28 JANUARY 2021
JUDGMENT

DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY BETWEEN MAURITIUS AND MALDIVES IN THE INDIAN OCEAN (MAURITIUS/MALDIVES)

PRELIMINARY OBJECTIONS

DIFFÉREND RELATIF À LA DÉLIMITATION DE LA FRONTIÈRE MARITIME ENTRE MAURICE ET LES MALDIVES DANS L'OCÉAN INDIEN (MAURICE/MALDIVES)

EXCEPTIONS PRELIMINAIRE

28 JANVIER 2021
ARRÊT

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

YEAR 2021

28 January 2021

List of cases:
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DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY BETWEEN MAURITIUS AND MALDIVES IN THE INDIAN OCEAN
(MAURITIUS/MALDIVES)

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Present: Judge PAIK, *President of the Special Chamber*; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judges* ad hoc OXMAN, SCHRIJVER; *Registrar* HINRICHS OYARCE.

In the

Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean

between

Mauritius,

represented by

Mr Dheerendra Kumar Dabee, G.O.S.K., S.C., Solicitor-General, Attorney General's Office,

as Agent;

Mr Jagdish Dharamchand Koonjul, G.O.S.K., Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations in New York, United States of America,

as Co-Agent;

Mr Philippe Sands QC, Professor of International Law at University College London, Barrister at Matrix Chambers, London, United Kingdom,

Mr Paul S. Reichler, Attorney-at-Law, Foley Hoag LLP, Member of the Bar of the District of Columbia, United States of America,

Mr Pierre Klein, Professor of International Law at the *Université Libre de Bruxelles*, Brussels, Belgium,

as Counsel and Advocates;

Mr Remi Reichhold, Barrister at 5 Essex Court, London, United Kingdom,

Mr Andrew Loewenstein, Attorney-at-Law, Foley Hoag LLP, Member of the Bar of Massachusetts, Boston, United States of America,

Ms Diem Huang Ho, Attorney-at-Law, Foley Hoag LLP, Paris, France,

Mr Yuri Parkhomenko, Attorney-at-Law, Foley Hoag LLP, Washington D.C., United States of America,

Ms Anjolie Singh, Member of the Indian Bar, New Delhi, India,

as Counsel;

Ms Shiu Ching Young Kim Fat, Minister Counsellor, Prime Minister's Office,

as Adviser;

Mr Scott Edmonds, International Mapping, Ellicott City, United States of America,

Mr Thomas Frogh, International Mapping, Ellicott City, United States of America,

as Technical Advisers;

Ms Lea Main-Klingst, Germany,

as Assistant,

and

the Maldives,

represented by

Mr Ibrahim Riffath, Attorney General,

as Agent;

Ms Khadeeja Shabeen, Deputy Attorney General,

Ms Salwa Habeeb, Senior State Counsel in the Office of the Attorney General,

as Representatives;

Mr Payam Akhavan, LL.M., S.J.D. (Harvard), Professor of International Law, Senior Fellow, Massey College and Distinguished Visitor, Faculty of Law, University of Toronto; Member of the State Bar of New York and of the Law Society of Ontario; Member of the Permanent Court of Arbitration,

Mr Alan Boyle, Emeritus Professor of International Law, University of Edinburgh, Member of the Bar of England and Wales, Essex Court Chambers, United Kingdom,

Mr Jean-Marc Thouvenin, Professor at the University Paris-Nanterre; Secretary-General of The Hague Academy of International Law; Associate Member of the *Institut de droit international*; Member of the Paris Bar, Sygna Partners, France,

Ms Naomi Hart, Ph.D. (Cambridge), Member of the Bar of England and Wales, Essex Court Chambers, United Kingdom,

as Counsel and Advocates;

Mr John Brown, Law of the Sea Consultant, Cooley LLP, United Kingdom,

as Technical Adviser;

Ms Justine Bendel, Ph.D. (Edinburgh), Vienna School of International Studies, Austria,

Mr Mitchell Lennan, LL.M., University of Strathclyde, United Kingdom,

Ms Melina Antoniadis, LL.M., Barrister and Solicitor, Law Society of Ontario, Canada,

as Assistants,

THE SPECIAL CHAMBER,

composed as above,

after deliberation,

delivers the following Judgment:

I. Introduction

1. By letter dated 23 August 2019, the Solicitor-General of the Republic of Mauritius (hereinafter "Mauritius") informed the President of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal") of the institution of arbitral proceedings by Mauritius against the Republic of the Maldives (hereinafter "the Maldives") on 18 June 2019, pursuant to Annex VII to the United Nations Convention on the Law of the Sea (hereinafter "the Convention"). Attached to that letter was the Notification and the Statement of the claim and grounds on which it is based (hereinafter "the Notification") of Mauritius dated 18 June 2019, instituting arbitral proceedings against the Maldives under Annex VII to the Convention "in the dispute concerning the maritime boundary between Mauritius and Maldives".

2. Following consultations held by the President of the Tribunal with representatives of Mauritius and the Maldives in Hamburg on 17 September 2019, a Special Agreement was concluded between the two States on 24 September 2019 to submit the dispute concerning the delimitation of the maritime boundary between them in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute of the Tribunal (hereinafter "the Statute").

3. The Special Agreement and Notification between Mauritius and the Maldives dated 24 September 2019 (hereinafter "the Special Agreement"), in its relevant part, reads as follows:

> **Special Agreement and Notification**
>
> 1. Pursuant to article 15, paragraph 2, of the Statute of the International Tribunal for the Law of the Sea (hereinafter "the Tribunal"), the Republic of Mauritius and the Republic of Maldives hereby record their

agreement to submit to a special chamber of the Tribunal the dispute concerning the delimitation of the maritime boundary between them in the Indian Ocean. The agreement was reached on 24 September 2019, under the conditions reflected in the agreed Minutes of Consultations (17 September 2019), attached hereto.

2. The Republic of Mauritius and the Republic of Maldives further record their agreement that the special chamber shall be composed of the following nine individuals:

Judge Jin-Hyun Paik, as President
Judge José Luis Jesus
Judge Jean-Pierre Cot
Judge Shunji Yanai
Judge Boualem Bouguetaia
Judge Tomas Heidar
Judge Neeru Chadha
Mr Bernard Oxman, Judge *ad hoc* (Republic of Maldives)
Judge *ad hoc* to be chosen by the Republic of Mauritius

3. Receipt by the Registry of the Tribunal of the electronic copy of this Agreement and Notification signed by both Parties shall constitute the notification contemplated in article 55 of the Rules of the Tribunal. The date on which the Registry of the Tribunal has received this electronic copy will constitute the date of the institution of proceedings before the Tribunal. The original of the Special Agreement and Notification should be submitted to the Tribunal forthwith.

4. The Minutes of Consultations agreed between Mauritius and the Maldives on 17 September 2019 and attached to the Special Agreement read in their relevant part as follows:

3. During the consultations, the Parties agreed to transfer the arbitral proceedings instituted by Mauritius in the dispute concerning the delimitation of the maritime boundary between Mauritius and the Maldives in the Indian Ocean to a special chamber of the Tribunal to be formed pursuant to article 15, paragraph 2, of the Statute. The Parties agreed that the date of the institution of proceedings before the Tribunal is the date on which the Registry of the Tribunal has received the electronic copy of the Special Agreement and Notification signed by both Parties (see

paragraph 3 of the Special Agreement and Notification). The proceedings of the special chamber of the Tribunal shall be governed by the provisions contained in the Statute and the Rules of the Tribunal.

4. The Parties agreed that the special chamber to be formed pursuant to article 15, paragraph 2, of the Statute shall be composed of nine members, two of whom will be judges *ad hoc* chosen by the Parties in accordance with article 17 of the Statute of the Tribunal. The composition of the special chamber will be determined by the Tribunal with the approval of the parties. In this respect, the Parties have agreed on the following names:

Judge Jin-Hyun Paik, as President
Judge José Luis Jesus
Judge Jean-Pierre Cot
Judge Shunji Yanai
Judge Boualem Bouguetaia
Judge Tomas Heidar
Judge Neeru Chadha

Mauritius has not yet chosen its judge *ad hoc* but will make its nomination in due course. Maldives has chosen Mr Bernard Oxman as judge *ad hoc*.

5. An electronic copy of the Special Agreement was received by the Registry on 24 September 2019 and the original was received on 7 October 2019. Pursuant to paragraph 3 of the Special Agreement, receipt by the Registry of the electronic copy of the Special Agreement signed by both Parties constituted the notification contemplated in article 55 of the Rules of the Tribunal (hereinafter "the Rules").

6. As stated in the Special Agreement, the Government of Mauritius had appointed Mr Dheerendra Kumar Dabee, G.O.S.K, S.C, Solicitor-General, as Agent for Mauritius, and the Government of the Maldives had appointed Mr Ibrahim Riffath, Attorney General, as Agent for the Maldives.

7. By Order dated 27 September 2019, the Tribunal decided to accede to the request of Mauritius and the Maldives to form a special chamber of nine judges to deal with the dispute concerning delimitation of their maritime boundary in the Indian Ocean (hereinafter "the Special Chamber"), and determined, with the approval of the Parties, the composition of the Special Chamber as follows:

President	Paik
Judges	Jesus
	Cot
	Yanai
	Bouguetaia
	Heidar
	Chadha
Judge *ad hoc*	Oxman
Judge *ad hoc*	to be chosen by Mauritius.

8. In the Order, the Tribunal stated that, in the Special Agreement, the Maldives had notified the Tribunal of its choice of Mr Bernard Oxman to sit as judge *ad hoc* in the Special Chamber, and that no objection to the choice of Mr Oxman as judge *ad hoc* appeared to the Tribunal. The Tribunal also stated that, in the Special Agreement, Mauritius had notified the Tribunal of its intention to choose a judge *ad hoc*.

9. The Registrar transmitted a copy of the Order of 27 September 2019 to the Parties on the same date.

10. The case was entered in the List of Cases as Case No. 28.

11. By letter dated 27 September 2019, the Registrar, pursuant to the Agreement on Cooperation and Relationship between the United Nations and the International Tribunal for the Law of the Sea of 18December 1997 (hereinafter "the Relationship Agreement"), notified the Secretary-General of the United Nations of the institution of proceedings. By a note verbale of the same date, the Registrar also notified the States Parties to the Convention, in accordance with article 24, paragraph 3, of the Statute, of the institution of proceedings.

12. On 8 October 2019, in accordance with article 45 of the Rules, telephone consultations were held by the President of the Special Chamber with representatives of the Parties to ascertain their views with regard to questions of procedure in respect of the case.

13. By letter dated 9 October 2019, the Agent of Mauritius informed the Registrar that Mauritius had chosen Mr Nicolaas Schrijver to sit as judge *ad hoc* in the case. The Registrar transmitted a copy of the letter to the Maldives on

the same date. No objection to the choice of Mr Schrijver as judge *ad hoc* was raised by the Maldives, and no objection appeared to the Special Chamber. Consequently, in accordance with article 19, paragraph 3, of the Rules, the Parties were informed by separate letters dated 4 November 2019 that Mr Schrijver would be admitted to participate in the proceedings as judge *ad hoc*, after having made the solemn declaration required under article 9 of the Rules.

14. Having ascertained the views of the Parties, by Order dated 10 October 2019, the President of the Special Chamber, in accordance with articles 59 and 61 of the Rules, fixed the following time-limits for the filing of the pleadings in the case: 9 April 2020 for the Memorial of Mauritius and 9 October 2020 for the Counter-Memorial of the Maldives. The Registrar transmitted a copy of the Order to the Parties on 10 October 2019.

15. By communication addressed to the Registrar and received on 18 December 2019, within the time-limit set by article 97, paragraph 1, of the Rules, the Maldives filed with the Special Chamber written preliminary objections "under article 294 of the Convention and article 97 of the Rules" to the jurisdiction of the Special Chamber and the admissibility of Mauritius' claims (hereinafter "the Preliminary Objections"). The Preliminary Objections were notified to Mauritius on the same date.

16. Upon receipt of the Preliminary Objections by the Registry, pursuant to article 97, paragraph 3, of the Rules, the proceedings on the merits were suspended, as noted in the Order of the President of the Special Chamber dated 19 December 2019.

17. By the same Order, the President of the Special Chamber fixed 17 February 2020 as the time-limit for Mauritius to file its written observations and submissions on the Preliminary Objections filed by the Maldives, and 17 April 2020 as the time-limit for the Maldives to file its written observations and submissions in reply. The Registrar transmitted a copy of the Order to the Parties on 19 December 2019.

18. Pursuant to the Relationship Agreement, the Registrar, by letter dated 18 December 2019, notified the Secretary-General of the United Nations of the Preliminary Objections filed by the Maldives in the case. By note verbale of the same date, the Registrar also notified the States Parties to the Convention of the Preliminary Objections.

19. In accordance with article 45 of the Rules, on 4 February 2020, the President of the Special Chamber held telephone consultations with the representatives of the Parties to ascertain their views with regard to questions of procedure in respect of the Preliminary Objections. During these consultations, the Parties agreed that the hearing should take place from 24 to 27 June 2020.

20. Mauritius filed its written observations and submissions on the Preliminary Objections (hereinafter "the Observations") on 17 February 2020 and a copy thereof was transmitted to the Maldives on the same date.

21. The written observations and submissions in reply of the Maldives (hereinafter "the Reply") were filed on 15 April 2020 and a copy thereof was transmitted to Mauritius on the same date.

22. In light of the situation concerning the COVID-19 pandemic, including travel restrictions and safety considerations, by separate communications dated 7 May 2020, the Registrar sought the views of the Parties with regard to the feasibility of holding the hearing on the dates previously agreed.

23. The Maldives, by communication dated 8 May 2020, and Mauritius, by communication dated 13 May 2020, expressed their agreement that the hearing should take place during the week beginning 12 October 2020. The Registrar transmitted a copy of each communication to the other Party on 14 May 2020.

