First, according to the Maldives, the Advisory Opinion did not resolve the sovereignty dispute, which was an issue that was not before the General Assembly when it requested the Advisory Opinion.<sup>62</sup> Second, the Maldives asserts that the Advisory Opinion is not binding and cannot therefore

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<sup>58</sup> Preliminary Objections, para. 33.

<sup>59</sup> *Ibid.*, para. 59.

<sup>60</sup> *Ibid.*, Section II(B).

<sup>61</sup> *Ibid.*, paras. 8-12.

<sup>62</sup> *Ibid.*, para. 14.

generate any binding legal consequences for the United Kingdom, or extinguish or otherwise affect its supposed claim to sovereignty over the Chagos Archipelago.<sup>63</sup>

3.5 These arguments are wholly misconceived and simply rehash arguments that the United Kingdom put to the ICJ, which the Court roundly rejected. In those proceedings, Mauritius invoked the *Western Sahara* Advisory Opinion in which the Court rejected the argument put forward by some States taking part in those proceedings that it should decline to provide the requested opinion because the request was said to concern a “bilateral dispute” over territorial sovereignty. In that proceeding, the Court determined that it should issue an opinion because the request fundamentally raised a question of decolonisation, and the matter of sovereignty was subsumed within and incidental to that question.<sup>64</sup> Similarly, the matter referred to the ICJ by the General Assembly in relation to the Chagos Archipelago concerned decolonisation, and this was the fundamental question to address because once the lawfulness of decolonisation is determined, the question of territorial sovereignty no longer arises.

3.6 By addressing the question of decolonisation as it did, the Court thus disposed of any question as to territorial sovereignty over the Chagos Archipelago, leaving no doubt that Mauritius alone is sovereign over that territory. The Court even went so far as to hold that “the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago, as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its territory.”<sup>65</sup> The fact that the United Kingdom, in defiance of the Court’s ruling, is attempting to maintain a claim to sovereignty over the Chagos Archipelago does not mean that that claim is plausible or even arguable. As a matter of law, the United Kingdom can no more claim it has sovereignty over the Chagos Archipelago than over any other part of Mauritius.

#### **B. In Light of the ICJ Advisory Opinion There Is No Issue of Sovereignty Over the Chagos Archipelago**

3.7 The Maldives asserts that the Advisory Opinion “did not, and could not, resolve the bilateral sovereignty dispute between Mauritius and the United Kingdom; it did not make a determination that Mauritius or the United Kingdom currently has sovereignty over the Chagos Archipelago.”<sup>66</sup> In support of this argument, the Maldives refers to the passage of the Opinion where the Court notes that the General Assembly “did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius.”<sup>67</sup>

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<sup>63</sup> *Ibid.*, paras. 18-19.

<sup>64</sup> Mauritius cited, in particular, Judge Gros’ statement that “[i]l n’y a pas de différend bilatéral détachable du débat sur la décolonisation aux Nations Unies.” *Western Sahara*, Advisory Opinion of 16 October 1975, Declaration of Judge Gros, p. 69, at para. 2.

<sup>65</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, of 25 February 2019, para. 178.

<sup>66</sup> Preliminary Objections, para. 14.

<sup>67</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, of 25 February 2019, para. 136.

3.8 Far from supporting the Maldives' argument, this language defeats it. This – and other passages of the Opinion to the same effect<sup>68</sup> – are, first and foremost, a repudiation of the argument put forward by the United Kingdom urging the Court to exercise its discretion and decline to provide the opinion requested by the General Assembly. According to that argument, accepting the General Assembly's request would amount to circumventing the requirement of consent of the States concerned to the submission of a bilateral dispute to judicial settlement.<sup>69</sup>

3.9 The Court made clear that this was not the case, and that the questions presented by the General Assembly did not concern a bilateral territorial dispute, since “[t]he issues raised by the request are located in the broader frame of reference of decolonization, including the General Assembly's role therein, from which those issues are inseparable.”<sup>70</sup> On that basis, the Court concluded that “[t]he General Assembly has not sought the Court's opinion to resolve a territorial dispute between two States.”<sup>71</sup> Rather, the Court found, it was requested by the General Assembly to give an Advisory Opinion on the lawfulness of the decolonisation of Mauritius.<sup>72</sup>

3.10 In response to the first question put to it by the General Assembly, the Court thus expressed the opinion that “having regard to international law, the process of decolonization of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago.”<sup>73</sup> And, in response to the second question, it expressed the opinion that “the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.”<sup>74</sup>

3.11 The consequences of these pronouncements for the issue of sovereignty over the Chagos Archipelago are inescapable. If decolonisation of Mauritius was not lawfully completed because of the United Kingdom's unlawful detachment and retention of the Chagos Archipelago, and if the ongoing colonial administration by the United Kingdom is an internationally wrongful act, entailing the international responsibility of the United Kingdom, as the Court concluded, then it follows inexorably that the United Kingdom has no lawful claim to sovereignty over the Archipelago. As the Court found on the basis of its examination of the historical evidence: “at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory.”<sup>75</sup> The United Kingdom's detachment of the Archipelago from the rest of Mauritius was thus “unlawful,” the

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<sup>68</sup> *Ibid.*, paras. 86, 89.

<sup>69</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Written Statement of the United Kingdom, para. 1.3; Written Statement of the United States, paras. 3.3-3.4; Written Statement of Australia, paras. 35-36; Written Statement of Israel, para. 1.4.

<sup>70</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, para. 88.

<sup>71</sup> *Ibid.*, para. 86.

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, para. 183(3).

<sup>74</sup> *Ibid.*, para. 183(4).

<sup>75</sup> *Ibid.*, para. 170.

Court ruled, because it was done without the “free and genuine expression of the will of the people concerned.”<sup>76</sup>

3.12 The Maldives refuses to see these passages of the Opinion as determinative of the issue of sovereignty. The Court, it argues, only found that the Chagos Archipelago was a part of Mauritius at the time of the detachment, but “[i]t did not state that the archipelago forms an integral part of the territory of Mauritius today; that issue is at the heart of the current dispute over sovereignty between the United Kingdom and Mauritius.”<sup>77</sup>

3.13 This assertion is illogical and casuistic. The Maldives fails to explain how the United Kingdom could possibly be seen to have an arguable claim to sovereignty over the Chagos Archipelago in light of the Advisory Opinion that concludes, as a matter of international law, that the Archipelago is, and always has been, an integral part of the territory of Mauritius, and that the United Kingdom’s continued colonial administration of that territory is – at the present day, as much as in previous decades – unlawful under international law, and must be terminated as rapidly as possible. Plainly, such conclusions admit of no possibility that the United Kingdom could have a valid sovereignty claim over the very territory that forms part of Mauritius and that international law requires it to stop administering at the earliest possible date.

3.14 And, it could hardly be otherwise. Recognising even the plausibility of the United Kingdom’s claim of sovereignty over the Chagos Archipelago as a result of its wrongful detachment from Mauritius would transgress the general principle of international law of *ex injuria non oritur jus*, according to which “States cannot profit from their own wrong” and “rights and benefits cannot be derived from wrong-doing.”<sup>78</sup>

3.15 Indeed, the Court itself characterised the Chagos Archipelago as belonging to Mauritius today. When describing the legal consequences of the United Kingdom’s continued administration of the Archipelago, the Court declared that the United Kingdom is obligated to “bring an end to its administration” so as to enable “Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination.”<sup>79</sup> Similarly, the Court used the present tense when holding that the “obligations arising under international law and reflected in the resolutions adopted by the General Assembly during the process of decolonization of Mauritius require the United Kingdom, as the administering Power, to respect the territorial integrity of that country [*i.e.*, Mauritius] including the Chagos Archipelago.”<sup>80</sup> The words admit of only a single interpretation: the International Court of Justice, the principal judicial organ of the United Nations, concluded that the Chagos Archipelago is an integral part of the territory of Mauritius, and that Mauritius alone is sovereign over all of its territory, including the Chagos Archipelago.

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<sup>76</sup> *Ibid.*, para. 172.

<sup>77</sup> Preliminary Objections, para. 24.

<sup>78</sup> G. Fitzmaurice, *The General Principles of International Law Considered from the Standpoint of the Rule of Law*, 92 RECUEIL DES COURS (1957), p. 117.

<sup>79</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, para. 178 (emphasis added).

<sup>80</sup> *Ibid.*, para. 173 (emphasis added).

3.16 The Advisory Opinion was communicated to the General Assembly. Its members received the Advisory Opinion and reaffirmed, by an overwhelming majority, that “[t]he Chagos Archipelago forms an integral part of the territory of Mauritius.”<sup>81</sup> There can be no doubt that the issue of sovereignty over the Chagos Archipelago has been disposed of by the Court in its Advisory Opinion, the conclusions of which carry legal consequences for all UN Member States and international institutions. The fact that the United Kingdom, for political reasons, chooses to continue to make claims that have no basis in international law, and that the Maldives, for political reasons of its own, has decided to ignore its *erga omnes* obligations under the ICJ’s Advisory Opinion and the General Assembly’s Resolution, cannot bar the Special Chamber from exercising its jurisdiction in these proceedings.

### **C. The Advisory Opinion’s Conclusions Carry Legal Consequences for All UN Member States and International Institutions**

3.17 The Maldives parrots the United Kingdom’s view, according to which the Court’s Advisory Opinion could not affect the United Kingdom’s absence of doubts about its sovereignty over the Chagos Archipelago in light of the fact that advisory opinions are not, as such, binding on Member States of the United Nations.<sup>82</sup> This is seen by the Maldives as evidence that “[t]he matter plainly remains in dispute as between Mauritius and the United Kingdom,”<sup>83</sup> even if the Advisory Opinion could be considered as being dispositive of the issue of sovereignty over the Archipelago. But such a narrow conception of the authority of the ICJ’s advisory opinions is indefensible in light of legal reality and practice.