24. By Order dated 19 May 2020, the President of the Special Chamber, having ascertained the views of the Parties, fixed 13 October 2020 as the date for the opening of the oral proceedings. The Registrar transmitted a copy of the Order to the Parties on the same date.

25. By separate letters dated 28 July 2020, the Registrar, referring to the ongoing COVID-19 pandemic and the difficulty to organize an in-person hearing owing to health and safety concerns as well as travel and border restrictions, informed the Parties that the President of the Special Chamber was considering holding the hearing on the scheduled dates in hybrid format. The Registrar stated that a hearing in hybrid format would combine physical and virtual participation of members of the Special Chamber and representatives of the Parties.

26. The Maldives, by letter dated 4 August 2020, and Mauritius, by letter dated 6 August 2020, expressed their agreement that the hearing should be held in hybrid format. The Registrar transmitted a copy of each letter to the other Party on 7 August 2020.

27. By separate letters dated 13 August 2020, the Registrar informed the Parties that the President of the Special Chamber, having ascertained their views, had decided that the hearing would be conducted in hybrid format. On 19 August 2020, the Registrar informed the Parties by telephone of the intention of the members of the Special Chamber, including the judges *ad hoc*, to participate in the hearing in person or remotely.

28. By letter dated 26 August 2020, the Registrar informed the Parties that Judge Cot had tendered his resignation as member of the Special Chamber by letter dated 26 August 2020 to the President of the Special Chamber with effect from that date, and that, accordingly, a vacancy had occurred in the Special Chamber. The Registrar also informed the Parties that the President of the Special Chamber wished to ascertain their views with regard to the Special Chamber's composition. Further to written consultations, the Parties agreed that Judge Pawlak should fill the vacancy left by the resignation of Judge Cot.

29. With regard to the information referred to in paragraph 27, the Maldives, by letter dated 26 August 2020, expressed concerns regarding the participation of the judges *ad hoc* in the proceedings "by different means". The Maldives stated that "[t]his could potentially undermine the fairness of the proceedings" and that "it is consistent with the practice of other international courts and tribunals for parties' respective appointed Judges to participate in hearings and deliberations on the same basis". Accordingly, the Maldives requested that, "if Judge *ad hoc* Oxman is to participate in the hearing remotely, then Judge *ad hoc* Schrijver should also be requested to participate remotely." A copy of the letter was transmitted by the Registrar to Mauritius on 27 August 2020.

30. By letter dated 31 August 2020, Mauritius opposed the Maldives' request. In the view of Mauritius, the Maldives' proposal "implies a differential treatment for one (or two) members of the Special Chamber from any of the others, and is inconsistent with the 'complete equality' of Judges *ad hoc* with other judges." With reference to article 17 of the Statute and article 8 of the Rules, Mauritius stated that "[t]he Statute and Rules of the Tribunal do not provide for any distinction of treatment as to these members of the Special Chamber." Mauritius also stated that it "[was] not aware of any precedent that supports …

Maldives' proposal." In addition, Mauritius submitted that the Maldives "might have raised this matter at an earlier stage, when the question of a hybrid hearing was first raised, and the views of the parties were sought" but that "[i]t did not do so." A copy of the letter was transmitted by the Registrar to the Maldives on the same date.

31. On 1 September 2020, the President of the Special Chamber held telephone consultations with representatives of the Parties to ascertain the views of the Parties regarding the organization of the hearing.

32. By letter dated 3 September 2020, the Maldives referred again to the issue of the participation of judges *ad hoc* in the proceedings, maintaining that it had "raised its concerns with the Registrar within two days of receiving the relevant information" and that "[t]here was no unreasonable delay whatsoever." In its letter, the Maldives also reiterated its request made on 26 August 2020. A copy of the letter was transmitted by the Registrar to Mauritius on 3 September 2020.

33. Mauritius responded by letter dated 4 September 2020, a copy of which the Registrar transmitted to the Maldives on the same day. In its letter, Mauritius referred to its previous arguments, stating, *inter alia*, that "all judges are equal" and that "*ad hoc* judges are to be treated no differently than sitting judges."

34. With regard to the participation of judges *ad hoc* in the hearing and meetings of the Special Chamber, pursuant to article 45 of the Rules, by letter to the Parties dated 8 September 2020, the President of the Special Chamber indicated that, "in light of the ongoing pandemic, both parties had agreed to hold the hearing in a hybrid format, in which members of the Special Chamber are allowed to participate either in person or remotely." He stated that "[s]uch format is based on the premise that there is no difference between the two modes of participation" and that "[a]ny suggestion to the contrary runs counter to this basic notion of a hybrid hearing." The President of the Special Chamber further stated that, in accordance with article 17, paragraph 6, of the Statute and article 8, paragraph 1, of the Rules, "*ad hoc* judges participate in a case 'on terms of complete equality' with the other judges" and that "[t]here is no ground whatsoever in the Statute or the Rules to treat *ad hoc* judges differently." He noted

that "[i]t is up to each member of the Special Chamber, including judges *ad hoc*, to decide whether he or she participates in the hearing in person or remotely" and that he "fully respect[ed] the decision of each member in this regard." The President of the Special Chamber also assured the Parties that "each member, irrespective of his or her mode of participation, [would] be given an equal opportunity to participate fully in the proceedings of the Special Chamber."

35. By Order dated 15 September 2020, the Tribunal determined, with the approval of the Parties, that Judge Pawlak should fill the vacancy left by the resignation of Judge Cot and that as a result the composition of the Special Chamber formed to deal with this case was as follows:

President	Paik
Judges	Jesus
	Pawlak
	Yanai
	Bouguetaia
	Heidar
	Chadha
Judges *ad hoc*	Oxman
	Schrijver

36. On 15 September 2020, the Registrar transmitted a copy of the Order to each Party.

37. By letter dated 6 October 2020 addressed to the President of the Special Chamber, received by the Registry on 7 October 2020, the Prime Minister of Mauritius notified the Special Chamber of the appointment of Mr Jagdish Dharamchand Koonjul, Ambassador and Permanent Representative of Mauritius to the United Nations in New York, as Co-Agent for Mauritius.

38. Prior to the opening of the oral proceedings, on 9 October 2020, the Agent of the Maldives and the Agent of Mauritius submitted to the Registry materials required under paragraph 14 of the Guidelines concerning the Preparation and Presentation of Cases before the Tribunal.

39. At a public sitting held in hybrid format on 12 October 2020, Mr Oxman and Mr Schrijver each made the solemn declaration required under article 9 of the Rules.

40. In accordance with article 68 of the Rules, on 12 October 2020, prior to the opening of the oral proceedings, the Special Chamber held initial deliberations in hybrid format.

41. On 12 October 2020, the President of the Special Chamber held consultations with representatives of the Parties at the premises of the Tribunal to ascertain the views of the Parties regarding the organization of the hearing.

42. Between 13 and 19 October 2020, the Special Chamber held four public sittings in hybrid format. At these sittings, the Special Chamber was addressed by the following:

For the Maldives:

Mr Ibrahim Riffath,
as Agent;

Mr Payam Akhavan,
Mr Alan Boyle,
Mr Jean-Marc Thouvenin,
Ms Naomi Hart,
as Counsel and Advocates;

Ms Khadeeja Shabeen,
Ms Salwa Habeeb,
as Representatives;

For Mauritius:

Mr Jagdish Dharamchand Koonjul,
as Co-Agent;

Mr Philippe Sands,
Mr Paul S. Reichler,
Mr Pierre Klein,
as Counsel and Advocates.

43. During the hearing, the Parties displayed a number of exhibits on screen, including maps and excerpts of documents.

44. The hearing was broadcast on the Internet as a webcast.

45. Pursuant to article 67, paragraph 2, of the Rules, copies of the pleadings and documents annexed thereto were made accessible to the public on the opening of the oral proceedings.

46. In accordance with article 86, paragraph 1, of the Rules, the transcript of the verbatim records of each public sitting was prepared by the Registry in the official languages of the Tribunal used during the hearing. In accordance with article 86, paragraph 4, of the Rules, copies of the transcripts of the said records were circulated to the judges sitting in the case and to the Parties. The transcripts were also made available to the public in electronic format.

47. By separate letters dated 15 October 2020, the Registrar communicated to the Parties, pursuant to article 76 of the Rules, a list of questions which the Special Chamber wished the Parties specially to address. These questions were as follows:

> 1. What were the legal considerations of the Parties in holding the first meeting on maritime delimitation and submission regarding the extended continental shelf of 21 October 2010 and in agreeing to "make bilateral arrangements on the overlapping area of extended continental shelf of the two States around the Chagos Archipelago" in the joint communiqué of 12 March 2011?
>
> 2. According to the Advisory Opinion of the International Court of Justice of 25 February 2019, "all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius." This obligation is further explained in paragraph 180 of the Advisory Opinion. Is this obligation relevant to the present case and, if so, how?
>
> 3. If delimitation were deferred for reasons indicated in the preliminary objections, what would be the obligations of the Parties under paragraph 3 of articles 74 and 83 of the Convention? Would there be jurisdiction with respect to those obligations?

48. Responses to the aforementioned questions were provided during the second round of oral pleadings by counsel for the Maldives on 17 October 2020, and by counsel for Mauritius on 19 October 2020.

49. By letter dated 16 October 2020 addressed to the President of the Special Chamber, the Agent of the Maldives, with reference to a statement made by counsel of Mauritius during the first round of oral pleadings, requested that the Maldives be allowed, pursuant to article 71 of the Rules, to submit additional documents. On the same date, the Agent of the Maldives transmitted to the Special Chamber the additional documents consisting of copies of three email communications between counsel for the Parties dated 27, 28 and 29 August 2019. On 17 October 2020, the Registrar transmitted the letter of 16 October 2020 and the additional documents to the Agent of Mauritius, in accordance with article 71 of the Rules, for comments the same day. By communication dated 17 October 2020, the Co-Agent of Mauritius informed the Special Chamber that Mauritius did not object to the Maldives' request.

50. By letter dated 17 October 2020, the Registrar informed the Agent of the Maldives that the documents submitted by the Maldives would be included in the case file and that the Maldives could refer to the documents in the second round of oral pleadings. A copy of the letter was transmitted to the Agent of Mauritius.

51. By letter dated 19 October 2020, the Co-Agent of Mauritius, pursuant to article 71, paragraph 4, of the Rules, provided comments on the new documents produced by the Maldives and submitted documents in support of his comments, consisting of copies of the three emails referred to in paragraph 49 and copies of further emails exchanged between counsel for the Parties during the period from 7 to 13 September 2019. By letter dated 19 October 2020, the Registrar transmitted Mauritius' letter and the attached documents to the Agent of the Maldives, indicating that, in accordance with article 71, paragraph 4, of the Rules, the letter and documents would form part of the case file and that Mauritius could refer to the documents in the second round of oral pleadings. A copy of the Registrar's letter was transmitted to the Agent of Mauritius.

52. By letter dated 19 October 2020, the Agent of the Maldives transmitted comments on the letter of Mauritius of 19 October 2020 and accompanying documents. A copy of the letter was transmitted to the Agent of Mauritius.

II. Submissions of the Parties

53. In its Preliminary Objections, and in its Reply, the Maldives requested the Special Chamber to adjudge and declare that:

> For the reasons set out in [the] Preliminary Objections … it is without jurisdiction in respect of the claims submitted … by the Republic of Mauritius. Additionally or alternatively, for the reasons set out in [the] Preliminary Objections, … that the claims submitted … by the Republic of Mauritius are inadmissible.

54. In its Observations, Mauritius requested 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.

55. In accordance with article 75, paragraph 2, of the Rules, the following final submissions were presented by the Parties at the conclusion of the last statement made by each Party at the hearing:

On behalf of the Maldives:

> In accordance with Article 75, paragraph 2, of the Rules of the Tribunal, and for the reasons set out during the written and oral phases of the pleadings, the Republic of Maldives requests the Special Chamber to adjudge and declare that it is without jurisdiction in respect of the claims submitted to the Special Chamber by the Republic of Mauritius. Additionally or alternatively, for the reasons set out during the written and oral phases of the pleadings, the Republic of Maldives requests the Special Chamber to adjudge and declare that the claims submitted to the Special Chamber by the Republic of Mauritius are inadmissible.

On behalf of Mauritius:

> For the reasons set out in the Written Observations of Mauritius on the Preliminary Objections raised by the Republic of Maldives, dated 17 February 2020, and for the reasons set out in the oral pleadings of Mauritius during the hearings on 15 and 19 October 2020, the Republic of Mauritius respectfully requests the Special Chamber of the International Tribunal for the Law of the Sea to rule and adjudge that:
>
> a. The Preliminary Objections raised by 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.

III. Factual Background

56. Mauritius and the Maldives are States situated in the Indian Ocean. Both States consist of several islands. According to Mauritius, "[t]he territory of Mauritius includes, in addition to the main Island, *inter alia*, the Chagos Archipelago, which is located approximately 2,200 kilometres north-east of the main Island of Mauritius." Mauritius states that the Chagos Archipelago "is about 517 kilometres from Maldives".

57. In 1814, France, by the Treaty of Paris, ceded Mauritius and its dependencies to the United Kingdom. According to Mauritius, between 1814 and 1965, the United Kingdom administered the Chagos Archipelago as "a dependency of the colony of Mauritius."

58. In September 1965, a constitutional conference took place in London involving representatives of the colony of Mauritius and the United Kingdom. Mauritius submits that at that conference "the British Government made the independence of Mauritius conditional on Mauritian Ministers 'agreeing' to detachment [of the Chagos Archipelago], linking 'both matters in a possible package deal'", and that the British Prime Minister "procured the supposed but reluctant 'agreement' of Premier Ramgoolam [of Mauritius] and two of his colleagues to the detachment of the Chagos Archipelago." Mauritius notes that, when considering "the question of whether the people of Mauritius had given

their consent to the detachment of a part of their territory", the International Court of Justice (hereinafter "the ICJ") found that it was "not possible to talk of an international agreement, when one of the parties to it, Mauritius, which is said to have ceded the territory to the United Kingdom, was under the authority of the latter."

59. On 8 November 1965, the United Kingdom adopted *The British Indian Ocean Territory Order*, which provided that the Chagos Archipelago, with certain other islands, "shall together form a separate colony which shall be known as the British Indian Ocean Territory." On 12 March 1968, Mauritius became an independent State. The United Kingdom continues to administer the Chagos Archipelago.

60. On 16 December 1965, the United Nations General Assembly (hereinafter "the UNGA") adopted resolution 2066 (XX) on the "Question of Mauritius", in which it noted "*with deep concern* that any step taken by the administering Power to detach certain islands from the Territory of Mauritius for the purpose of establishing a military base would be in contravention of the Declaration" (referring to the Declaration on the Granting of Independence to Colonial Countries and Peoples) and invited the "administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity".

61. According to the Maldives, since 1814 and following the establishment of the British Indian Ocean Territory (hereinafter "the BIOT") in 1965, "the United Kingdom has consistently claimed sovereignty over the Chagos Archipelago." The Maldives states that, "since at least 1980, Mauritius has claimed that it is sovereign over the Chagos Archipelago".

62. In a letter dated 19 June 2001 addressed to the Minister of Foreign Affairs of the Maldives, the Minister of Foreign Affairs and Regional Cooperation of Mauritius stated that Mauritius was "embarking on the exercise to delimit the Continental Shelf around the Chagos Archipelago" and asked the Maldives to "agree to preliminary negotiations being initiated at an early date." By a diplomatic note dated 18 July 2001, the Ministry of Foreign Affairs of the Maldives replied that:

> As jurisdiction over the Chagos Archipelago is not exercised by the Government of Mauritius, 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.

63. According to Mauritius, in February 2010, the Maldives proposed "that Mauritius and Maldives hold discussions for the delimitation of the exclusive economic zone of [their] two countries." In a letter of 2 March 2010, addressed to the Minister of Foreign Affairs of the Maldives, the Minister of Foreign Affairs, Regional Integration and International Trade of Mauritius referred to the Maldives' proposal that "Mauritius and Maldives hold discussions for the delimitation of the exclusive economic zones of [their] two countries", adding that this proposal was "under active consideration by the relevant Mauritian authorities".

64. On 1 April 2010, the United Kingdom announced the creation of a marine protected area (hereinafter "the MPA") in and around the Chagos Archipelago. On 20 December 2010, Mauritius instituted arbitral proceedings against the United Kingdom pursuant to Annex VII of the Convention, requesting the Arbitral Tribunal to adjudge and declare, in respect of the Chagos Archipelago, that:

> (1) the United Kingdom is not entitled to declare an "MPA" or other maritime zones because it is not the "coastal State" within the meaning of *inter alia* Articles 2, 55, 56 and 76 of the Convention; and/or
>
> (2) having regard to the commitments that it has made to Mauritius in relation to the Chagos Archipelago, the United Kingdom is not entitled unilaterally to declare an "MPA" or other maritime zones because Mauritius has rights as a "coastal State" within the meaning of *inter alia* Articles 56(1)(b)(iii) and 76(8) of the Convention; and/or
>
> ...
>
> (4) The United Kingdom's purported "MPA" is incompatible with the substantive and procedural obligations of the United Kingdom under the Convention, including *inter alia* Articles 2, 55, 56, 63, 64, 194 and 300, as well as Article 7 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995.

(*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at pp. 440–441, para. 158)

65. On 26 July 2010, the Maldives made a submission to the Commission on the Limits of the Continental Shelf (hereinafter "the CLCS") pursuant to paragraph 8 of article 76 of the Convention. In a diplomatic note dated 21 September 2010, addressed to the Ministry of Foreign Affairs of the Maldives, the Ministry of Foreign Affairs, Regional Integration and International Trade of Mauritius noted that the Government of Mauritius was "agreeable to holding formal talks with the Government of ... Maldives for the delimitation of the exclusive economic zones (EEZs) of Mauritius and Maldives." It also stated that Mauritius had taken note of the Maldives' submission to the CLCS and that "the holding of EEZ delimitation boundary talks [was] all the more relevant in the light of" that submission.

66. On 21 October 2010, a "first meeting on maritime delimitation and submission regarding the extended continental shelf between the Republic of Maldives and Republic of Mauritius" took place in Malé "to discuss a potential overlap of the extended continental shelf and to exchange views on maritime boundary delimitation between the two respective States." According to the minutes of the meeting, which were signed by representatives of both States, the two sides "agreed to exchange coordinates of their respective base points as soon as possible in order to facilitate the eventual discussions on the maritime boundary." With regard to the Maldives' submission to the CLCS, the representative of the Maldives stated that the exclusive economic zone coordinates of "Mauritius in the Chagos region were not taken into consideration" and that "this would be rectified by an addendum to the submission".

67. From 11 to 13 March 2011, the President of the Maldives paid a State visit to Mauritius. A joint communiqué issued during this visit, on 12 March 2011, records that the Prime Minister of Mauritius and the President of the Maldives "agreed to make bilateral arrangements on the overlapping area of extended continental shelf of the two States around the Chagos Archipelago."

68. In a diplomatic note dated 24 March 2011, addressed to the Secretary-General of the United Nations, the Permanent Mission of Mauritius to the United Nations, referring to the Maldives' submission to the CLCS and the October 2010 meeting between the two countries, noted that "no addendum has up to now been filed with the Secretary-General of the United Nations" by the Maldives. The diplomatic note states that Mauritius "protests formally against the submission ... in as much as the Extended Continental Shelf being claimed by ... Maldives encroaches on the Exclusive Economic Zone of ... Mauritius".

69. On 18 March 2015, the Arbitral Tribunal constituted pursuant to Annex VII to the Convention rendered its award in the *Arbitration regarding the Chagos Marine Protected Area* (hereinafter "the *Chagos* arbitral award"). The Arbitral Tribunal found, in relation to its jurisdiction, "that it lacks jurisdiction with respect to Mauritius' First and Second Submissions" (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at p. 582, para. 547). It also found that it had jurisdiction pursuant to article 288, paragraph 1, and article 297, paragraph 1(c), of the Convention to consider Mauritius' Fourth Submission and the compatibility of the MPA with certain provisions of the Convention. In relation to the merits, the Arbitral Tribunal found that, in establishing the MPA surrounding the Chagos Archipelago, the United Kingdom breached its obligations under article 2, paragraph 3, article 56, paragraph 2, and article 194, paragraph 4, of the Convention.

70. In resolution 71/292 of 22 June 2017, the UNGA decided to request the ICJ, pursuant to Article 65 of its Statute, to give an advisory opinion on the following questions:

> (a) Was the process of decolonization 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?

71. On 25 February 2019, the ICJ delivered its advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (hereinafter "the *Chagos* advisory opinion"). The operative part of the *Chagos* advisory opinion provides as follows:

> The Court,
> ...
>
> (3) By thirteen votes to one,
>
> *Is of 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;
> ...
>
> (4) By thirteen votes to one,
>
> *Is of 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; ...
>
> (5) By thirteen votes to one,
>
> *Is of the opinion* that all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius.
> ...
> (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 140, para. 183)

72. Following the *Chagos* advisory opinion, in a diplomatic note dated 7 March 2019, addressed to the Permanent Mission of the Maldives to the United Nations, the Permanent Mission of Mauritius to the United Nations referred to the "meeting on maritime delimitation held between Mauritius and the Maldives in Malé in October 2010" and invited the Maldives "to a second

round of discussions in the second week of April in Mauritius." The Maldives did not respond to that note.

73. In a communiqué of the Mauritian Prime Minister's Office of 30 April 2019, it was stated that it is "undeniable that the Republic of Mauritius is the sole State lawfully entitled to exercise sovereignty and sovereign rights in relation to the Chagos Archipelago and its maritime zones." On the other hand, on the same date, the United Kingdom Minister of State for Europe and the Americas stated that:

> we have no doubt about our sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the Archipelago and we do not recognise its claim. We have, however, made a long-standing commitment since 1965 to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment.

74. On 22 May 2019, the UNGA adopted resolution 73/295 entitled "Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965". In the resolution, the UNGA, *inter alia*,

> *Demands* that the United Kingdom of Great Britain and Northern Ireland 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;
> ...
>
> *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;

75. The resolution was adopted with 116 votes in favour, 6 against and 56 abstentions. Mauritius voted in favour of the resolution. The Maldives and the United Kingdom voted against.

76. The representative of the United Kingdom, commenting on that resolution before the UNGA on 22 May 2019, reiterated that "[t]he United Kingdom is not in doubt about our sovereignty over the British Indian Ocean Territory" and that "[i]t has been under continuous British sovereignty since 1814."

77. The United Kingdom did not take any action on the demand of the UNGA within the period indicated in paragraph 3 of the above-mentioned resolution.

IV. The Maldives' preliminary objections to jurisdiction and admissibility

78. Mauritius and the Maldives are both States Parties to the Convention, having ratified it on 4 November 1994 and 7 September 2000, respectively. In its Notification, Mauritius relied on articles 286 and 288, paragraph 1, of the Convention to found the jurisdiction of an arbitral tribunal to be constituted in accordance with Annex VII to the Convention. As noted in paragraph 2 of the present Judgment, by the Special Agreement, the Parties agreed to transfer their dispute to a special chamber of the Tribunal.

79. The Maldives raises five preliminary objections to the jurisdiction of the Special Chamber and the admissibility of Mauritius' claims. According to the Maldives' first preliminary objection, the United Kingdom is an indispensable third party to the present proceedings, and, as the United Kingdom is not a party to these proceedings, the Special Chamber does not have jurisdiction over the alleged dispute. In its second preliminary objection, the Maldives submits that the Special Chamber has no jurisdiction to determine the disputed issue of sovereignty over the Chagos Archipelago, which it would necessarily have to do if it were to determine Mauritius' claims in these proceedings. The Maldives contends in its third preliminary objection that, as Mauritius and the Maldives have not engaged, and cannot meaningfully engage, in the negotiations required by articles 74 and 83 of the Convention, the Special Chamber lacks jurisdiction. According to the Maldives' fourth preliminary objection, there is not, and cannot be, a dispute between Mauritius and the Maldives concerning its maritime boundary. Without such a dispute, the Special Chamber has no jurisdiction. Finally, the Maldives submits that Mauritius' claims constitute an abuse of process and should therefore be rejected as inadmissible at the preliminary objections phase.

80. The Special Chamber will now examine the above preliminary objections in the order presented by the Maldives.

V. First preliminary objection: Indispensable third party

81. The Maldives' first preliminary objection is that the Special Chamber lacks jurisdiction "because an indispensable party, namely the United Kingdom, is absent in these proceedings and did not consent to be a party to them."

82. The Maldives maintains that, under the well-established Monetary Gold principle, "a court or tribunal cannot exercise its jurisdiction in the absence of an indispensable party". Referring to the findings of the ICJ and the Tribunal, the Maldives states that under the Monetary Gold principle: (1) a State not party to proceedings is an "indispensable party" when the decision between the parties cannot be reached without the court or tribunal examining the validity of the conduct of this State or its legal position; and (2) an international court or tribunal cannot exercise its jurisdiction in the absence of such an indispensable party.

83. The Maldives contends that the Monetary Gold principle plainly applies to the present case and prevents the Special Chamber from exercising jurisdiction. According to the Maldives, there is a long-standing and unresolved sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago. Thus, in order to entertain Mauritius' delimitation claims, the Special Chamber would necessarily be required to rule on those States' respective sovereignty claims. In other words, the subject matter of the Special Chamber's decision in the present case would necessarily entail a determination as to whether the United Kingdom is or is not sovereign over the Chagos Archipelago. However, in the view of the Maldives, the Special Chamber cannot make such a determination without the consent of the United Kingdom.

84. In this regard, the Maldives argues that the legal situation in the present case is strikingly similar to the *East Timor* case. In the latter case, the Maldives points out, the ICJ noted that the very subject matter of its decision would necessarily be a determination of whether Indonesia, which was not a party to the proceedings, "could or could not have acquired the power to enter into treaties on behalf of East Timor relating to the resources of its continental shelf" and concluded that it "could not make such a determination in the absence of the consent of Indonesia."

85. With respect to Mauritius' contention that the *Chagos* advisory opinion has already determined that the United Kingdom has no sovereign rights with regard to the Chagos Archipelago, so that the Special Chamber should consider that the United Kingdom's claim to sovereignty or sovereign rights is not plausible, the Maldives claims that "the Special Chamber should acknowledge that the sovereignty dispute between the United Kingdom and Mauritius does exist and has not been resolved as a matter of fact."

86. According to the Maldives, despite the advisory opinion and the subsequent UNGA resolution 73/295, the United Kingdom "maintains its claim over Chagos, which it continues to administer as the British Indian Ocean Territory." The Maldives states that Mauritius acknowledges this fact and that Mauritius has "reiterate[ed] its view that the ICJ Advisory Opinion 'made clear that the Chagos Archipelago is, and has always been, a part of Mauritius'." Thus, in the Maldives' view, it is plain that the matter of sovereignty over the Chagos Archipelago remains in dispute between Mauritius and the United Kingdom.

87. Moreover, the Maldives submits that "Mauritius' present claims" also require the Special Chamber to rule on:

> (a) Whether the ICJ gave an opinion on the sovereignty dispute; (b) Whether any such opinion is binding on the United Kingdom; (c) Whether the obligation on which the ICJ advised – namely, that the United Kingdom must bring an end to its administration of the Chagos Archipelago – means that Mauritius is entitled to exercise the rights of the "coastal State" and delimit a maritime boundary with the Maldives before the United Kingdom's administration has in fact been terminated; and (d) Whether the *Chagos* Advisory Opinion overruled the award in the *Chagos Marine Protected Area Arbitration* with the effect that that award no longer has *res judicata* effect between the United Kingdom and Mauritius.