3.18 It is, of course, beyond dispute that advisory opinions are not as such directly binding on Member States. As the Court expressed in one of its earlier opinions, “[t]he Court’s reply is only of an advisory character: as such, it has no binding force.”<sup>84</sup>

3.19 This does not mean, however, that an advisory opinion is devoid of legal effects. When the Court gives an advisory opinion, it provides an authoritative statement of the law in relation to the issues to which the advisory proceedings give rise. In the words of Rosenne, “the substantive problems of the post-adjudicative phase of an advisory case are not dissimilar to those of the post-adjudicative phase of a contentious case. *In both instances the Court has declared the law.*”<sup>85</sup>

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<sup>81</sup> United Nations General Assembly, Resolution 73/295, *Advisory Opinion of the International Court of Justice on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, U.N. Doc. A/RES/73/295 (24 May 2019), para. 2(b) (Preliminary Objections, Annex 19).

<sup>82</sup> See Preliminary Objections, paras. 19, 27.

<sup>83</sup> *Ibid.*, para. 20.

<sup>84</sup> *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion of 30 March 1950, ICJ Reports 1950, p. 65, at p. 71.

<sup>85</sup> S. Rosenne, *THE INTERNATIONAL COURT OF JUSTICE. AN ESSAY IN POLITICAL AND LEGAL THEORY* (1961), p. 493 (emphasis added). See also e.g. P. Daillier, M. Forteau & A. Pellet, *DROIT INTERNATIONAL PUBLIC* (2009), p. 1010 (noting that advisory opinions “*contiennent au surplus l’une des composantes de tout acte juridictionnel, à savoir la constatation du droit en vigueur*”); E. David, *DROIT DES ORGANISATIONS INTERNATIONALES* (2016), at p. 119 (when it gives an advisory opinion, “la Cour dit le droit”).



3.20 In regard to the weight to be given to such declarations of the law, the same distinguished author observes that “[t]he fact that the advisory opinion has no binding force ... nevertheless does not confer upon the statement of law contained in an advisory opinion characteristics any different from those of the statement of law contained in a judgment.”<sup>86</sup> And, it is precisely for that reason that the pronouncements made by the Court in advisory opinions are considered on an equal footing with those made in judgments as integral components of the Court’s jurisprudence.<sup>87</sup>

3.21 Because the ICJ is the principal judicial organ of the United Nations, the statements of law made in advisory opinions are considered authoritative.<sup>88</sup> In his latest speech to the UN General Assembly, the current President of the Court himself referred to the “continued relevance of the Court’s advisory procedure, which enables the Court to provide authoritative pronouncements on complex legal issues arising in the context of the work of the main organs and institutions of the United Nations system.”<sup>89</sup>

3.22 As Sir Arthur Watts expressed in a commentary on the 2004 *Wall* Advisory Opinion, the Opinion “was more than just a restatement of pre-existing positions adopted by the political organs of the UN: It was a legally reasoned exposition, lending the full weight of the UN’s ‘principal judicial organ’ to propositions which hitherto had been grounded almost as much in politics as in law.”<sup>90</sup> In another commentary on the *Wall* Opinion, Professor Dugard notes that “[w]hile not bound by the Opinion itself, Israel and States are nonetheless bound by the obligations upon which it relies. The Opinion has simply elucidated and confirmed their obligations.”<sup>91</sup> The same is true for the United Kingdom and other States in relation to the Advisory Opinion concerning the Chagos Archipelago.

3.23 For the same reasons, legal determinations made by the ICJ in its advisory opinions are accepted as binding and dispositive statements of the law by other international courts and

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<sup>86</sup> S. Rosenne, *THE INTERNATIONAL COURT OF JUSTICE. AN ESSAY IN POLITICAL AND LEGAL THEORY* (1961), p. 113.

<sup>87</sup> See e.g., I. Hussain, *DISSENTING AND SEPARATE OPINIONS AT THE WORLD COURT* (1984), p. 38; B. Raïs Monji, *Le règlement judiciaire des différends internationaux*, in *RÈGLEMENT PACIFIQUE DES DIFFÉRENDS INTERNATIONAUX* (Horchani, ed., 2002), p. 370; see also P. Daillier, M. Forteau & A. Pellet, *DROIT INTERNATIONAL PUBLIC* (2009), p. 1010; A. Peeters, *Has the Advisory Opinion’s Finding that Kosovo’s Declaration of Independence was not Contrary to International Law Set an Unfortunate Precedent?* in *THE LAW AND POLITICS OF THE KOSOVO ADVISORY OPINION* (M. Milanovic & M. Wood eds., 2015), p. 296.

<sup>88</sup> See e.g., S. Rosenne, *THE WORLD COURT: WHAT IT IS AND HOW IT WORKS* (1989), p. 106; E. Valencia-Ospina, *The Use of Chambers at the International Court of Justice*, in *FIFTY YEARS OF THE INTERNATIONAL COURT OF JUSTICE* (V. Lowe and M. Fitzmaurice eds., 1996), p. 503, at p. 525 (quoting the then President of the Court, Sir Robert Jennings); A. Remiro-Brotons, *et al.*, *DERECHO INTERNACIONAL* (2007), p. 623; R. Falk, *The Kosovo Advisory Opinion: Conflict Resolution and Precedent*, 105 *AJIL* (2011) 1, p. 52.

<sup>89</sup> Speech by H.E. Mr. Abdulqawi A. Yusuf, President of the International Court of Justice, on the occasion of the seventy-fourth session of the United Nations General Assembly (30 October 2019), pp. 10-11, available at <https://www.icj-cij.org/files/press-releases/0/000-20191030-STA-01-00-BI.pdf>.

<sup>90</sup> Sir A. Watts & R. Jorritsma, *Israeli Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)*, *Max Planck Encyclopedias of International Law* (2019), para. 44.

<sup>91</sup> J. Dugard, *Advisory Opinions and the Secretary General with Special Reference to the 2004 Advisory Opinion on the Wall* in *INTERNATIONAL LAW AND THE QUEST FOR IMPLEMENTATION/LE DROIT INTERNATIONAL ET LA QUÊTE DE SA MISE EN OEUVRE* (L. Boisson de Chazournes & M. Kohen eds., 2010), p. 403, at 410.

tribunals. For example, in *Council of the European Union v. Front Polisario*, (Case C-104/16P), the Court of Justice of the European Union (“CJEU”) had to determine whether the Association Agreement between the EU and Morocco Concerning Liberalisation of Reciprocal Trade in Agricultural and Fishery Products applies to Western Sahara. The CJEU determined that the Agreement does not apply to Western Sahara, despite Morocco’s claim that Western Sahara is an integral part of its territory. In reaching this conclusion, the CJEU accepted as conclusive as a matter of international law the ICJ’s determination, in its Advisory Opinion in the *Western Sahara* case, that “the population of [Western Sahara] enjoyed the right to self-determination under general international law,”<sup>92</sup> and that:

in view of the separate and distinct status accorded to the territory of Western Sahara by virtue of the principle of self-determination, in relation to that of any State, including the Kingdom of Morocco, the words ‘territory of the Kingdom of Morocco’ set out in Article 94 of the Association Agreement cannot ... be interpreted in such a way that Western Sahara is included within the territorial scope of that agreement.<sup>93</sup>

3.24 The same approach was taken by the CJEU in *Organisation juive européenne & Vignoble Psagot Ltd v. Ministre de l’Economie et des Finances*, (Case C-363/18). There, the CJEU applied the factual and legal findings of the ICJ in the *Wall* case, upholding the right of self-determination of the people living in territory occupied by Israel in violation of international law. The case involved a challenge to a European regulation requiring that food products from Israeli settlements in the occupied areas be labelled as such, rather than being labelled as originating in Israel. The Court upheld the regulation on the ground that, as an institution of the European Union, it was bound to observe international law, and therefore obligated to apply the legal principles set out by the ICJ, including in its advisory opinions, especially when these included *erga omnes* norms such as the right of self-determination.<sup>94</sup>

3.25 Accordingly, even though the advisory opinions in the *Western Sahara* and *Wall* cases were not binding as such on Morocco or Israel, all States, including Morocco and Israel, were bound by the rules of international law identified and applied by the Court. The present case – which also concerns the right of self-determination – is no different. Indeed, the same principles of self-determination, and their *erga omnes* character, that were the foundation of the Court’s rulings in the *Western Sahara* and *Wall* cases, underlie the Advisory Opinion concerning the Chagos Archipelago.

3.26 In such circumstances, the Maldives cannot hide behind fallacious assertions by the United Kingdom that, contrary to the Advisory Opinion, it has “no doubt” about its sovereignty over the Chagos Archipelago. This gives more weight to a defiant political statement by a recalcitrant State than to the Court’s authoritative legal determination of the issue. The

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<sup>92</sup> *Council of the European Union v. Front Polisario*, CJEU Case C-104/16P, Judgement (21 December 2016), paras. 104-105.

<sup>93</sup> *Ibid.*, para. 92.