88. As to whether the Monetary Gold principle applies in the context of decolonization, the Maldives asserts that the *East Timor* case

> leaves no doubt that the principle applies with equal force even in the extreme case of aggression and annexation of a non-self-governing

territory, in flagrant violation of obligations *erga omnes*. The context of decolonization is simply irrelevant; whether the UK is right or wrong is irrelevant; its consent to jurisdiction cannot be circumvented.

89. The Maldives concludes that a decision on Mauritius' maritime claims in the present proceedings would necessarily require the Special Chamber to rule on the United Kingdom's legal interests, which would not only be affected by, but would form the very subject matter of, this decision. Since the United Kingdom is absent from the present proceedings, the Maldives submits that the Special Chamber should decline jurisdiction.

90. While Mauritius "does not dispute that the *Monetary Gold* principle is 'a well-established procedural rule in international judicial proceedings'", it submits that "this principle has no application to the present case." Mauritius maintains that "[t]he *Monetary Gold* principle can have no application in circumstances where a third State has no rights."

91. According to Mauritius, the United Kingdom is plainly not an indispensable party in this case. It maintains that the United Kingdom is not even an interested party, because "it has no legal interest in the Chagos Archipelago, and therefore none that can be affected by a delimitation of the maritime boundary separating the Archipelago from the Maldives, which is the object of this case."

92. Mauritius submits that "[t]he bar for declining to exercise jurisdiction is very high", referring to the finding of the ICJ in *Monetary Gold Removed from Rome in 1943* that, "[i]n the present case, Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision." Mauritius argues that 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 as "[t]hat determination has already been made by the ICJ."

93. For Mauritius, "[t]he 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." Mauritius submits 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."

94. According to Mauritius, since the United Kingdom has no sovereignty, or sovereign rights or other material rights, in respect of any part of the territory of Mauritius, 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."

95. Regarding the *East Timor* case, Mauritius submits that the ICJ, in that case, could not treat the resolutions of political organs, without more, as having resolved a dispute about the lawfulness of Indonesia's conduct and on that basis alone proceed to adjudicate Indonesia's rights in its absence. In contrast, "here we have the ICJ's authoritative, and correct, by admission, judicial determinations that directly address, and resolve, the legal status of the Chagos Archipelago as an integral part of Mauritius' territory."

96. Regarding the United Kingdom's sovereignty claim to the Chagos Archipelago after the ICJ rendered its advisory opinion, Mauritius contends that "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." According to Mauritius, this gives more weight to "a defiant political statement by a recalcitrant State than to the Court's authoritative legal determination of the issue."

* * *

97. The Special Chamber recalls that the Tribunal stated in the *M/V "Norstar" Case* that the Monetary Gold principle is "a well-established procedural rule in international judicial proceedings" (*M/V "Norstar"* (*Panama* v. *Italy*), *Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at p. 84, para. 172). The Special Chamber notes in this regard that the Parties are in agreement as to the effect of the Monetary Gold principle. The Parties further agree that Mauritius' claims can be entertained only if the Special Chamber accepts that Mauritius, not the United Kingdom, has sovereignty over the Chagos Archipelago.

98. However, the Parties disagree as to whether the United Kingdom is an indispensable party to the present proceedings. While the Maldives argues that the United Kingdom is an indispensable party as there is an extant sovereignty dispute between the United Kingdom and Mauritius over the Chagos Archipelago, Mauritius contends that the United Kingdom is not such a party because the ICJ has already determined that it has no sovereignty, or sovereign rights, in respect of any part of the Chagos Archipelago. Thus the Parties' disagreement boils down to the question as to whether a sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago still exists or has been resolved.

99. Accordingly, if a sovereignty dispute over the Chagos Archipelago exists, the United Kingdom may be regarded as an indispensable party and the Monetary Gold principle would prevent the Special Chamber from exercising its jurisdiction. On the other hand, if such sovereignty dispute has been resolved in favour of Mauritius, the United Kingdom may not be regarded as an indispensable party and the Monetary Gold principle would not apply.

100. As the Special Chamber will examine below, the core issue of the second preliminary objection raised by the Maldives also concerns the legal status of the Chagos Archipelago. Therefore, this issue is central to both the first and the second preliminary objection. The Special Chamber observes that the Parties acknowledge that their entire cases for both preliminary objections rest on the "core premise", namely that for the Maldives, the sovereignty dispute between Mauritius and the United Kingdom remains unresolved and that for Mauritius, the sovereignty issue has been resolved in its favour. It also observes that during the oral proceedings the Parties presented their arguments on the first and second preliminary objections in combination. The Special Chamber thus considers it appropriate to examine the two objections together insofar as the legal status of the Chagos Archipelago is concerned. Accordingly, the Special Chamber will proceed to the second preliminary objection of the Maldives and scrutinize the key issues common to these two preliminary objections. It will then give its findings on the first and second preliminary objections of the Maldives.

VI. Second preliminary objection: Disputed issue of sovereignty

101. The Special Chamber will now turn to the second preliminary objection of the Maldives, namely that the Special Chamber has "no jurisdiction to determine the disputed issue of sovereignty over the Chagos Archipelago, which it would necessarily have to do if it were to determine Mauritius' claims in these proceedings."

102. In addressing this objection, the Special Chamber will begin by examining the scope of its jurisdiction under article 288, paragraph 1, of the Convention and the nature of the dispute submitted to it. It will then consider the question of the legal status of the Chagos Archipelago.

A. Scope of jurisdiction of the Special Chamber and nature of the dispute

103. The Maldives submits that the Special Chamber's "jurisdiction … is established by, and limited to, disputes 'concerning the interpretation or application of this Convention'" pursuant to article 288, paragraph 1, of the Convention. It further submits that a dispute over territorial sovereignty is clearly not a dispute concerning the interpretation or application of the Convention. According to the Maldives, "[t]he jurisprudence provides clear and consistent confirmation that disputes concerning sovereignty over land territory do not come within the jurisdiction of an UNCLOS tribunal" pursuant to article 288, paragraph 1, of the Convention. In support of its submission, the Maldives refers to the findings of the arbitral tribunals in the *Chagos Marine Protected Area Arbitration*, the *South China Sea Arbitration* and *Coastal State Rights in the Black Sea, Sea of Azov and Kerch Strait* (hereinafter "*Coastal State Rights*").

104. As to the nature of the dispute submitted to the Special Chamber, the Maldives contends that the case before the Special Chamber "*primarily* concerns a long-standing and unresolved bilateral dispute between Mauritius and the United Kingdom about territorial sovereignty over the Chagos Archipelago". According to the Maldives, "[o]nly an 'opposite' or 'adjacent' state may bring proceedings" pursuant to articles 74 and 83 of the Convention. However, it argues that determining whether Mauritius is currently the State with the "opposite or adjacent coast" to the Maldives would inevitably require

the Special Chamber "to determine (either expressly or implicitly) the dispute between Mauritius and the United Kingdom regarding sovereignty over the Chagos Archipelago."

105. The Maldives asserts that the Special Chamber has no jurisdiction to determine such a disputed issue of sovereignty, as "the question of whether Mauritius is the 'coastal State' in respect of the Chagos Archipelago is clearly not a dispute concerning the interpretation or application of UNCLOS" and thus is a matter that is manifestly outside the jurisdiction of the Special Chamber under article 288 of the Convention. Accordingly, the Maldives claims that the Special Chamber is without jurisdiction in respect of the claims of Mauritius.

106. For its part, Mauritius submits that the preliminary objection raised by the Maldives should be rejected as it offers no basis for the Special Chamber to decline to exercise its jurisdiction.

107. As to the scope of jurisdiction of the Special Chamber, Mauritius does not appear to contest that the jurisdiction of the Special Chamber is limited to disputes concerning the interpretation or application of the Convention and that a territorial dispute is not such a dispute.

108. As to the nature of the dispute submitted to the Special Chamber, Mauritius contends that "[t]he dispute concerns the delimitation of the Exclusive Economic Zone ("EEZ") and continental shelf of Mauritius with Maldives in the Indian Ocean." It states that it "does not seek, nor has it ever sought, to use these proceedings to settle a territorial dispute." In its view, there exists no dispute over territorial sovereignty that could prevent the Special Chamber from delimiting the maritime boundary between Mauritius and the Maldives. Mauritius argues that,

> 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.

Accordingly, for Mauritius, the subject matter of the present proceedings is the delimitation of a maritime area adjacent to the Chagos Archipelago over

which "the United Kingdom, as the ICJ has made clear, has no plausible claim of sovereignty or sovereign rights."

* * *

109. Article 288, paragraph 1, of the Convention reads:

> A court or tribunal referred to in article 287 shall have jurisdiction over any dispute concerning the interpretation or application of this Convention which is submitted to it in accordance with this Part.

It is thus clear that the jurisdiction of the Special Chamber is confined to "any dispute concerning the interpretation or application of [the] Convention".

110. The Special Chamber considers that a dispute, which requires the determination of a question of territorial sovereignty, may not be regarded as a dispute concerning the interpretation or application of the Convention under article 288, paragraph 1, of the Convention. In this regard, the Special Chamber recalls the following statement made by the Arbitral Tribunal in the *South China Sea Arbitration*:

> The Convention, however, does not address the sovereignty of States over land territory. Accordingly, this Tribunal has not been asked to, and does not purport to, make any ruling as to which State enjoys sovereignty over any land territory in the South China Sea, in particular with respect to the disputes concerning sovereignty over the Spratly Islands or Scarborough Shoal.
> (*The South China Sea Arbitration between the Republic of the Philippines and the People's Republic of China, Award of 12 July 2016, RIAA, Vol. XXXIII*, p. 153, at p. 184, para. 5)

111. The Special Chamber notes that the Parties appear to be in agreement that the jurisdiction of the Special Chamber is confined to a dispute concerning the interpretation or application of the Convention and that a territorial dispute is not such a dispute.

112. The Special Chamber will now examine the nature of the dispute submitted to it. In paragraphs 27 and 28 of the Notification, Mauritius makes the following claims:

27. Mauritius requests the Tribunal 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 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.

28. Mauritius also requests the Tribunal to declare that Maldives has violated its obligation to, pending agreement as provided for in paragraphs 1 of Articles 74 and 83 of UNCLOS, make every effort to enter into provisional arrangements of a practical nature and, during such transitional periods, not to jeopardize or hamper the reaching of the final agreement.

113. The Special Chamber notes that, given the geography of the area relevant to the present proceedings, in particular the location of the Chagos Archipelago, Mauritius' claims are based on the premise that it has sovereignty over the Chagos Archipelago and thus is the State with an opposite or adjacent coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention and the State concerned within the meaning of paragraph 3 of the same articles. The Special Chamber further notes that the Parties are in agreement that Mauritius' claims are based on such premise.

114. However, the Parties disagree on the validity of the premise that Mauritius has sovereignty over the Chagos Archipelago. The Maldives argues that such premise is untenable in light of the longstanding, unresolved sovereignty dispute between Mauritius and the United Kingdom. For its part, Mauritius contends that such premise must be accepted by the Special Chamber as the advisory opinion of the ICJ has already determined that the United Kingdom has no rights as a sovereign over the Chagos Archipelago and has confirmed that, as a matter of international law, the Chagos Archipelago is an integral part of Mauritius, and Mauritius only. Mauritius adds that the Special Chamber is called upon simply to recognize and respect the ICJ's authoritative determination of this issue and proceed to delimit the maritime boundary between the Parties.

115. Therefore, the legal status of the Chagos Archipelago is at the core of the disagreement between the Parties with respect to the second preliminary objection. As noted above, it is also central to the disagreement between the

Parties with respect to the first preliminary objection. Accordingly, the Special Chamber's examination of this question is pertinent to both the first and the second preliminary objection.

B. Legal Status of the Chagos Archipelago

116. The Special Chamber will now turn to the question of the legal status of the Chagos Archipelago.

117. The Maldives claims that "the sovereignty dispute remains extant" and that "[u]ntil it is resolved there cannot be a dispute between the parties concerning a maritime boundary which they may or may not share." In support of its claim, the Maldives puts forward the following arguments. First, the *Chagos* arbitral award did not resolve the sovereignty dispute and remains *res judicata* between Mauritius and the United Kingdom. Second, the *Chagos* advisory opinion did not resolve the sovereignty dispute. Third, UNGA resolution 73/295 had no effect on the sovereignty dispute. Fourth, in any case, the sovereignty dispute between Mauritius and the United Kingdom exists as a matter of fact.

118. Mauritius submits that, in light of the ICJ advisory opinion, there is no issue of sovereignty over the Chagos Archipelago and that the Maldives' claim should accordingly be rejected.

119. The Special Chamber will examine the arguments advanced by the Parties with respect to the *Chagos* arbitral award, the *Chagos* advisory opinion, UNGA resolution 73/295 and the current status of the sovereignty dispute over the Chagos Archipelago.

1. Arbitral award in the *Chagos Marine Protected Area Arbitration*

120. The Special Chamber now turns to the question as to whether the *Chagos* arbitral award has any relevance or implication for the legal status of the Chagos Archipelago.

121. The Maldives argues that the Annex VII Arbitral Tribunal in the *Chagos Marine Protected Area Arbitration* found that a sovereignty dispute existed between Mauritius and the United Kingdom over the Chagos Archipelago and

declined to resolve this dispute, finding that to do so would be outside its jurisdiction. The Maldives claims that "the 2015 arbitral award, according to which the territorial dispute between Mauritius and the United Kingdom does not concern the interpretation or application of the United Nations Convention on the Law of the Sea, remains fully relevant" and "possesses the "finality" of decisions with *res judicata* effect."

122. The Maldives submits that, while the Arbitral Tribunal found that the parties' dispute with respect to Mauritius' first submission was properly characterized as relating to land sovereignty over the Chagos Archipelago, it held, however, that it could exercise jurisdiction over Mauritius' fourth submission – namely, that the United Kingdom's declaration of the MPA violated its obligations under, *inter alia*, articles 2, 55, 56, 63, 64, 194 and 300 of the Convention. According to the Maldives, the Arbitral Tribunal concluded that the United Kingdom's declaration involved a breach of article 2, paragraph 3, article 56, paragraph 2, and article 194, paragraph 4, of the Convention "because, in exercising the powers of a coastal State, it had failed to consult with or have due regard to the interests of Mauritius." The Maldives claims that "[t]he tribunal's findings necessarily treat the United Kingdom as the relevant coastal State for the purpose of managing maritime zones around the Chagos Archipelago."

123. In the Maldives' view, therefore, "the *Chagos Marine Protected Area Arbitration* produced an award, with *res judicata* effect between Mauritius and the United Kingdom, to the effect that, at least until resolution of the sovereignty dispute, the United Kingdom is entitled to exercise the rights of a coastal State under UNCLOS in respect of the Chagos Archipelago".

124. As to Mauritius' argument concerning the difference between the *Chagos Marine Protected Area Arbitration* and the present case, the Maldives points out that it "advances no claim that the award in the *Chagos Marine Protected Area Arbitration* is *res judicata* between the parties to the present proceedings, so Mauritius' response is irrelevant."

125. Mauritius states that "it should be indisputable that the arbitral award could not have had *res judicata* effect on the question of who is the "coastal State" in respect of the Chagos Archipelago, because the Annex VII tribunal did not make any decision on that issue." It further states that, "[t]o the contrary, it decided, by a 3–2 vote, that it would not rule on that issue because

it had no jurisdiction under the 1982 Convention to decide questions of land sovereignty." Mauritius adds that, "[i]n short, sovereignty over Chagos was not the *res* that was *judicata* in the Annex VII case."

126. Mauritius contends that it "is not seeking the same decision which it sought in the *Chagos MPA Arbitration*, or the ruling which the UN General Assembly sought in the Advisory Opinion concerning the Chagos Archipelago." According to Mauritius, there have been "critical developments" since the *Chagos* arbitral award was rendered, namely the ICJ's advisory opinion and UNGA resolution 73/295. Mauritius avers that "[t]hese 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."

127. Mauritius also points out that "[t]here is no identity between the relief sought or the issues determined in the *Chagos MPA Arbitration* and those now raised before the Special Chamber." It adds that "[t]hey are not based on the same set of facts, nor do they involve the same parties."

* * *

128. The Special Chamber is aware that, before the present dispute was submitted to it, the questions relating to the legal status of the Chagos Archipelago had been considered first by the Annex VII Arbitral Tribunal in relation to the dispute between Mauritius and the United Kingdom concerning the MPA established by the United Kingdom around the Chagos Archipelago, and then by the ICJ in relation to the request made by the UNGA for an advisory opinion regarding the decolonization of Mauritius.

129. The Parties make reference to, and rely on, the *Chagos* arbitral award and the *Chagos* advisory opinion in support of their respective claims. However, as was seen above and will be seen below, the Parties hold markedly different views as to the meaning and effect of the arbitral award and the advisory opinion.

130. The Special Chamber will begin with the examination of the *Chagos* arbitral award to assess whether it can shed light on the legal status of the Chagos Archipelago.

131. In the *Chagos Marine Protected Area Arbitration*, Mauritius made four submissions to claim that the establishment of the MPA around the Chagos Archipelago by the United Kingdom was in breach of the Convention. The submissions that may be relevant to the question the Special Chamber has to address are the first and fourth submissions.

132. The first submission of Mauritius reads as follows:

> the United Kingdom is not entitled to declare an "MPA" or other maritime zones because it is not the "coastal State" within the meaning of *inter alia* Articles 2, 55, 56 and 76 of the Convention;
> (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at p. 440, para. 158)

The fourth submission reads:

> The United Kingdom's purported "MPA" is incompatible with the substantive and procedural obligations of the United Kingdom under the Convention, including *inter alia* Articles 2, 55, 56, 63, 64, 194 and 300, as well as Article 7 of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995.
> (*Ibid.*, at pp. 440–441, para. 158)

133. Regarding the first submission, the Arbitral Tribunal found that "a dispute between the Parties exists with respect to sovereignty over the Chagos Archipelago" and that "[t]he Parties' dispute regarding sovereignty over the Chagos Archipelago does not concern the interpretation or application of the Convention." Accordingly, the Arbitral Tribunal concluded that it had no jurisdiction to entertain Mauritius' first submission.

134. Thus, it is clear that the Arbitral Tribunal recognized the existence of a sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago, which, it concluded, it lacked jurisdiction to address. In this regard, it is worth noting what the Arbitral Tribunal observed about

"the agreement between the United Kingdom and the Mauritius Council of Ministers in 1965 to the detachment of the Archipelago" (hereinafter "the 1965 Agreement"). According to the Arbitral Tribunal, the validity or otherwise of the 1965 Agreement was "a central element of the Parties' submissions on Mauritius' First and Second Submissions, sovereignty, and the identity of the coastal State" (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at pp. 533–534, para. 418).

135. As to the fourth submission, the Arbitral Tribunal found that it had jurisdiction to consider Mauritius' fourth submission and the compatibility of the MPA with the following provisions of the Convention:

> (a) Article 2(3) insofar as it relates to Mauritius' fishing rights in the territorial sea or to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;
> (b) Article 56(2), insofar as it relates to the United Kingdom's undertakings to return the Archipelago to Mauritius when no longer needed for defence purposes and to return the benefit of any minerals or oil discovered in or near the Chagos Archipelago to Mauritius;
> (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at pp. 500–501, para. 323)

136. After finding that it had jurisdiction over the fourth submission of Mauritius, the Arbitral Tribunal noted that "the legal effect of the 1965 Agreement is also a central element of the Parties' submissions on Mauritius' Fourth Submission, insofar as it involves the Lancaster House Undertakings" (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at p. 534, para. 419). The Arbitral Tribunal then found that "its jurisdiction with respect to Mauritius' Fourth Submission … permits it to interpret the 1965 Agreement to the extent necessary to establish the nature and scope of the United Kingdom's undertakings" (*Ibid.*). The Arbitral Tribunal went on to examine the legal status of the 1965 Agreement and the extent to

which it was called upon to engage with Mauritius' arguments regarding its validity as well as the legal significance of the United Kingdom's repetition of its undertakings in the years following the independence of Mauritius.

137. On the basis of those examinations, the Arbitral Tribunal found:

> (1) that the United Kingdom's undertaking to ensure that fishing rights in the Chagos Archipelago would remain available to Mauritius as far as practicable is legally binding insofar as it relates to the territorial sea;
> (2) that the United Kingdom's undertaking to return the Chagos Archipelago to Mauritius when no longer needed for defence purposes is legally binding; and
> (3) that the United Kingdom's undertaking to preserve the benefit of any minerals or oil discovered in or near the Chagos Archipelago for Mauritius is legally binding;
>
> (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at pp. 582–583, para. 547)

Accordingly, the Arbitral Tribunal declared that, in establishing the MPA surrounding the Chagos Archipelago, the United Kingdom breached its obligations under article 2, paragraph 3, article 56, paragraph 2, and article 194, paragraph 4, of the Convention.

138. In the view of the Special Chamber, the fact that the Arbitral Tribunal found that it had jurisdiction to consider the fourth submission of Mauritius and concluded that the United Kingdom had breached its obligations under the Convention does not mean that the Arbitral Tribunal recognized the United Kingdom as the coastal State with respect to the Chagos Archipelago, as the Maldives argues. On the contrary, in addressing the first submission of Mauritius, the Arbitral Tribunal made it clear that it lacked jurisdiction to determine who has sovereignty over the Chagos Archipelago. With respect to the fourth submission, the main concern of the Arbitral Tribunal was, without prejudice to the question of sovereignty over the Chagos Archipelago, to consider whether the United Kingdom's declaration of the MPA was compatible with its obligations under the Convention. In this regard, the Arbitral Tribunal examined the 1965 Agreement to the extent necessary to establish the nature and scope of the United Kingdom's undertakings, and found them to be legally binding on the ground of estoppel "in view of their repeated reaffirmation

after 1968" (*Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom of Great Britain and Northern Ireland, Award of 18 March 2015, RIAA, Vol. XXXI*, p. 359, at p. 548, para. 448). The Special Chamber, therefore, cannot accept the Maldives' contention that

> the *Chagos Marine Protected Area Arbitration* produced an award, with *res judicata* effect between Mauritius and the United Kingdom, to the effect that, at least until resolution of the sovereignty dispute, the United Kingdom is entitled to exercise the rights of a coastal State under UNCLOS in respect of the Chagos Archipelago.

139. The Special Chamber considers that the *Chagos* arbitral award is of some relevance to the legal status of the Chagos Archipelago. While the Arbitral Tribunal recognized the existence of the sovereignty dispute over the Chagos Archipelago, it was unable to address it owing to its jurisdictional limitation as an Annex VII tribunal. On the other hand, in the Special Chamber's view, the Arbitral Tribunal's findings on the rights of Mauritius in respect of the Chagos Archipelago pursuant to the legally binding undertakings of the United Kingdom, such as fishing rights in the waters of the Archipelago, the right to the return of the Archipelago when no longer needed for defence purposes, and the right to the benefit of any minerals or oil discovered in or near the Archipelago, may play a role in the assessment of whether Mauritius can be regarded as the State with an opposite or adjacent coast to the Maldives for the purpose of maritime boundary delimitation. The Special Chamber will return to this issue when it comes to a conclusion below (see paragraph 246 below).

2. Advisory opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*

140. The Special Chamber will now consider whether the *Chagos* advisory opinion has any relevance to, or implications for, the legal status of the Chagos Archipelago.

141. The Maldives submits that the *Chagos* advisory opinion did not, and could not, resolve the bilateral sovereignty dispute between Mauritius and the United Kingdom. The Maldives advances the following arguments in this regard. First, "[t]he ICJ was not asked to, and did not, provide advice on the sovereignty dispute, let alone the question of which State is the relevant coastal

State for UNCLOS purposes". Second, resolution of the sovereignty dispute is not "an implied or necessary consequence of the ICJ's Advisory Opinion". Third, even if the ICJ had given advice on the sovereignty dispute, any such opinion would not have been binding on States. Fourth, the ICJ was not asked, had no power and did not purport to overrule the *Chagos* arbitral award.

142. For its part, Mauritius submits that "[t]here 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."

143. The Special Chamber will examine the issues raised by the Parties' arguments in the order presented by the Maldives. The Special Chamber will embark upon this task by first considering the nature of the questions posed to the ICJ and the scope and contents of the advisory opinion. It will then examine the consequences and legal effect of the advisory opinion. Finally, it will address the relationship between the *Chagos* arbitral award and the *Chagos* advisory opinion.

Questions posed to the ICJ and the scope and contents of the Chagos *advisory opinion*

144. The Maldives maintains that neither of the questions which the UNGA posed to the ICJ concerned sovereignty or required the ICJ to give an opinion on the sovereignty dispute between Mauritius and the United Kingdom. According to the Maldives, "[t]he questions posed to the Court made no mention of sovereignty whatsoever" and "[t]he Court made that much clear itself." The Maldives argues that the ICJ "expressly recognised that '[t]he General Assembly ha[d] not sought the Court's opinion to resolve a territorial dispute between two States'."

145. The Maldives points out that, in considering the first question, the ICJ found that,

> [i]n Question (*a*), the General Assembly asks the Court to examine certain events which occurred between 1965 and 1968, and which fall within the framework of the process of decolonization of Mauritius as a

> non-self-governing territory. *It did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius*.

146. The Maldives underscores that it was indeed specifically on the basis that it had not been asked to resolve the sovereignty dispute that the ICJ considered that "it could exercise jurisdiction to give the advisory opinion requested without 'circumventing the principle of consent by a State to the judicial settlement of its dispute with another State'."

147. The Maldives contends that the second question put to the ICJ is particularly instructive in this regard. It points out that the ICJ's answer was a short one, that "the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and … all Member States must co-operate with the United Nations to complete the decolonization of Mauritius." The Maldives states that

> [t]hose were the only legal consequences which the Court identified. At no point did the Court state that the UK suddenly lost sovereignty, let alone that Mauritius immediately became the exclusive sovereign and coastal State. The General Assembly had not asked for an opinion about sovereignty – only one about decolonization.

148. The Maldives considers that "Mauritius' claim that the ICJ decided the bilateral dispute could only be correct if the Court went beyond the legal questions put to it and exceeded its jurisdiction."

149. In this regard, the Maldives draws the attention of the Special Chamber to the attempts made by Mauritius, during the advisory proceedings, to invite the ICJ to "issue a sweeping opinion on territorial sovereignty and maritime boundary delimitation with the Maldives." First, according to the Maldives, Mauritius invited the ICJ to find that

> sovereignty over the Chagos Archipelago is entirely derivative of, subsumed within, and determined by the question of whether decolonization has or has not been lawfully completed.

The Maldives contends that the ICJ declined to do so, "stating in clear terms that the UNGA had not asked it to resolve the sovereignty or territorial dispute

between Mauritius and the United Kingdom." Second, Mauritius invited the ICJ to find that,

> among the legal consequences of continued British administration of the Chagos Archipelago, was the obligation of the United Kingdom to 'consult and cooperate with Mauritius inter alia to … allow Mauritius to proceed to a delimitation of its maritime boundaries with the Maldives.'

The Maldives argues that the ICJ again declined Mauritius' invitation to "articulate even these consequences which are more modest than a sovereignty claim." In the Maldives' view, "the Court's silence" is certainly not consistent with the claim that the sovereignty dispute has been resolved in favour of Mauritius.