<sup>94</sup> *Organisation juive européenne & Vignoble Psagot Ltd v. Ministre de l’Economie et des Finances*, CJEU Case C-363/18, Judgement (12 November 2019), paras. 35, 48, 56-58.

untenable nature of such a position was highlighted by Judge Nagendra Singh, a former President of the Court:

[t]he findings of law contained in such [advisory] opinions have of course the authority and prestige of the Court behind them to the same extent as a judgment, and the State which chooses to contravene what has been defined by the Court as a rule of law in an advisory opinion will find it difficult to claim that it is not in breach of international law.<sup>95</sup>

3.27 The Court's Advisory Opinion on the legal status of the Chagos Archipelago is as dispositive on the issue of sovereignty as its 1971 Advisory Opinion in relation to South West Africa.<sup>96</sup> The UN Council for South-West Africa had been established in 1967 by the General Assembly, acting under Article 22 of the UN Charter, in UN General Assembly Resolution 2248 (S-V), with the function of administering the territory until it gained independence from South Africa's unlawful administration. Following the Advisory Opinion, the Council continued to act in pursuance of the powers and duties granted to it by the United Nations, despite the fact that South Africa denied it access to the territory. In its capacity as administering authority, the Council represented Namibia at the international level, participating in the UN General Assembly and Security Council and other UN bodies such as UNCTAD and UNHCR. It participated in the negotiations leading to the adoption of UNCLOS, Article 305(1), which provided that the Convention "shall be open for signature by ... Namibia represented by the United Nations Council for Namibia."<sup>97</sup> This demonstrated the immediate and authoritative legal effect of the ICJ's Advisory Opinion, notwithstanding the protestations of South Africa.<sup>98</sup> The equally hollow protestations of the United Kingdom carry no greater weight in establishing sovereignty over the Chagos Archipelago.

3.28 In essence, the Maldives invites the Special Chamber, by way of its Preliminary Objections, to disregard and effectively overrule the ICJ's authoritative determination that the United Kingdom has no lawful basis to claim sovereignty or sovereign rights in regard to the Chagos Archipelago. Mauritius respectfully submits that there is no tenable basis for the Special Chamber to place itself in direct opposition to the ICJ and the UN General Assembly.

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<sup>95</sup> N. Singh, *THE ROLE AND RECORD OF THE INTERNATIONAL COURT OF JUSTICE* (1989), p. 26.

<sup>96</sup> See *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276*, Advisory Opinion of 21 June 1971, p. 16, at para. 133.

<sup>97</sup> For a detailed account of the Council's work following the 1971 Advisory Opinion, see K. Arts, *The Legal Status and Functioning of the United Nations Council for Namibia*, 2 *LEIDEN JOURNAL INTERNATIONAL LAW* 194 (1989).

<sup>98</sup> Writing in 1985, Dugard referred to South Africa's "refusal to accept the obvious," observing that "[s]ince 1971, when the International Court of Justice held in its Advisory Opinion on Namibia that South Africa is in illegal occupation of Namibia ... the South African government's propaganda machine has waged a relentless campaign, both at home and abroad, to show either that the court did not make such a finding or that, if it did, it was wrong and biased." John Dugard, *The Mandate for South Africa Revisited*, 1(2) *SOUTH AFRICAN JOURNAL ON HUMAN RIGHTS* 154 (1985).

## II. The United Kingdom Is Not an Indispensable Third Party, and Its Absence from the Present Proceedings Does Not Deprive the Special Chamber of Jurisdiction

3.29 The Maldives argues that the *Monetary Gold* principle bars the Special Chamber from exercising jurisdiction over the maritime boundary dispute between the Parties because “it would necessarily be required to rule on the United Kingdom’s legal interests, which would not only be affected, but would form the very subject-matter” of the decision on delimitation.<sup>99</sup>

3.30 Mauritius does not dispute that the *Monetary Gold* principle is “a well-established procedural rule in international judicial proceedings,” which, when applicable, may preclude a court or tribunal from resolving a dispute if doing so would require “the prior determination of ... rights and obligations” of a third State, such that they would “form the subject matter of the decision to be rendered.”<sup>100</sup> However, this principle has no application to the present case.

3.31 The subject-matter of the Special Chamber’s decision does not require it to make a “prior determination of rights and obligations” of the United Kingdom that would “form the subject matter of the decision to be rendered.”<sup>101</sup> That determination has already been made by the ICJ. The subject-matter of the present proceedings is the delimitation of a maritime area adjacent to insular features over which the United Kingdom, as the ICJ has made clear, has no plausible claim of sovereignty or sovereign rights. In these circumstances, for the Special Chamber to treat the United Kingdom as an indispensable party would be to ignore, and effectively overrule, the Advisory Opinion of the ICJ (and General Assembly Resolution 73/295).

3.32 The ICJ’s determination of the legal rights and obligations of a third party is what distinguishes this case from those cited by the Maldives. In *Monetary Gold (Italy v. France, the UK, and the US)*, Italy claimed, *inter alia*, that it had a direct claim to Albanian gold as satisfaction for damage allegedly caused to Italy by Albania’s law of 1945. The Court held that, in order to decide whether Italy was entitled to the Albanian gold, it was necessary to determine whether Albania had committed an internationally wrongful act against Italy by enacting the 1945 law, and whether Albania was under any obligation to pay compensation to Italy. This would require it to decide a dispute between Italy and Albania in circumstances where Albania did not consent to its jurisdiction. Because Albania was not a party to the proceedings, the Court declined jurisdiction.<sup>102</sup> Here, in contrast, the ICJ has already determined that the United Kingdom has no sovereign rights in regard to the Chagos Archipelago and that its colonial administration is a continuing internationally wrongful act which “arose as a result of the separation of the Chagos Archipelago from Mauritius” and which must be ended “as rapidly as possible.”<sup>103</sup> The Special Chamber need make no determination as to the United Kingdom’s

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<sup>99</sup> Preliminary Objections, para. 58.

<sup>100</sup> *The M/V “Norstar” Case (Panama v. Italy)*, Judgment of 4 November 2016, ITLOS Reports 2016, paras. 172-173.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Case of the Monetary Gold Removed from Rome in 1943 (Preliminary Question)*, Judgment of 15 June 1954, ICJ Reports 1954, p. 19, at pp. 32-33.

<sup>103</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, paras. 177-178.

putative rights in respect of the Chagos Archipelago, because it has already been determined to have none by the ICJ.

3.33 It is equally wrong for the Maldives to argue that “[t]he legal situation in the present case is strikingly similar to the *East Timor* case.”<sup>104</sup> It is not. In that case, Portugal brought a claim against Australia seeking, *inter alia*, to challenge an agreement on the delimitation of the continental shelf in the Timor Gap that Australia had concluded with Indonesia at the time when East Timor was under Indonesian occupation. Because Indonesia was not a party to the proceedings, the Court refused to exercise jurisdiction over the dispute. The Court held that it “would necessarily have to rule upon the lawfulness of Indonesia’s conduct as a prerequisite for deciding on Portugal’s contention that Australia [by concluding the agreement with Indonesia] violated its obligations to respect Portugal’s status as an administering power, East Timor’s status as a non-self-governing territory and the right of the people of the Territory to self-determination.”<sup>105</sup> Here, by contrast, the Special Chamber is not called upon to rule on the lawfulness of the United Kingdom’s actions or claims, as the ICJ has already determined that the United Kingdom’s past and ongoing conduct is unlawful, that it has no rights as a sovereign over the Chagos Archipelago, and that it is under an international legal obligation to bring to an end to its illegal administration as rapidly as possible. There was no such equivalent determination in the *East Timor* case.

3.34 Putting it another way, one might ask the question: What rights of the United Kingdom would be affected by any judgment of the Special Chamber to delimit the maritime boundary as between Mauritius and Maldives? In light of the Advisory Opinion and General Assembly Resolution 73/295, the answer is clear and simple: none. The contrary view is, in light of the ICJ Advisory Opinion and the UNGA resolution, unarguable as a matter of international law.

### **III. There Is an Unresolved Dispute Concerning the Parties’ Maritime Boundary**

3.35 The Maldives contends that when Mauritius filed its Notification and Statement of Claim on 18 June 2019, it did so in the absence of a dispute between the Parties in respect of the maritime boundary in the EEZ and continental shelf.<sup>106</sup> The objection has no factual or legal support.

3.36 The Maldives offers two arguments, neither of which has any merit. First, it contends that that “there cannot exist any valid dispute as regards maritime delimitation between Mauritius and the Maldives until the dispute between Mauritius and the United Kingdom concerning the sovereignty over the Chagos Archipelago is resolved”<sup>107</sup> “in Mauritius’

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<sup>104</sup> Preliminary Objections, para. 55.

<sup>105</sup> *East Timor (Portugal v. Australia)*, Judgment of 30 June 1995, ICJ Reports 1995, p. 90, at paras. 19, 27, 28, 33.

<sup>106</sup> Preliminary Objections, para. 73.

<sup>107</sup> *Ibid.*, para. 77.

favour,”<sup>108</sup> so that Mauritius “[can] be a party to a maritime delimitation dispute as the relevant coastal State.”<sup>109</sup>

3.37 This is simply another iteration of the Maldives’ erroneous argument that sovereignty over the Chagos Archipelago is uncertain merely because the United Kingdom continues to assert a claim. This gets the Maldives nowhere, because, as set out above, the ICJ has already determined that, under the rules of international law, the Archipelago is – and has always been – an integral part of the territory of Mauritius, such that the United Kingdom has no lawful claim and must terminate its unlawful administration as rapidly as possible.<sup>110</sup>

3.38 Second, the Maldives makes what it calls an “additional and alternative” argument, that “even if the sovereignty dispute did not bar the existence of a valid dispute over maritime delimitation as claimed by Mauritius,” it is “manifest that there was no maritime boundary dispute between [the Parties] at the time that proceedings under Part XV of UNCLOS were initiated.”<sup>111</sup> This is supposedly because there has been no “positive opposition between the Parties regarding their respective maritime boundary claims.”<sup>112</sup>

3.39 The untenable nature of this argument is revealed by the contemporaneous official documents and communications between the Parties that are annexed to these Observations, including official depictions of overlapping boundary claims.

3.40 Mauritius’ 1977 Maritime Zones Act declared a 200-nautical mile EEZ and continental shelf to the outer edge of the continental margin, or 200 nautical miles from its baseline, around the entirety of its territory, including the Chagos Archipelago, as shown in **Figure 1**.<sup>113</sup>

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<sup>108</sup> *Ibid.*, para. 79.