150. For the Maldives, "there is no clearer indication of Mauritius' mischaracterization of the Opinion than its repeated assertion that the Court concluded that the Chagos 'is, and always has been, a part of the territory of Mauritius.'" The Maldives emphasizes that the ICJ simply did not say this and that all it said was that, "*at the time of its detachment from Mauritius in 1965*, the Chagos Archipelago was clearly an integral part of that non-self-governing territory [i.e. Mauritius]".

151. With regard to the two passages which Mauritius claims indicate the ICJ's opinion that the Chagos Archipelago is currently part of Mauritius' sovereign territory, the Maldives asserts that, "[r]ead properly and in context, neither of the passages support that conclusion." First, regarding the passage stating that the United Kingdom must bring to an end its administration of the Chagos Archipelago so as to enable Mauritius to complete the "decolonization of its territory", the Maldives submits that, read in context, "the words … most readily refer to the United Kingdom's obligation to complete the decolonisation of the entire territory of Mauritius *as it stood in 1965*." Second, as to the passage stating that the obligations arising under international law "require" the United Kingdom to respect the territorial integrity of that country, including the Chagos Archipelago, the Maldives is also of the view that, in context, the passage is best understood as a reference to the territorial integrity of Mauritius "as it stood in 1965", and the United Kingdom's obligation to complete the process of decolonization in respect of the entire territory.

152. Mauritius takes the position that

> [t]he issue of whether the Chagos Archipelago is an integral part of the territory of Mauritius or whether it is a lawful colonial possession of the UK was resolved definitively, and as a matter of international law, by the International Court of Justice in its Advisory Opinion of 25 February 2019.

153. According to Mauritius, the passage of the advisory opinion, in which the ICJ 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", is far from supporting the Maldives' position that the advisory opinion did not, and could not, resolve the bilateral sovereignty dispute. Mauritius contends that, read in context, this and other passages of the advisory opinion to the same effect are "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, Mauritius notes, accepting the General Assembly's request would amount to circumventing the principle of consent.

154. However, Mauritius argues that the ICJ rejected the United Kingdom's objection and made clear that the questions posed 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."

155. For Mauritius, the ICJ left no doubt about which issues it considered inseparable from one another. Mauritius argues that the ICJ recognized that "the issue of whether the Chagos Archipelago forms an integral part of Mauritius was inseparable from the issue of the lawfulness of Mauritius' decolonization", and that its advisory opinion would necessarily address and resolve both issues. Mauritius notes that the ICJ thus continued in the next paragraph:

> However, the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute.

In Mauritius' view, in replying to the General Assembly's request, and deciding whether the decolonization of Mauritius had been lawfully completed, the ICJ was also determining which State had sovereignty over the Chagos Archipelago.

156. Mauritius contends that, contrary to the Maldives' claim, it did not "invite" the ICJ to find that the sovereignty issue was subsumed within the question of decolonization; nor did the ICJ reject an "invitation" from Mauritius which it never received. Rather, its argument before the ICJ was similar to that of the United Kingdom that "the underlying sovereignty dispute could not be separated from the question of decolonization, and that by answering the UNGA's questions on decolonization … the sovereignty issue would inevitably be resolved." In Mauritius' view, it is of paramount significance that, "faced with these entirely congruent views by the two main protagonists in the Advisory Proceedings, on the consequences of answering the questions, the Court chose to do so."

157. Mauritius argues that decolonization always implicates sovereignty, because "the end result of decolonization is independence, and the exercise of sovereignty by the newly independent State over the entirety of the former colonial territory." Thus, in Mauritius' view, in answering the question as to whether the decolonization of Mauritius had been lawfully completed, the ICJ clearly understood that, "in so doing, it was determining which State was the lawful sovereign over Chagos."

158. Mauritius notes that, as regards the General Assembly's first question, the ICJ determined 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 was unlawful, Mauritius argues, it follows that the United Kingdom has no rights in respect of the Chagos Archipelago.

159. Mauritius asserts that what made the decolonization of Mauritius incomplete was the United Kingdom's failure to fulfil its obligation "to respect

the territorial integrity of that country, including the Chagos Archipelago." According to Mauritius, "[t]here can be no clearer determination, that as a matter of international law, the Archipelago is an integral part of the territory of Mauritius."

160. In Mauritius' view, there are equally clear determinations in the ICJ's answer to the General Assembly's second question regarding the legal consequences arising from the failure to complete the decolonization of Mauritius. According to Mauritius, in response to this question, the ICJ determined that, "because the UK continued to occupy and administer Chagos after Mauritius achieved independence as a sovereign State, the UK was engaged in 'an unlawful act of a continuing character.'" As a consequence, "the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of that State." The United Kingdom accordingly 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." In light of this language, Mauritius avers, "the only conclusion that can be drawn is that in the Court's view Mauritius alone is sovereign over Chagos".

161. In this regard, Mauritius draws attention to the specific words used in two passages of the advisory opinion. First, as seen above, the ICJ determined that the United Kingdom is obligated to bring an end to its administration of the Chagos Archipelago "so as to enable 'Mauritius to complete the decolonization of its territory …'." Second, the ICJ used the present tense when holding that the "obligations arising under international law … require the United Kingdom … to respect the territorial integrity of that country [*i.e.*, Mauritius] including the Chagos Archipelago." Mauritius states that the ICJ "did not refer to the obligation as one that was limited to a past moment". It asserts that the words admit of only a single interpretation: the ICJ 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."

* * *

162. The questions put by the UNGA to the ICJ for an advisory opinion are as follows:

(a) Was the process of decolonization 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?

163. The Special Chamber notes that the questions posed by the General Assembly are concerned with the lawfulness of the process of decolonization of Mauritius and the consequences under international law arising from the United Kingdom's continued administration of the Chagos Archipelago.

164. The Special Chamber further notes that both Parties refer to the findings of the ICJ that, in making a request for an advisory opinion, the General Assembly "has not sought the Court's opinion to resolve a territorial dispute between two States" and "did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 117, para. 86, and at p. 129, para. 136).

165. However, the Parties differ as to the meaning and implication of these findings. The Maldives is of the view that, given the nature of the questions posed, the ICJ did not, and could not, address the sovereignty dispute between the United Kingdom and Mauritius. On the other hand, Mauritius' view is that the ICJ stated so because "the issues raised by the request were 'located in the broader frame of reference of decolonization'" and that, in answering the questions about the decolonization of Mauritius and its consequences, the ICJ also determined the sovereignty issue over the Chagos Archipelago.

166. In the Special Chamber's view, the pronouncement that the General Assembly did not submit to the ICJ a bilateral dispute over sovereignty does

not necessarily carry with it the inference that the advisory opinion therefore has no relevance or implication for the issue of sovereignty. Given the close relationship between decolonization and sovereignty, such inference is far from evident. The Special Chamber notes that the ICJ itself denied such inference when it stated that "the fact that the Court may have to pronounce on legal issues on which divergent views have been expressed by Mauritius and the United Kingdom does not mean that, by replying to the request, the Court is dealing with a bilateral dispute" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 118, para. 89).

167. The Special Chamber will next examine whether the advisory opinion has, expressly or implicitly, addressed the sovereignty dispute over the Chagos Archipelago. The Special Chamber notes that the Parties hold diametrically opposed views as to this question. While the Maldives contends that the advisory opinion does not and cannot resolve the sovereignty dispute between Mauritius and the United Kingdom, Mauritius asserts that the advisory opinion has conclusively resolved the sovereignty issue in favour of Mauritius.

168. As an initial matter, the Special Chamber notes that the principle of consent by a State to the judicial settlement of its dispute with another State is fundamental to international judicial proceedings. It would be contrary to the principle of consent to accept the proposition that international courts or tribunals, through contentious or advisory proceedings, can resolve a bilateral dispute without the consent of a party to the dispute. However, this does not mean that the advisory opinion could not entail implications for the disputed issue of sovereignty.

169. The Special Chamber will now consider paragraphs in the *Chagos* advisory opinion which are of particular relevance in this regard.

170. With respect to the first question posed by the General Assembly, the relevant paragraphs are:

> 170. … at the time of its detachment from Mauritius in 1965, the Chagos Archipelago was clearly an integral part of that non-self-governing territory.
>
> …

> 172. … Having reviewed the circumstances in which the Council of Ministers of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago on the basis of the Lancaster House agreement, the Court considers that this detachment was not based on the free and genuine expression of the will of the people concerned.
>
> 173. … The Court considers 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, including the Chagos Archipelago.
>
> 174. The Court concludes that, as a result of the Chagos Archipelago's unlawful detachment and its incorporation into a new colony, known as the BIOT, the process of decolonization of Mauritius was not lawfully completed when Mauritius acceded to independence in 1968.
> (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at pp. 136–137)

171. Thus, the ICJ determined that the detachment of the Chagos Archipelago, which was clearly an integral part of Mauritius in 1965, was not based on the free and genuine expression of the will of the people concerned and consequently the process of decolonization of Mauritius was not lawfully completed. The Special Chamber notes that the ICJ made these determinations after reviewing the circumstances in which the Council of Ministers of the colony of Mauritius agreed in principle to the detachment of the Chagos Archipelago on the basis of the 1965 Agreement, the validity or otherwise of which, as stated above (see paragraph 134 above), the Arbitral Tribunal in the *Chagos Marine Protected Area Arbitration* noted was "a central element" of the parties' submissions on sovereignty. Thus, these determinations could have implications for the issue of sovereignty over the Chagos Archipelago.

172. With respect to the second question of the General Assembly, the relevant paragraphs of the advisory opinion are:

> 177. The Court 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 … It is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius.
>
> 178. Accordingly, 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.
>
> 179. The modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the United Nations General Assembly, in the exercise of its function relating to decolonization.
> …
>
> 180. Since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right … The Court considers that, while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect.
> …
>
> 182. … the Court concludes that the United Kingdom has an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible, and that all Member States must co-operate with the United Nations to complete the decolonization of Mauritius.
> (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at pp. 138–140)

173. The ICJ thus determined that the United Kingdom's continued administration of the Chagos Archipelago is an unlawful act of a continuing character, entailing its international responsibility, and must be brought to an end as rapidly as possible. The Special Chamber considers that these determinations, together with those previously mentioned, have unmistakable implications for the United Kingdom's claim to sovereignty over the Chagos Archipelago. In the Special Chamber's view, such claim is contrary to the determinations made by the ICJ that the detachment of the Chagos Archipelago was unlawful and that

the United Kingdom's continued administration of the Chagos Archipelago constitutes an unlawful act of a continuing character.

174. The ICJ's determinations may also entail considerable implications for the sovereignty claim of Mauritius, whose territory, as the ICJ found, included the Chagos Archipelago at the time of its unlawful detachment by the United Kingdom. In particular, the ICJ determined 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, including the Chagos Archipelago*" (emphasis added by the Special Chamber) (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 137, para. 173). In the Special Chamber's view, this can be interpreted as suggesting Mauritius' sovereignty over the Chagos Archipelago. The same may be said of the determination 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" (emphasis added by the Special Chamber) (*Ibid.*, at p. 139, para. 178). The Special Chamber also notes that the process of decolonization has yet to be completed and that in this regard the ICJ stated that "[t]he modalities necessary for ensuring the completion of the decolonization of Mauritius" were left with the UNGA (*Ibid.*, at p. 139, para. 179).

175. The Special Chamber will take into account its findings above, together with other relevant factors, in assessing the legal status of the Chagos Archipelago. On the basis of that assessment, the Special Chamber will give its conclusion as to whether Mauritius can be regarded as the State with an opposite or adjacent coast to the Maldives for the purpose of maritime boundary delimitation under article 74, paragraph 1, and article 83, paragraph 1, of the Convention.

Consequences of the Chagos *advisory opinion*

176. The Maldives further submits that the resolution of the sovereignty dispute is not "an implied or necessary consequence" of the *Chagos* advisory opinion.

177. Refuting Mauritius' argument that "the Opinion can be taken to have resolved the sovereignty dispute by necessary implication", the Maldives contends that Mauritius's case requires the Special Chamber to assume that "the Court, without saying so, agreed with Mauritius' submissions on the consequences of the decolonisation questions for the sovereignty dispute." However, the Maldives argues that the ICJ's refusal to make such statements is consistent with the fact that "it had not been requested to give an opinion on these matters and did not consider that the consequences suggested by Mauritius flowed from its opinion."

178. In this regard, the Maldives presents three arguments. First, according to the Maldives, whatever Mauritius' own interpretation is, it cannot deny that there is a dispute between Mauritius and the United Kingdom over the consequences of the advisory opinion for the sovereignty dispute between them. The Maldives maintains that, while it considers its interpretation of the advisory opinion to be correct, it does not matter whether it has interpreted the advisory opinion correctly or not because "the correct interpretation of the Advisory Opinion is not a matter concerning the interpretation or application of UNCLOS. It is plainly outside the scope of this Chamber's jurisdiction."

179. Second, the Maldives submits that, "on its face, Mauritius' claim that the *Chagos* Advisory Opinion resolved the sovereignty dispute by necessary implication is not convincing." In the Maldives' view, as a matter of international legal principle, it is not the case that "an administering State which bears an obligation to complete the process of decolonisation in respect of a given territory is immediately stripped of sovereignty over that territory." The existence of such an obligation is thus neither necessarily nor automatically accompanied by an instant loss of sovereignty.

180. Third, the Maldives contends that neither the advisory opinion on *Legal Consequences for States of the Continued Presence of South Africa in Namibia* (*South West Africa*) *notwithstanding Security Council Resolution 276* (*1970*) (hereinafter "the *Namibia* advisory opinion") nor the *Western Sahara* advisory opinion, to which Mauritius referred, assist Mauritius in establishing that "the sovereignty dispute was resolved as a necessary consequence of the *Chagos* Advisory Opinion." The Maldives asserts that the factual and legal situations addressed in these advisory opinions are distinguishable in crucial respects.

181. The Maldives argues that the *Namibia* advisory opinion was not "dispositive on the issue of sovereignty" as Mauritius alleges. According to the Maldives, what was at issue in that case was the extent of South Africa's obligations as a mandatory power, not a claim to sovereignty which it had never made. In contrast, there is no dispute that the United Kingdom historically possessed sovereignty over Mauritius when it was a colony. Thus, once the mandate agreement had been lawfully terminated, South Africa had no right or title of any kind to administer Namibia. However, that is not the case with the United Kingdom. In the Maldives' view, "[t]he *Chagos* Advisory Opinion makes clear that the right of administration remains with the United Kingdom until it departs." In addition, the Maldives argues that, while there was a binding Security Council resolution to ensure that all States were compelled to recognize the illegality and invalidity of South Africa's presence in Namibia, there is no Security Council resolution to such effect relating to the Chagos Archipelago. For these reasons, the Maldives contends, the ICJ did not draw a comparison between the situation in the Chagos Archipelago and that of Namibia, or refer in any other way to the *Namibia* advisory opinion when giving its opinion on the consequences of the United Kingdom's continued administration of the Chagos Archipelago.

182. As regards the *Western Sahara* advisory opinion, the Maldives is of the view that, contrary to Mauritius' claim, the ICJ rejected Spain's objection to the advisory proceedings precisely because "rendering the opinion sought would *not* resolve a bilateral sovereignty dispute or otherwise affect Spain's rights as the administering power of Western Sahara." The Maldives adds that, to the extent that the ICJ gave an opinion on sovereignty, it was in the context of answering the second question posed, which directly required the ICJ to consider the question of historic sovereignty over, or any other legal ties with, Western Sahara. According to the Maldives, as an asserted historical tie of sovereignty was the very subject matter of the second question, there was no need to "extrapolate from the Court's express statements what the implied consequences were for sovereignty …, which is what Mauritius is asking the Special Chamber to do in the present proceedings." The Maldives adds that the *Western Sahara* advisory opinion confirms that "the obligation to complete decolonization is not one and the same as territorial sovereignty; the Court can issue an opinion on the former without any necessary or implied consequences for the latter."

183. Mauritius maintains that, as a consequence of the *Chagos* advisory opinion,

> Mauritius is the only State entitled to claim sovereignty over Chagos; the United Kingdom has no sovereignty in respect of the Archipelago; and, insofar as these proceedings are concerned, it has no legal rights that could be affected by a delimitation of the maritime boundary between the Archipelago and the Maldives.

184. As regards the Maldives' interpretation of the advisory opinion, Mauritius asserts that, "[i]n essence, the Maldives invites the Special Chamber … 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." In this regard, Mauritius argues that "there is no tenable basis for the Special Chamber to place itself in direct opposition to the ICJ and the UN General Assembly." In proceeding to delimit the overlapping maritime zones of Mauritius and the Maldives, Mauritius contends, the Special Chamber "is asked to do no more than respect the territorial integrity of Mauritius, as confirmed by the Court."

185. Mauritius refutes the Maldives' claim that, as a matter of international legal principle, the existence of an obligation to complete decolonization is not necessarily accompanied by an instant loss of sovereignty. Mauritius contends that the Maldives cites not a single authority for the existence of such an alleged "legal principle". On the contrary, according to Mauritius, "[r]ecognising 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*".

186. In support of its argument that the advisory opinion disposed of the issue of sovereignty, Mauritius refers to the *Namibia* advisory opinion of the ICJ. Mauritius notes that, following that advisory opinion, the United Nations Council for South-West Africa, which was established in 1967 by the General Assembly with the function of administering the territory until it gained independence, continued to act in pursuance of the powers and duties granted to it by the United Nations, despite the fact that South Africa denied access to the territory. According to Mauritius, this demonstrated "the immediate and authoritative legal effect of the ICJ's Advisory Opinion, notwithstanding the protestations of South Africa."

187. Referring to the *Western Sahara* advisory opinion, Mauritius asserts that the ICJ determined that it should issue an advisory opinion because the request fundamentally raised a question of decolonization, and "the matter of sovereignty was subsumed within and incidental to that question." Similarly, according to Mauritius, the matter referred to the ICJ in the *Chagos* advisory proceedings concerned decolonization, but "once the lawfulness of decolonisation is determined, the question of territorial sovereignty no longer arises."

* * *

188. The Special Chamber considers that decolonization of a territory entails considerable consequences regarding the question of sovereignty over the territory, as decolonization and territorial sovereignty are closely interrelated. To what extent decolonization may implicate territorial sovereignty depends on the particular circumstances of each case.

189. In the Special Chamber's view, the decolonization and sovereignty of Mauritius, including the Chagos Archipelago, are inseparably related. This was recognized by the Arbitral Tribunal in the *Chagos* arbitral award when it stated that the validity or otherwise of the "1965 Agreement" was "a central element of the Parties' submissions on Mauritius' First and Second Submissions, sovereignty, and the identity of the coastal State" (see paragraph 134 above). This was also implied when the ICJ stated in the *Chagos* advisory opinion that "[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" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 118, para. 88).

190. As regards the Maldives' first argument, the Special Chamber does not consider that the Parties' disagreement on the consequences of the *Chagos* advisory opinion falls outside its jurisdiction. Under article 288, paragraph 4, of the Convention, the Special Chamber has the competence to decide its own jurisdiction. In this regard, whether the *Chagos* advisory opinion has clarified the legal status of the Chagos Archipelago is a question central to the jurisdiction of the Special Chamber. Accordingly, the Special Chamber is competent to assess the Parties' dispute as to the consequences of the advisory opinion to the extent necessary to determine its jurisdiction.

191. With respect to the Maldives' argument that the obligation to complete the process of decolonization is neither necessarily nor automatically accompanied by an instant loss of sovereignty, the Special Chamber considers that the relevant question is whether this would be the case in the specific circumstances of the decolonization of Mauritius rather than whether it is valid as a general proposition. In the case of Mauritius, as noted above, the issues of decolonization and sovereignty are inseparably related so that a decision on decolonization may necessarily implicate sovereignty.

192. Regarding the *Namibia* and *Western Sahara* advisory opinions referred to by the Parties to support their views as to the consequences of decolonization for sovereignty, the Special Chamber notes that, as the circumstances of the two cases are different from those of the present case, it is difficult to draw any meaningful inference from them to support either the view of the Maldives or that of Mauritius.

Legal effect of the Chagos *advisory opinion*

193. The Maldives argues that even if the ICJ had given an opinion on the sovereignty dispute, any such opinion would not have been binding on States.

194. The Maldives states that the Parties are in agreement that advisory opinions do not have binding effect. The Maldives also states that the ICJ itself has confirmed on numerous occasions that its advisory opinions are not binding even on the organs which request them, let alone on other entities such as States. Additionally, the Maldives expresses the view that, "whatever authority advisory opinions may have in jurisprudence as abstract statements of international law, they are not a means of binding States in specific disputes through the backdoor."

195. As for the *Chagos* advisory opinion, the Maldives asserts that, "even if the Court had purported to advise on the sovereignty dispute, its opinion did not have binding force on the UNGA or any State (including the United Kingdom and the Maldives)".

196. With respect to the two cases decided by the Court of Justice of the European Union (hereinafter "the CJEU") to which Mauritius refers (see paragraph 199 below), the Maldives submits that neither of the cases supports Mauritius' position. According to the Maldives, although it is possible for the

CJEU to resolve inter-State disputes, it was not performing this role in either of those cases. In addition, the Maldives argues that in neither of the cases did the CJEU's Grand Chamber or the CJEU suggest that an advisory opinion of the ICJ was "binding on it or on any EU organ or Member State."

197. Mauritius maintains that, while an advisory opinion is not binding as such, this does not mean that it is devoid of legal effects. According to Mauritius, when the ICJ gives an advisory opinion, it provides "an authoritative statement of the law in relation to the issues to which the advisory proceedings give rise." As the ICJ is the principal judicial organ of the United Nations, the statement of law made in advisory opinions is considered authoritative.

198. Referring to scholarly views on this matter, Mauritius argues that the pronouncements made by the ICJ in advisory opinions are considered to be on an equal footing with those made in judgments as integral components of its jurisprudence. It further argues that, although compliance may not be obligatory in respect of an opinion itself, States are bound and obliged to comply with the law, as declared and defined by the ICJ, whether in contentious cases or advisory opinions.

199. Mauritius is of the view that "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 tribunals." In this regard, it refers to two cases decided by the CJEU. In *Council of the European Union* v. *Front Polisario* (Case C-104/16P), Mauritius contends, the CJEU accepted as conclusive as a matter of international law the ICJ's determination in its advisory opinion in the *Western Sahara* case. Likewise, in *Organisation juive européenne and Vignoble Psagot Ltd* v. *Ministre de l'Economie et des Finances* (Case C-363/18), the CJEU applied the factual and legal findings of the ICJ in the advisory opinion on the *Legal Consequences of a Wall in the Occupied Palestinian Territory* (hereinafter "the *Wall* advisory opinion"). Accordingly, Mauritius emphasizes that, even though the *Western Sahara* and *Wall* advisory opinions were not binding as such on Morocco or Israel, all States, including the two States concerned, were bound by "the rules of international law identified and applied by the Court."

200. Referring to the *Chagos* advisory opinion, Mauritius argues that it is "replete with references to the legal obligations by which the United Kingdom, and other States, are legally bound" and that "[s]uch legal obligations are, indeed, binding, even if the Advisory Opinion itself, *per se*, is not."

201. Mauritius further argues that the advisory opinion of 2019 has been accepted and approved by the General Assembly. According to Mauritius, it is "the law recognized by the United Nations" and

> continues to be so although the Government of the country that is unlawfully administering the Chagos Archipelago has declined to accept it as binding upon it, and although it has acted in disregard of the international obligations as declared by the Court in that Opinion.

* * *

202. The Special Chamber notes that it is generally recognized that advisory opinions of the ICJ cannot be considered legally binding. As the ICJ itself stated in the advisory opinion on *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, "[t]he Court's reply is only of an advisory character: as such, it has no binding force" (*Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65, at p. 71; see also *Request for Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015*, p. 4, at. p. 26, para. 76). However, it is equally recognized that an advisory opinion entails an authoritative statement of international law on the questions with which it deals.

203. In this regard, the Special Chamber finds it necessary to draw a distinction between the binding character and the authoritative nature of an advisory opinion of the ICJ. An advisory opinion is not binding because even the requesting entity is not obligated to comply with it in the same way as parties to contentious proceedings are obligated to comply with a judgment. However, judicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the "principal judicial organ" of the United Nations with competence in matters of international law.

204. The Special Chamber notes in this regard that the CJEU, while it did not suggest that an advisory opinion of the ICJ is "binding", attached due importance to the legal and factual determinations made by the ICJ in its advisory opinions.

205. In the Special Chamber's view, determinations made by the ICJ in an advisory opinion cannot be disregarded simply because the advisory opinion is not binding. This is true of the ICJ's determinations in the *Chagos* advisory opinion, *inter alia*, that 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, and that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible. The Special Chamber considers that those determinations do have legal effect.

206. The Special Chamber, accordingly, recognizes those determinations, and takes them into consideration in assessing the legal status of the Chagos Archipelago.

Relationship between the Chagos *arbitral award and the* Chagos *advisory opinion*

207. In support of its argument that the advisory opinion did not resolve the sovereignty dispute over the Chagos Archipelago, the Maldives contends that "[t]he ICJ was not asked, had no authority, and did not purport to overrule" the *Chagos* arbitral award.

208. The Maldives notes that the Arbitral Tribunal found that a sovereignty dispute existed between Mauritius and the United Kingdom over the Chagos Archipelago and that such dispute did not concern the interpretation or application of the Convention. The Maldives argues that the Arbitral Tribunal "found unanimously in 2015 that the UK was entitled to exercise the powers of a coastal State in respect of the Chagos Archipelago in accordance with UNCLOS".

209. According to the Maldives, these findings have *res judicata* effect as between Mauritius and the United Kingdom, and the ICJ "could not have considered itself to be overturning an existing award with binding effect". In the Maldives' view, therefore, the advisory opinion did not resolve the extant bilateral sovereignty dispute and did not overrule the Arbitral Tribunal's findings on the power of the United Kingdom to act as a coastal State.

210. Mauritius contends that the Maldives' argument is the same as that of the United Kingdom in the advisory proceedings, which was rejected by the ICJ. According to Mauritius, the ICJ found that "the arbitral award did not have

res judicata effect in respect of any of the issues that were submitted to it by the General Assembly."

211. Mauritius underlines that the ICJ had no need to override or overrule the arbitral award because the issues decided by the Arbitral Tribunal were not the same as those before the ICJ. Mauritius points out that "[t]he fact that the Annex VII tribunal decided not to decide the "coastal State" issue only underscores that there was no decision on this issue for the ICJ to overrule."

212. Mauritius also states that the ICJ, which was not subject to the jurisdictional limitation under the Convention, was thus free to "opine on the lawfulness of Mauritius' decolonization and whether the Chagos Archipelago was an integral part of Mauritius' territory, before and after independence, without treading on the arbitral tribunal's turf."

* * *

213. The Special Chamber notes that the premise of the Maldives' contention is that the Arbitral Tribunal rendered an award with *res judicata* effect regarding the existence of a sovereignty dispute between Mauritius and the United Kingdom as well as which State is entitled to exercise the power of the coastal State in respect of the Chagos Archipelago (see paragraphs 121–123 above).