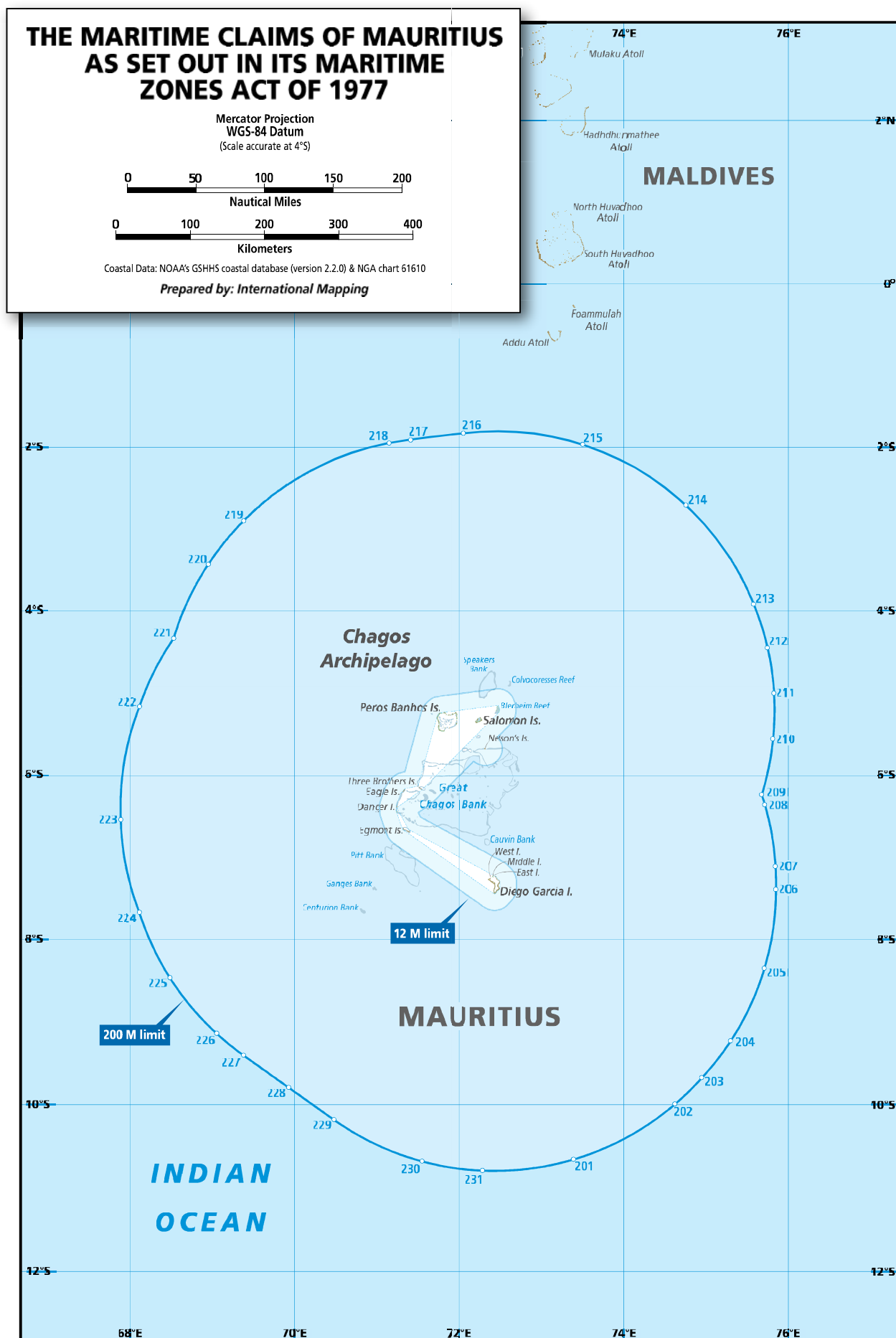
<sup>109</sup> *Ibid.*

<sup>110</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, paras. 173, 177, 178.

<sup>111</sup> Preliminary Objections, para. 80.

<sup>112</sup> *Ibid.*, para. 91.

<sup>113</sup> Maritime Zones Act 1977 (Act No. 13 of 3 June 1977), available at [https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MUS\\_1977\\_Act.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/MUS_1977_Act.pdf).



3.41 By its Maritime Zones Act of 2005, Mauritius reaffirmed its 200-nautical mile EEZ and continental shelf.<sup>114</sup> On 26 July 2006, pursuant to Articles 75(2) and 84(2) of the Convention, Mauritius submitted geographical coordinates to the UN Division for Ocean Affairs and the Law of the Sea, including in regard to the maritime zones generated by the Chagos Archipelago.<sup>115</sup> On 6 May 2009, Mauritius submitted to the UN Commission on the Limits of the Continental Shelf (“CLCS”) Preliminary Information concerning the Extended Continental Shelf in the Chagos Archipelago Region.<sup>116</sup>

3.42 For its part, the Maldives has opposed Mauritius’ claims and asserted its own EEZ and continental shelf claims, as reflected in Maritime Zones of Act No. 6/96. Article 6 of this Act provides that “the maritime area adjacent to and beyond the territorial sea ... together with the seabed thereof up to 200 nautical miles measured from the archipelagic baselines ... shall be the exclusive economic zone of Maldives.”<sup>117</sup> Article 7 of this Act further provides that “in the event that the exclusive economic zone of Maldives as determined under section 6 of this Act overlaps with the exclusive economic zone of another State, this Act does not prohibit the Government of Maldives from entering into an agreement with that State as regards the area of overlapping and delimiting the exclusive economic zone of Maldives for the said area of overlapping.”<sup>118</sup> The maritime claims of the Maldives are depicted in **Figure 2**.

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<sup>114</sup> Maritime Zones of Mauritius Act No. 2 (2005) (Written Observations, Annex 15).

<sup>115</sup> Note Verbale of 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 134 in *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Memorial of the Republic of Mauritius (1 August 2012) available at <https://files.pca-cpa.org/pcadocs/mu-uk/Annexes%20to%20Memorial/MM%20Annexes%2081-177.pdf>).

<sup>116</sup> 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) available at [https://www.un.org/Depts/los/clcs\\_new/submissions\\_files/submission\\_mus\\_36\\_2009.html](https://www.un.org/Depts/los/clcs_new/submissions_files/submission_mus_36_2009.html).

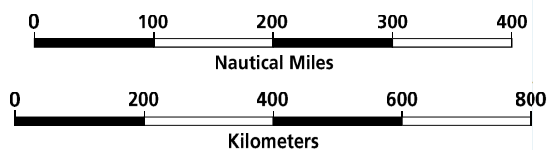
<sup>117</sup> Maritime Zones of Maldives Act No. 6/96, Art. 6 (Written Observations, Annex 16).

<sup>118</sup> *Ibid.*, Art. 7.



# THE MALDIVES' MARITIME CLAIMS AS SET OUT IN ITS LAW No. 6/96 OF 1996

Mercator Projection  
WGS-84 Datum  
(Scale accurate at 3°N)



Coastal Data: NOAA's GSHHS coastal database (version 2.2.0) & NGA chart 61610

Prepared by: International Mapping

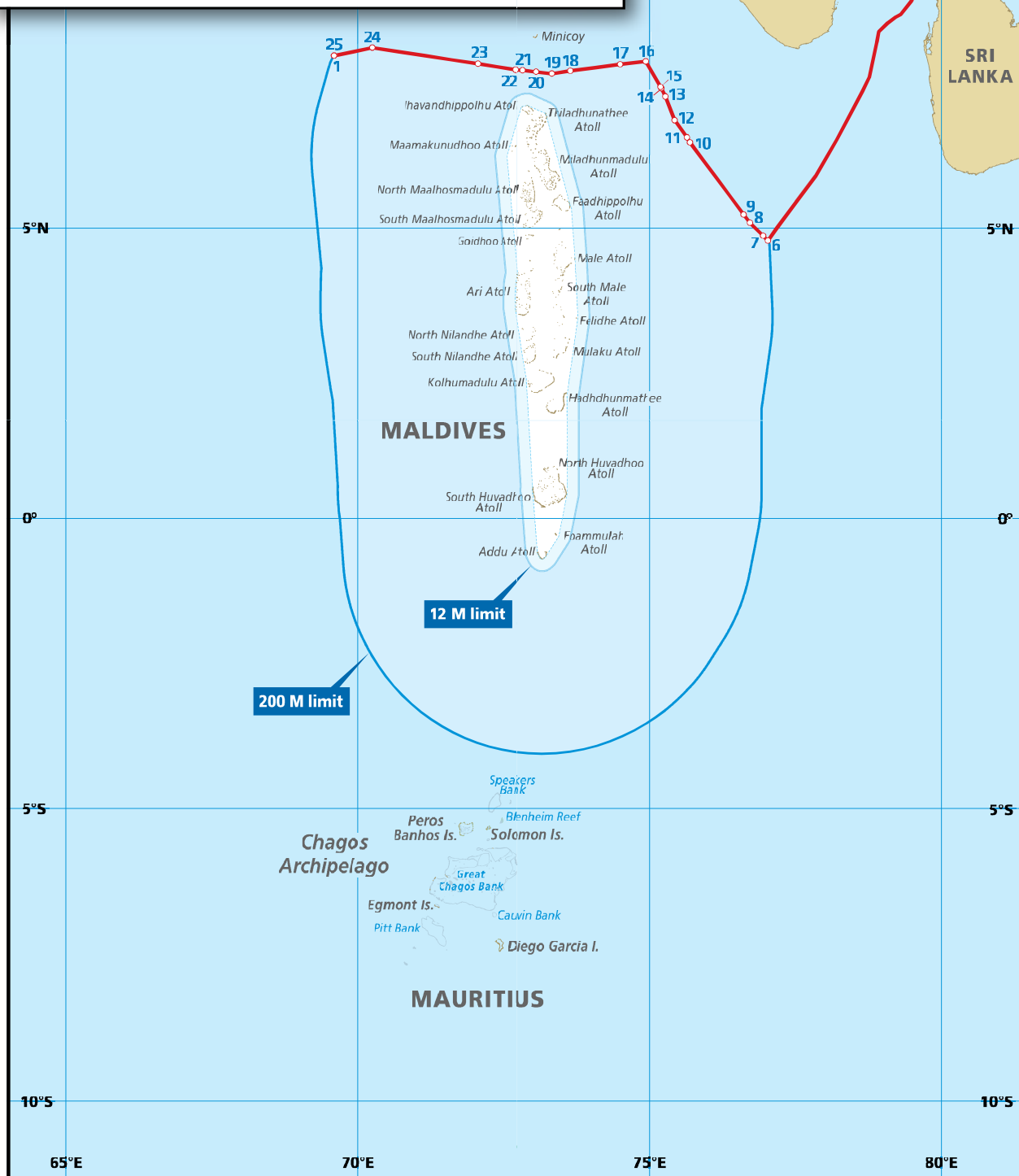


Figure 2

3.43 On 26 July 2010, the Maldives submitted to the CLCS information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.<sup>119</sup> The submission was accompanied by a map, reproduced at **Figure 3**, which, in addition to claiming areas of extended continental shelf, also indicated the areas of the EEZ claimed by the Maldives.

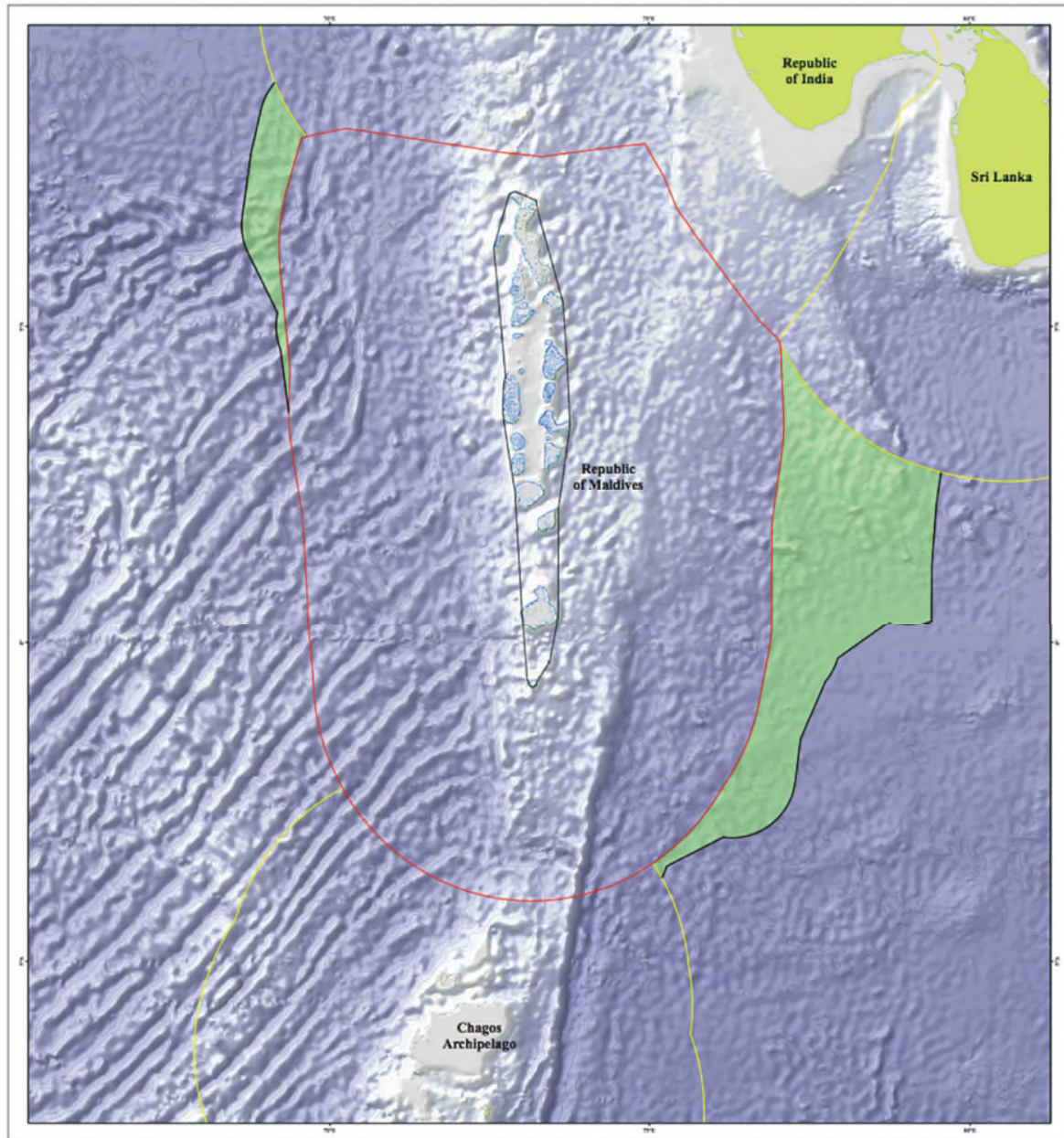
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<sup>119</sup> Submission by the Republic of Maldives to the Commission on the Limits of the Continental Shelf, Executive Summary, Mal-ES-DOC (July 2010) *available at* [https://www.un.org/Depts/los/clcs\\_new/submissions\\_files/mdv53\\_10/MAL-ES-DOC.pdf](https://www.un.org/Depts/los/clcs_new/submissions_files/mdv53_10/MAL-ES-DOC.pdf).

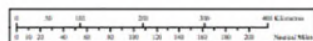
**MAP #1 FROM THE MALDIVE'S  
SUBMISSION TO THE CLCS**



**Republic of Maldives**



**Areas of extended continental shelf submitted by the Republic of Maldives  
to the Commission on the Limits of the Continental Shelf**



Scale 1:1,500,000

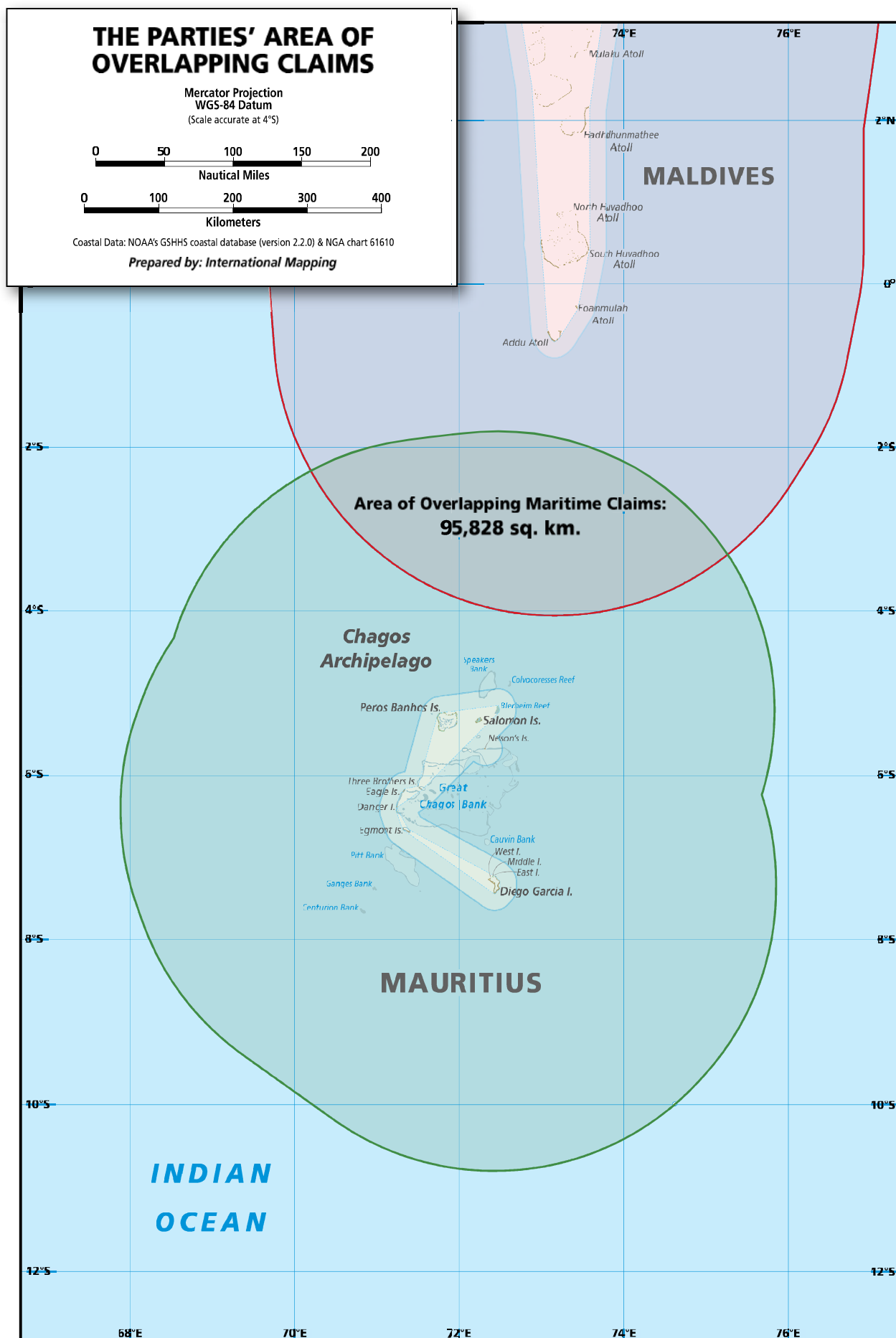
World coordinate projection  
WGS 1984 Datum

1. This map was created using ESRI ArcView 3.2a and Google Earth 4.2 software with spatially correct data submitted to the World Geodetic System 1984 System, datum in Area 43N1237 00000, datum in Area 43N1237 00000, datum in Area 43N1237 00000, datum in Area 43N1237 00000.
2. The independent geodetic surveying is based on the 1993 IERS, a public domain data set obtained from the National Geospatial Intelligence Agency's (NGA) National Geospatial Data Center (NGDC).
3. The area of Republic of Maldives extended continental shelf is depicted by the green shading.
4. Depth of 200M from other than the submitting State is based on the best available data at the time of analysis and should not be taken as a significant discrepancy in endorsement by the Republic of Maldives of the validity or international law of another State's boundaries from which they are drawn.



MAL-ES-MAP 1

3.44 The unbroken red line on the Maldives' map is described in the legend as "Republic of Maldives EEZ." It depicts the extent of the EEZ that the Maldives claims as falling within its exclusive sovereign rights and jurisdiction. The unbroken yellow line illustrates "[o]ther coastal States EEZ." The map shows that the Maldives' claim extends a full 200 M southwards, encroaching to a significant extent into the maritime area claimed by Mauritius and disputing potential maritime entitlements of Mauritius to its EEZ north of the Chagos Archipelago. The extent of the disputed area within 200 M from the baselines from which the breadth of the territorial sea is measured is shown in **Figure 4**.



3.45 On 21 September 2010, Mauritius objected to the maritime claims depicted in the Maldives' submission to the CLCS.<sup>120</sup> Mauritius welcomed the Maldives' proposal to "hold discussions for the delimitation of the exclusive economic zones of the two countries," asserting that "the holding of EEZ delimitations boundary talks are all the more relevant in the light of this submission" in order to resolve the two States' overlapping claims.<sup>121</sup>

3.46 Shortly thereafter, on 21 October 2010, the Parties met to address delimitation of their maritime boundary. The meeting was convened expressly "to discuss a potential overlap of the extended continental shelf and to exchange views on maritime boundary delimitation between the two States."<sup>122</sup> In the course of the meeting, the Maldives confirmed the existence of a dispute over the maritime boundary: It recognised that in its "submission to the CLCS the exclusive economic zone (EEZ) coordinates of the Republic of Mauritius in the Chagos region were not taken into consideration."<sup>123</sup> The Maldives then "assured the Mauritius side that this would be rectified by an addendum to the submission of the Republic of Maldives which would be prepared by the Expert in consultation with the Government of Mauritius."<sup>124</sup> Recognising the existence of overlapping claims, the Maldives further "agreed that both sides will work jointly on the area of the overlap."<sup>125</sup>

3.47 However, despite having recognised the overlap and the dispute to which it gave rise, the Maldives failed to take any further steps to address the situation, notwithstanding its undertakings to do so. The Maldives' conduct caused Mauritius to send a diplomatic note to the United Nations Secretary-General on 24 March 2011. In the note, Mauritius:

protest[ed] 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.<sup>126</sup>

3.48 The matter remained unresolved for the following eight years. On 7 March 2019, following the ICJ's Advisory Opinion of 25 February 2019, and with the objective of resolving its dispute with the Maldives over the course of the maritime boundary in the area adjacent to the Chagos Archipelago, Mauritius again "invit[ed] the Maldives authorities to a second round

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<sup>120</sup> Diplomatic Note from Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to Ministry of Foreign Affairs, Republic of Maldives (21 September 2010) (Written Observations, Annex 12).

<sup>121</sup> *Ibid.*

<sup>122</sup> First Meeting on Maritime Boundary Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius (21 October 2010) (Written Observations, Annex 13).

<sup>123</sup> *Ibid.*

<sup>124</sup> *Ibid.*

<sup>125</sup> *Ibid.*

<sup>126</sup> Diplomatic Note No. 11031/11 from the Permanent Mission of the Republic of Mauritius to the Secretary-General of the United Nations (24 March 2011), p. 2 (Preliminary Objections, Annex 27).

of discussions.”<sup>127</sup> Mauritius requested an early confirmation that the Maldives would participate in the proposed negotiations, which Mauritius suggested could take place in April 2019. The Maldives did not respond. As of the date of these Observations, the Maldives still has not responded.

3.49 Accordingly, the evidence confirms that a dispute in regard to the course of the maritime boundary in the area adjacent to the Chagos Archipelago has existed between the Parties since at least 2010. For ten years this dispute has continued, without resolution. It existed when Mauritius initiated the present proceedings by filing its Notification and Statement of Claim on 18 June 2019. There is no merit to the Maldives’ contention that no such dispute exists.

#### **IV. Because Delimitation Cannot Be Reached By Agreement, Articles 74 and 83 of UNCLOS Mandate the Parties to Resort to the Dispute Settlement Procedures Under Part XV**

3.50 The Maldives argues that the Special Chamber has no jurisdiction because Mauritius has not fulfilled the “mandatory procedural obligation set out in Articles 74 and 83” of UNCLOS since it allegedly failed to negotiate with the Maldives to reach an agreement on the delimitation of the continental shelf and EEZ.<sup>128</sup> This objection is entirely without merit. First, Articles 74 and 83 impose no obligation to negotiate as a jurisdictional precondition to invoking the procedures provided for in Part XV of the Convention. Second, as noted above, in 2010 the Parties *did* commence negotiations to resolve their maritime boundary dispute, but the Maldives unilaterally abandoned them and refused to engage in any further talks on the subject.

##### **A. Articles 74 and 83 Do Not Set Out an Obligation of Negotiations as a Jurisdictional Precondition to Part XV Procedures**

3.51 The Maldives argues that Articles 74 and 83 require negotiations as a procedural precondition for invoking Part XV dispute settlement procedures. That is not the case. Neither of these articles imposes such jurisdictional prerequisites, as the case law makes clear.

3.52 Under UNCLOS, the procedural precondition for the submission of a dispute to a Part XV court or tribunal is found in Article 283.<sup>129</sup> As ITLOS held in *Panama v. Italy*, “when a

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<sup>127</sup> Diplomatic Note No. 08/19 from the Permanent Mission of the Republic of Mauritius to the United Nations to the Permanent Mission of the Republic of Maldives to the United Nations (7 March 2019) (Preliminary Objections, Annex 16).

<sup>128</sup> Preliminary Objections, para. 69. *See also ibid.*, Section 2.III.

<sup>129</sup> UNCLOS, Art. 283, “Obligation to exchange views,” provides:

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.

dispute arises, article 283 of the Convention requires the parties to ‘proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means’.”<sup>130</sup>

3.53 Notably, the Maldives does not argue that Mauritius has failed to meet the requirements of Article 283. Rather, the Maldives seeks to rely on provisions of UNCLOS (Articles 74 and 83) that are located not in Part XV, which governs the settlement of disputes, but in Parts V and VI, which concern States’ substantive obligations in relation to the EEZ and continental shelf. It is telling that courts and tribunals that have exercised jurisdiction under UNCLOS to delimit maritime boundaries have always looked to Article 283 to confirm whether the procedural precondition for exercising jurisdiction is satisfied; they have never found – or even considered – that a separate obligation to negotiate, rather than merely an exchange views, emanating from Articles 74 and 83, must be satisfied before ITLOS or an Annex VII tribunal may exercise jurisdiction.<sup>131</sup>

3.54 The approach of the Maldives is as novel as it is wrong. If Articles 74 and 83 could be read so as to impose prior negotiations as a precondition to the exercise of jurisdiction, then courts and tribunals would have made this clear in previous Part XV cases. None has done so. Moreover, interpreting Articles 74 and 83 in the manner proposed by the Maldives would lead to the absurd result that a State would be obligated to negotiate in regard to delimitation of the EEZ and continental shelf prior to submitting the dispute to a Part XV court or tribunal, but would be under no equivalent obligation before submitting to a court or tribunal a dispute concerning delimitation of the territorial sea, since the text upon which the Maldives relies in Articles 74 and 83 has no analogue in Article 15.

3.55 Articles 74 and 83 plainly do not impose procedural preconditions. Where drafters of a treaty intend negotiations to be a procedural prerequisite for the exercise of jurisdiction, they expressly provide for this in the treaty’s dispute settlement provisions. For example, Article 22 of the Convention on the Elimination of All Forms of Racial Discrimination provides: “Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, *which is not settled by negotiation* or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”<sup>132</sup> Interpreting this provision, the ICJ held that Article 22’s reference to “[a]ny dispute ... which is not settled by negotiation” establishes a “precondition to be fulfilled before the seisin of the Court.”<sup>133</sup>

3.56 By contrast, Articles 74 and 83 do not establish conditions for the exercise of jurisdiction. Rather, they set out two interrelated *substantive* obligations: (1) a State may not unilaterally delimit its EEZ or continental shelf but must do so by agreement with another State;

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<sup>130</sup> *The M/V “Norstar” Case (Panama v. Italy)*, Judgment of 4 November 2016, ITLOS Reports 2016, para. 208, citing *M/V “Louisa” (Saint Vincent and the Grenadines v. Kingdom of Spain)*, Provisional Measures, Order of 23 September 2010, ITLOS Reports 2008-2010, para. 57.

<sup>131</sup> See, e.g., *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*.

<sup>132</sup> Convention on the Elimination of All Forms of Racial Discrimination (1965), Art. 22.

<sup>133</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Provisional Measures, Order of 15 October 2008, para. 114.



and (2) failing to reach such agreement, the States concerned must resort to the procedures provided for in Part XV of the Convention.

3.57 This clearly follows from the text of Articles 74 and 83, as confirmed by their interpretation by international courts and tribunals. The two provisions provide in identical terms:

1. The delimitation of the exclusive economic zone [or continental shelf] between States with opposite or adjacent coasts *shall be effected by agreement on the basis of international law*, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.

2. If no agreement can be reached within a reasonable period of time, the States concerned *shall resort to the procedures* provided for in Part XV.<sup>134</sup>

3.58 It is also confirmed by the ITLOS Special Chamber's Judgment in *Ghana/Côte d'Ivoire*. In that case, Côte d'Ivoire argued *inter alia* that Ghana's "inflexibility in the negotiations" violated its "obligation to negotiate in good faith, as prescribed in article 83, paragraph 1 of [the Convention]."<sup>135</sup> The Special Chamber interpreted and applied Article 83(1) as imposing a *substantive* obligation "to reach an agreement on delimitation," which can be achieved through negotiations conducted in good faith.<sup>136</sup>

3.59 If no agreement on delimitation of the EEZ or continental shelf can be reached within a reasonable period of time as required by paragraph 1 of Articles 74 and 83, then paragraph 2 of those provisions imposes on the States concerned an additional and related obligation: They must "resort to the procedures provided for in Part XV." This obligation complements the obligation under paragraph 1, in that it ensures that, where agreement is not reached, delimitation of the overlapping EEZ or continental shelf entitlements is not established unilaterally but by the peaceful procedures provided for in Part XV.

3.60 In any event, as shown below, before Mauritius commenced these proceedings under Part XV, Mauritius and the Maldives *did* engage in negotiations in regard to the disputed maritime boundary, and failed to reach an agreement.

#### **B. The Parties Engaged in Negotiation of Their Maritime Boundary Dispute, Until the Maldives Unilaterally Abandoned the Talks**

3.61 The Maldives' allegation that no negotiations took place is belied by the diplomatic record. This record confirms that the Parties attempted to delimit by agreement their

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<sup>134</sup> Articles 74 and 83, the United Nations Convention on the Law of the Sea (1982) (emphasis added).

<sup>135</sup> *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Counter-Memorial of the Republic of Côte d'Ivoire, para. 9.40.

<sup>136</sup> *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)*, Judgment of 23 September 2017, paras. 604-605.

overlapping claims in the EEZ and continental shelf, until the Maldives unilaterally ended the negotiations.

3.62 As early as 19 June 2001, Mauritius invited the Maldives to “agree to preliminary negotiations being initiated at an early date” in order to delimit the continental shelf and also to “look at the issue of delimitation of the EEZ” in the areas adjacent to the Chagos Archipelago.<sup>137</sup> Mauritius expressed its “wishes to work closely with the Government of the Maldives to effect the delimitation in accordance with mutually agreed principles in an amicable manner.”<sup>138</sup> However, the Maldives refused that invitation, on the pretext that “jurisdiction over the Chagos Archipelago is not exercised by the Government of Mauritius,” so that “the Government of Maldives feels that it would be inappropriate to initiate any discussions between the Government of Maldives and the Government of Mauritius regarding the delimitation of the boundary between the Maldives and the Chagos Archipelago.”<sup>139</sup>

3.63 The Maldives subsequently changed its position. In February 2010, it proposed “that Mauritius and Maldives hold discussions for the delimitation of the exclusive economic zones of our two countries.”<sup>140</sup> This could only have referred to the area adjacent to the Chagos Archipelago, because there is no other area where the maritime entitlements of the two States even remotely overlap. Mauritius welcomed the proposal; it confirmed that “the Government of the Republic of Mauritius [was] agreeable to holding formal talks with the Government of the Republic of Maldives for the delimitation of the exclusive economic zones (EEZs) of Mauritius and Maldives.”<sup>141</sup> Mauritius also emphasised that “the holding of EEZ delimitation boundary talks [would be] all the more relevant” in the light of “the submission made by the Government of Maldives to the Commission on the Limits of the Continental Shelf” which claimed as its EEZ maritime areas that fell within the EEZ claimed by Mauritius adjacent to the Chagos Archipelago.<sup>142</sup>

3.64 On 21 October 2010, the Parties met in Malé, the Maldives, “to discuss a potential overlap of the extended continental shelf and to exchange views on maritime boundary delimitation between the two respective States.”<sup>143</sup> Minister Shaheed, the head of the Maldives

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<sup>137</sup> Letter from Minister of Foreign Affairs and Regional Cooperation of Mauritius to Minister of Foreign Affairs of Maldives (19 June 2001) (Preliminary Objections, Annex 24).

<sup>138</sup> *Ibid.*

<sup>139</sup> Note Verbale from Ministry of Foreign Affairs of Maldives to Ministry of Foreign Affairs of Mauritius (18 July 2001) (Preliminary Objections, Annex 25).

<sup>140</sup> Letter from Dr. the Hon. Arvin Boolell (Minister of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius), to H.E. Dr. A. Shaheed (Minister of Foreign Affairs, Republic of Maldives) (2 March 2010) (Written Observations, Annex 11).

<sup>141</sup> Diplomatic Note from Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to Ministry of Foreign Affairs, Republic of Maldives (21 September 2010) (Written Observations, Annex 12).

<sup>142</sup> *Ibid.*

<sup>143</sup> First Meeting on Maritime Boundary Delimitation and Submission Regarding the Extended Continental Shelf Between the Republic of Maldives and Republic of Mauritius (21 October 2010) (Written Observations, Annex 13).

delegation, “agreed that both sides will work jointly on the area of overlap” and “stated that further meetings will have to be held to finalize the pending issues.”<sup>144</sup>

3.65 Having agreed to “work jointly on the area of overlap” and “to make bilateral arrangements,” the Maldives then failed to respect that agreement. It refused to engage in any further negotiations, and none took place. Following the ICJ’s Advisory Opinion of 25 February 2019, Mauritius sent a diplomatic note to the Maldives on 7 March 2019, “invit[ing] the Maldives authorities to a second round of discussion.”<sup>145</sup> But the Maldives failed to respond. It is only now, in setting forth its objections to jurisdiction, that the Maldives has made clear its view that “bilateral negotiations between Mauritius and the Maldives addressing delimitation of the EEZ and continental shelf ... *cannot take place* in any meaningful way.”<sup>146</sup> The Maldives’ current position is inconsistent with its earlier engagement in negotiations. It is also inconsistent with the requirements of the ICJ Advisory Opinion, which states that “all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.”<sup>147</sup> By refusing to enter into negotiations with Mauritius, on the ground that the United Kingdom continues to maintain a claim to the Chagos Archipelago, the Maldives is refusing to comply with its international legal obligation to contribute to the completion of the decolonisation of Mauritius.

3.66 Because the delimitation of the EEZ and continental shelf cannot be reached by agreement as prescribed by paragraph 1 of Articles 74 and 83, paragraph 2 of those provisions requires the Maldives and Mauritius, as the next step, to “resort to the procedures provided for in Part XV,” which include, of course, these very proceedings before the Special Chamber.

## **V. Mauritius’ Commencement of These Proceedings Is Not an Abuse of Process**

3.67 The Maldives’ final preliminary objection is that Mauritius’ institution of the present proceedings constitutes an abuse of process.<sup>148</sup> This is an unfortunate and audacious argument, in light of the Advisory Opinion of the ICJ and UNGA Resolution 73/295, which point to the alternative conclusion, namely that it is the preliminary objections made by the Maldives that are the real abuse of process in this case.

3.68 Indeed, all of the Maldives’ preliminary objections, grounded as they are on the false premise that sovereignty over the Chagos Archipelago is disputed, are abusive. At the very least, they violate the Maldives’ legal obligation under the ICJ’s Advisory Opinion of 25 February 2019 to “co-operate with the United Nations in order to complete the decolonization of Mauritius.”<sup>149</sup> This is an *erga omnes* obligation that the Court found

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<sup>144</sup> *Ibid.*

<sup>145</sup> Note Verbale from Mauritius Mission to the UN, New York to Maldives Mission to the UN, New York (7 March 2019) (Preliminary Objections, Annex 16).

<sup>146</sup> Preliminary Objections, para. 69 (emphasis added).

<sup>147</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, para. 183(5).

<sup>148</sup> Preliminary Objections, paras. 98-102.

<sup>149</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, para. 183(5).

applicable to all UN Member States, including, of course, the Maldives. For the Maldives to assert that the United Kingdom may have sovereignty over the Chagos Archipelago, and for it to attempt to prevent Mauritius from delimiting the maritime boundary adjacent to the Archipelago on such ground, is inconsistent with that obligation.

#### **A. Mauritius' Claims Do Not Constitute an Abuse of Process**

3.69 The Maldives' objection does not merit extensive counter-argument, because it is patently frivolous.<sup>150</sup> It echoes the same refrain as the other, equally baseless objections: that Mauritius seeks adjudication of a territorial dispute between itself and the United Kingdom, a dispute over which the Special Chamber may not exercise jurisdiction.

3.70 This is not the case. Mauritius does not seek a ruling on sovereignty over the Chagos Archipelago. Such a ruling has already been issued by the ICJ. Mauritius' sovereignty over the Archipelago is now indisputable, as a matter of international law. The Court determined that the United Kingdom has no valid claim, and that it must bring to an end its administration of the Chagos Archipelago as rapidly as possible so as to enable Mauritius to complete the decolonisation of its territory. The dispute before the Special Chamber, therefore, concerns only the delimitation of the EEZ and continental shelf of Mauritius with the Maldives.<sup>151</sup> As set out in Mauritius' Notification and Statement of Claim of 18 June 2019, Mauritius requests the Special Chamber:

to delimit, in accordance with the principles and rules set forth in UNCLOS, the maritime boundary between Mauritius and Maldives in the Indian Ocean, in the EEZ and the continental shelf, including the portion of the continental shelf pertaining to Mauritius that lies more than 200 nautical miles from the baselines from which its territorial sea is measured.<sup>152</sup>

3.71 Plainly, Mauritius is not seeking the same decision which it sought in the *Chagos MPA Arbitration*,<sup>153</sup> or the ruling which the UN General Assembly sought in the Advisory Opinion concerning the Chagos Archipelago. The Maldives, for the purpose of its fifth preliminary objection, has chosen to ignore the critical developments since the Award in the *Chagos MPA Arbitration* in 2015, namely the ICJ's Advisory Opinion and UN General Assembly Resolution 73/295. These make it clear that the Chagos Archipelago is an integral part of the territory of Mauritius, with the consequence that Mauritius – and Mauritius alone – is the coastal State for purposes of maritime delimitation with the Maldives.

3.72 In these circumstances, the Maldives' reliance on the decision in the *Chagos MPA Arbitration* to demonstrate an alleged abuse of process by Mauritius is entirely ill-founded.

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<sup>150</sup> Mauritius notes that the Maldives does not argue that Article 300 of the Convention on "Good Faith and abuse of rights" constitutes the legal grounds of its admissibility objection. *See* Preliminary Objections, note 101.

<sup>151</sup> Notification and Statement of Claim submitted by the Republic of Mauritius (18 June 2019), para. 3.

<sup>152</sup> *Ibid.*, para. 27.

<sup>153</sup> *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Award of 18 March 2015.

There is no identity between the relief sought or the issues determined in the *Chagos MPA Arbitration* and those now raised before the Special Chamber. They are not based on the same set of facts, nor do they involve the same parties. The task of the Special Chamber is the delimitation of the maritime boundary between the Maldives and Mauritius, in light of the ICJ Advisory Opinion and UN General Assembly Resolution 73/295, not a declaration of sovereignty over the Archipelago, which has already been determined as a matter of international law.

3.73 The legal precedents invoked by the Maldives offer it no assistance. It may be that the case law of the ICJ includes instances in which the principle of abuse of process has been *invoked*.<sup>154</sup> What the Maldives fails to grapple with, however, is that the Court has never once found the conditions for an application of the principle to be *satisfied*. The cases referred to by the Maldives are thus easily distinguishable:

- In the *Ambatielos* case, the United Kingdom’s claim of abuse of process related to Greece’s “undue delay” in presentation of a claim, which while continuously possible since 1926 was made in 1951. The Court did not consider that Greece acted improperly in instituting proceedings in 1951.<sup>155</sup>
- In *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Honduras’s claim of abuse of process (while not characterised as such) was that Nicaragua’s request was “politically-inspired” and “artificial,” and related to the institution of judicial proceedings in parallel with the Contadora Process. Honduras’ objections were dismissed.<sup>156</sup>
- In *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, the Court considered Senegal’s contention that Guinea-Bissau’s Application was inadmissible as it invoked a declaration of the President of the arbitral tribunal in order to cast doubt on the validity of the Award. Senegal argued that Guinea Bissau’s attempt to use the declaration for that purpose “must be regarded as an abuse of process aimed at depriving Senegal of the rights belonging to it under the Award.” The Court rejected the argument on the basis that “Guinea-Bissau’s Application has been properly presented in the framework of its right to have recourse to the Court in the circumstances of the case.”<sup>157</sup>
- In the *Nauru* case, Australia argued that Nauru had failed to act consistently and in good faith in relation to rehabilitation of certain phosphate lands and that the Court “in exercise of its discretion, and in order to uphold judicial propriety should . . . decline to hear the Nauruan claims.”<sup>158</sup> The Court held that: “the

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<sup>154</sup> See Preliminary Objections, para. 99.

<sup>155</sup> *Ambatielos case (Merits: obligation to arbitrate)*, Judgment of 19 May 1953, ICJ Reports 1953, p. 10, at pp. 22-23.

<sup>156</sup> *Border and Transborder Armed Actions (Nicaragua v. Honduras)*, Jurisdiction and Admissibility, Judgment of 20 December 1988, ICJ Reports 1988, p. 69, at paras. 51-54.

<sup>157</sup> *Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal)*, Judgment of 12 November 1991, ICJ Reports 1991, p. 53 at paras. 26-27. See also *id.*, Separate Opinion of Judge Lachs, p. 92.

<sup>158</sup> *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment of 26 June 1992, ICJ Reports 1992, p. 240 at para. 37.

Application by Nauru has been properly submitted in the framework of the remedies open to it. At the present stage, the Court is not called upon to weigh the possible consequences of the conduct of Nauru with respect to the merits of the case. It need merely note that such conduct does not amount to an abuse of process.”<sup>159</sup>

3.74 The Maldives also fails to draw support from the academic commentary on which it relies. Perhaps that is why the quotation in its Preliminary Observations is truncated. Kolb states that:

*... it can be said that abuse of procedure consists in the use of procedural instruments and entitlements with a fraudulent, malevolent, dilatory, vexatious, or frivolous intent, with the aim to harm another or to secure an undue advantage to oneself, with the intent to deprive the proceedings ... of their proper object and purpose or outcome, or with the intent to use the proceedings for aims alien to the ones for which the procedural rights at stake have been granted (e.g., pure propaganda).*

The Maldives chose not to quote the italicised text.<sup>160</sup>

3.75 The Maldives’ objection based on an alleged abuse of process by Mauritius is itself vexatious, and, like all its other preliminary objections, unfounded.

#### **B. The Maldives’ Objection Is Incompatible with International Law and Its Obligations *Erga Omnes***

3.76 The Maldives’ attempt to circumvent the authoritative rulings of the ICJ in the Advisory Opinion concerning the Chagos Archipelago, and its disregard for the provisions of UN General Assembly Resolution 73/295, are incompatible with international law and its obligations *erga omnes*.

3.77 To be sure, the Maldives pays lip service to the right of self-determination.<sup>161</sup> But it then seeks to vitiate the ability of the Mauritian people to exercise that right. In so doing, it violates its obligation to cooperate with the United Nations and other States in bringing to an end the unlawful colonial administration of the Chagos Archipelago.

3.78 As the ICJ ruled, the United Kingdom’s continued unlawful administration of the Chagos Archipelago entails legal consequences not only for the United Kingdom, but for third States and international organisations, including the United Nations and its Member States. These consequences flow from the *erga omnes* character of the right of self-determination.

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<sup>159</sup> *Ibid.*, para. 38.

<sup>160</sup> Preliminary Objections, paras. 102, 106 (citing R. Kolb, *General Principles of Procedural Law* in *THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE: A COMMENTARY* (A. Zimmerman & Ch. J. Tams eds., 2019) (Preliminary Objections, Legal Annex 3), p. 999, para. 49.

<sup>161</sup> *Ibid.*, para. 34.

They require that *all States* – including the Maldives – co-operate with the United Nations to ensure the completion of the decolonisation of Mauritius.<sup>162</sup>

3.79 As part of their obligation of cooperation in the decolonisation of Mauritius, third States and international organisations have a duty not to recognise the existing unlawful situation, or assist the United Kingdom in maintaining it. Rather, they are required to cooperate in bringing Mauritius’ decolonisation to full and final completion. These obligations are spelled out explicitly in paragraphs 5-7 of UN General Assembly Resolution 73/295, in which the General Assembly:

5. *Calls upon* all Member States to cooperate with the United Nations to ensure the completion of the decolonization of Mauritius as rapidly as possible, and to refrain from any action that will impede or delay the completion of the process of decolonization of Mauritius in accordance with the advisory opinion of the Court and the present resolution;

6. *Calls upon* the United Nations and all its specialised agencies to recognise that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the “British Indian Ocean Territory;”

7. *Calls upon* all other international, regional and intergovernmental organisations, including those established by treaty, to recognise that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the “British Indian Ocean Territory.”

3.80 By invoking the United Kingdom’s discredited sovereignty claim as a defence against Mauritius in these proceedings, the Maldives is acting in violation of its legal obligations under the Advisory Opinion concerning the Chagos Archipelago and Resolution 73/295. If any party has committed an abuse of process, it is the Maldives.

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<sup>162</sup> *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion of 25 February 2019, paras. 180, 182. In this context the Court recalled the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations:

Every State has the duty to promote, through joint and separate action, realization of the principle of equal rights and self-determination of peoples, in accordance with the provisions of the Charter, and to render assistance to the United Nations in carrying out the responsibilities entrusted to it by the Charter regarding the implementation of the principle.

General Assembly Resolution 2625 (XXV).

## **CHAPTER 4 SUBMISSIONS**

For the reasons set out in these Written Observations, Mauritius respectfully requests the Special Chamber to rule that:

- a. The Preliminary Objections raised by the Maldives are rejected;
- b. It has jurisdiction to entertain the Application filed by Mauritius;
- c. There is no bar to its exercise of that jurisdiction; and
- d. It shall proceed to delimit the maritime boundary between Mauritius and the Maldives.

A handwritten signature in black ink, appearing to read 'Dabee', with a circular mark around the first part of the signature.

~~Dheerendra Kumar Dabee~~ G.O.S.K., S.C.  
Solicitor-General  
Agent for the Republic of Mauritius  
17 February 2020





## **CERTIFICATION**

I certify that the annexes to these Written Observations are true copies of the documents referred to.

A handwritten signature in black ink, appearing to read 'Dabee', with a large circular flourish on the left side.

Dheendra Kumar Dabee G.O.S.K., S.C.  
Solicitor-General  
Agent for the Republic of Mauritius  
17 February 2020