214. As the Special Chamber noted in paragraph 133 above, the Arbitral Tribunal in the *Chagos Marine Protected Area Arbitration* found that a sovereignty dispute existed between Mauritius and the United Kingdom over the Chagos Archipelago and that it lacked jurisdiction to entertain said dispute. Unlike the Arbitral Tribunal, whose jurisdiction was limited to disputes concerning the interpretation or application of the Convention under article 288, paragraph 1, of the Convention, the ICJ, in rendering its advisory opinion, had no such jurisdictional limitation. Consequently, it proceeded to examine issues relating to the decolonization of Mauritius and concluded, *inter alia*, that the detachment of the Chagos Archipelago from Mauritius was unlawful. Irrespective of whether or not the advisory opinion has resolved the sovereignty dispute, therefore, there is no question of the advisory opinion overruling the arbitral award, since, as the ICJ stated, "the issues that were determined by the Arbitral Tribunal in the *Arbitration regarding the Chagos Marine Protected*

Area ... are not the same as those that are before the Court in these proceedings" (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 116, para. 81).

215. The Special Chamber, in paragraph 138 above, did not accept the Maldives' claim that the Arbitral Tribunal determined, with *res judicata* effect between Mauritius and the United Kingdom, that, until the sovereignty dispute is resolved, the United Kingdom is entitled to exercise the rights of a coastal State under the Convention in respect of the Chagos Archipelago. Accordingly, it is plain that, regardless of whether or not the advisory opinion has resolved the sovereignty dispute, there can be no question of the advisory opinion overruling the arbitral award, as there was no determination in the award to that effect.

3. United Nations General Assembly resolution 73/295

216. The Special Chamber will now turn to the relevance or implications of UNGA resolution 73/295 for the legal status of the Chagos Archipelago.

217. The Maldives maintains that UNGA resolution 73/295 had no effect on the sovereignty dispute. According to the Maldives, it is a purely political statement, not an instrument with binding force or capable of being construed as "an amplification or authoritative interpretation of the *Chagos* Advisory Opinion".

218. Referring to the contents of the resolution, the Maldives states that the word "sovereignty" appears nowhere in the text. In its view, the resolution did not purport to resolve, and was not capable of resolving, the sovereignty dispute. In particular, the Maldives contends, in stating that "[t]he Chagos Archipelago forms an integral part of the territory of Mauritius", the resolution went further than the advisory opinion, which found only that the Chagos Archipelago was an integral part of Mauritius "at the time of its detachment from Mauritius in 1965".

219. The Maldives maintains that "[t]he UNGA Resolution does not provide evidence that the sovereignty dispute between Mauritius and the United Kingdom has been resolved, for three reasons." First, the General Assembly resolution is not binding on States in its own right; second, it cannot be read

as amplifying or providing an authoritative interpretation of the *Chagos* advisory opinion; and third, as a matter of fact, it is clear that sovereignty over the Chagos Archipelago has remained in dispute since the resolution was passed. Therefore, the Maldives submits, there is no basis for "assuming that Mauritius and the United Kingdom have accepted it as resolving their dispute."

220. Mauritius notes that, following the advisory opinion, the General Assembly adopted resolution 73/295, in which it welcomed and endorsed the advisory opinion. Mauritius further notes that the resolution affirmed, *inter alia*, that "in accordance with the advisory opinion of the Court", the Chagos Archipelago forms an integral part of Mauritius. It adds that the General Assembly also "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" and "call[ed] upon" all Member States to "refrain from any action that [would] 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."

221. Mauritius submits in this regard that "sovereignty inevitably pertains to the State of which the territory is an integral part" and that

> [f]ollowing 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.

Mauritius further submits that, notwithstanding the General Assembly's demand, the United Kingdom has refused to cease its internationally wrongful act and its unlawful administration of the Chagos Archipelago, in violation of Mauritius' sovereignty, continues.

222. Regarding the obligations of the Maldives under resolution 73/295, Mauritius argues that, as a matter of international law, the Maldives is under an obligation to cooperate with the United Nations to complete the decolonization of Mauritius and that "[t]he resolution thus prohibits the UK from impeding Mauritius' effort to negotiate a maritime boundary with the Maldives, and it prohibits the Maldives from invoking the UK's sovereignty claim to delay such negotiation."

223. Mauritius further argues that the Special Chamber "too is asked to do that which is laid out at paragraphs 6 and 7" of UNGA resolution 73/295, namely:

> 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".

* * *

224. The Special Chamber recalls the statements of the ICJ in the *South West Africa* case that UNGA resolutions "subject to certain exceptions ... are not binding, but only recommendatory in character" and that "[t]he persuasive force of Assembly resolutions can indeed be very considerable," yet the General Assembly "operates on the political not the legal level: it does not make these resolutions binding in law" (*South West Africa* (*Ethiopia* v. *South Africa; Liberia* v. *South Africa*), *Second Phase, Judgment, I.C.J. Reports 1966*, p. 6, at pp. 50–51, para. 98; see also *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov and Kerch Strait* (*Ukraine* v. *the Russian Federation*), Award on Preliminary Objections, para. 172).

225. The Special Chamber also recalls the statement of the Arbitral Tribunal in its award on *Coastal State Rights* that "the effect of factual and legal determination made in UNGA resolutions depends largely on their content and the conditions and context of their adoption. So does the weight to be given to such resolutions by an international court or tribunal" (*Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov and Kerch Strait* (*Ukraine* v. *the Russian Federation*), Award on Preliminary Objections, para. 174).

226. Resolution 73/295 was adopted by the General Assembly after it received the *Chagos* advisory opinion. It should be noted in this regard that, in the advisory opinion, the ICJ emphasized the functions of the General Assembly with regard to decolonization, in particular the "crucial role" which it has played in the work of the United Nations on decolonization (*Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95, at p. 135, para. 163). It should also be noted that the ICJ

stated in that context that "[t]he modalities necessary for ensuring the completion of the decolonization of Mauritius fall within the remit of the United Nations General Assembly, in the exercise of its functions relating to decolonization" (*Ibid.*, at p. 139, para. 179). The ICJ went on to state that, "while it is for the General Assembly to pronounce on the modalities required to ensure the completion of the decolonization of Mauritius, all Member States must co-operate with the United Nations to put those modalities into effect" (*Ibid.*, at p. 139, para. 180).

227. The General Assembly has thus been entrusted to take necessary steps toward the completion of the decolonization of Mauritius. In light of the general functions of the General Assembly on decolonization and the specific task of the decolonization of Mauritius with which it was entrusted, the Special Chamber considers that resolution 73/295 is relevant to assessing the legal status of the Chagos Archipelago.

228. In resolution 73/295, the General Assembly affirmed, "in accordance with the advisory opinion of the Court", that: "[t]he Chagos Archipelago forms an integral part of the territory of Mauritius". The Special Chamber considers that this affirmation is the General Assembly's view of the advisory opinion.

229. In the resolution, the General Assembly demanded 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.

The Special Chamber notes that this demand was made as one of the "modalities" for ensuring the completion of the decolonization of Mauritius pursuant to the advisory opinion. In the Special Chamber's view, the fact that the time-limit set by the General Assembly has passed without the United Kingdom complying with the demand further strengthens the Special Chamber's finding as to the United Kingdom's claim to sovereignty over the Chagos Archipelago noted in paragraph 173 above.

230. With respect to the argument made by Mauritius that the obligations under paragraphs 6 and 7 of UNGA resolution 73/295 also apply to the Special

Chamber, neither the language of the resolution nor the practice of the General Assembly suggests that the reference to "international, regional and intergovernmental organizations, including those established by treaty", in paragraph 7 of the resolution, is directed to the Special Chamber or any other international court or tribunal in light of the independent exercise of their adjudicatory functions.

4. Current status of the sovereignty dispute

231. The Special Chamber will now turn to the Parties' disagreement as to the current status of the sovereignty dispute over the Chagos Archipelago.

232. According to the Maldives, it is beyond doubt that there is a sovereignty dispute between the United Kingdom and Mauritius as a matter of fact. The Maldives submits that, "despite the Advisory Opinion and the General Assembly resolution, the UK maintains its claim over Chagos, which it continues to administer as the British Indian Ocean Territory." In the Maldives' view, Mauritius acknowledges this fact, and has publicly opposed the United Kingdom's sovereignty claim. It adds that, plainly, the question of sovereignty remains in dispute between Mauritius and the United Kingdom.

233. In support of its claim, the Maldives advances the following three arguments. First, the Maldives contends that, in order for a dispute to exist, a court or tribunal must assess whether there is "a disagreement on a point of law or fact, a conflict of legal views or of interests" between the parties. In the present case, according to the Maldives, "it is clear that a dispute, as this concept is defined by the well-established and widely accepted jurisprudence … exists with respect to sovereignty over the Chagos Archipelago." It adds that it is a fact that the United Kingdom has asserted its sovereignty claim over the Chagos Archipelago both before and after the ICJ rendered its advisory opinion and that Mauritius has opposed the United Kingdom's sovereignty claim. Thus, the Maldives submits, there is no doubt about the factual existence of a dispute between the United Kingdom and Mauritius as to which of them is sovereign over the Chagos Archipelago.

234. Second, the Maldives submits that the plausibility or implausibility of the United Kingdom's legal position is irrelevant to the determination of whether

or not a dispute exists. Referring to the *Coastal State Rights* case, the Maldives contends, the jurisprudence shows that, contrary to Mauritius' assertion, the Special Chamber should not enter into an analysis of whether the United Kingdom's sovereignty claim over the Chagos Archipelago is "plausible", but must only assess whether it exists.

235. Third, the Maldives argues that in any event Mauritius has not established that the United Kingdom's sovereignty claim is implausible. According to the Maldives, "if the Special Chamber were to find … that it *should* consider the plausibility of the United Kingdom's claim, it should reach the conclusion that that claim is (at the very least) plausible."

236. The Maldives adds that "the recognition by the Special Chamber of the existence of a sovereignty dispute between the United Kingdom and Mauritius would not imply a recognition that the United Kingdom's claim is well-founded." Furthermore, by declining jurisdiction, the Special Chamber would simply act in accordance with the true scope and legal effect of the advisory opinion, as well as the established principles of international law on the competence of courts and tribunals under such circumstances.

237. Mauritius contends 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." In its view, "[t]he fact that the United Kingdom, for political reasons, chooses to continue to make claims that have no basis in international law … cannot bar the Special Chamber from exercising its jurisdiction in these proceedings."

238. Mauritius states that "[t]he 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." Mauritius also states that any assertion of such rights by the United Kingdom is manifestly contrary to international law and that it is unarguable. According to Mauritius, "these words, whether uttered by the UK or echoed by the Maldives, are, in the end, only assertions" and "cannot, as a matter of law, establish the existence of a dispute, especially after the dispute has been resolved by the authoritative pronouncement of an international court or tribunal."

239. Mauritius explains that it does "not contend that the UK's continued assertion of sovereignty over Chagos should be disregarded because it is implausible – though it is." It argues that "it is irrelevant because the issue of sovereignty has already been resolved by the ICJ's determination that Chagos is an integral part of the territory of Mauritius, and that the UK's ongoing administration is unlawful, and must be terminated", and that there is thus no unresolved sovereignty dispute.

240. Mauritius submits that the present case is not one in which the Special Chamber is required to make a determination on competing territorial claims over the Chagos Archipelago, because the ICJ has conclusively determined in its advisory opinion that the Archipelago is part of the territory of Mauritius.

241. Referring to the *Coastal State Rights* case, Mauritius contends that, unlike Mauritius in the present case, Ukraine could not point to any authoritative judicial or legal determination to support a claim that its sovereignty was undisputed. According to Mauritius, "[u]nlike this Special Chamber, the Annex VII tribunal in that case would have had to determine for itself which State was sovereign over the territory; it considered the question without any prior judicial determination of this issue to rely upon." On the other hand, Mauritius relies in this case on "what both sides have agreed is an authoritative and correct legal determination by the ICJ." Mauritius asserts that there is "a world of difference" between relying on the opinion of the ICJ and relying on the resolutions of political organs of the United Nations.

* * *

242. The Special Chamber notes that it is beyond doubt that there had been a long-standing sovereignty dispute between Mauritius and the United Kingdom over the Chagos Archipelago. As noted above, this was confirmed by the Arbitral Tribunal in the *Chagos* arbitral award.

243. However, the key question in the present proceedings is whether the legal status of the Chagos Archipelago has been clarified by the advisory opinion of the ICJ. In the view of the Special Chamber, therefore, the fact that the United Kingdom and Mauritius continue to make their respective claims to the Chagos Archipelago is beside the point. If, indeed, the ICJ has determined that the Chagos Archipelago is a part of the territory of Mauritius, as Mauritius argues, the continued claim of the United Kingdom to sovereignty over the

Chagos Archipelago cannot be considered anything more than "a mere assertion". However, such assertion does not prove the existence of a dispute. As the Special Chamber recalls,

> it is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence.
> (*South West Africa Cases* (*Ethiopia* v. *South Africa; Liberia* v. *South Africa*), *Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319, at p. 328)

244. The Special Chamber sees a difference between the present case and the *Coastal State Rights* case, upon which the Maldives relies to buttress its position. In the latter case, the Annex VII Arbitral Tribunal did not have the benefit of prior authoritative determination of the main issues relating to sovereignty claims to Crimea by any judicial body. However, that does not seem to be the case in the present proceedings.

245. In light of the advisory opinion, which determined, *inter alia*, the United Kingdom's continued administration of the Chagos Archipelago to be an unlawful act of a continuing character, the Special Chamber does not find convincing the Maldives' argument as to the matter-of-fact existence of a sovereignty dispute over the Chagos Archipelago.

5. Summary of key findings

246. The Special Chamber summarizes its findings relevant to the legal status of the Chagos Archipelago as follows:

> While the Arbitral Tribunal in the *Chagos* arbitral award recognized the existence of a sovereignty dispute between the United Kingdom and Mauritius over the Chagos Archipelago, it found that it lacked jurisdiction to address said dispute. On the other hand, the Arbitral Tribunal recognized, without prejudice to the question of sovereignty, that Mauritius had certain rights in respect of the Chagos Archipelago, including fishing rights, the right to its return when no longer needed for defence purposes and the right to the benefit of minerals or oil discovered. This demonstrates that, aside from the question of sovereignty, the Chagos

Archipelago has been subject to a special regime, according to which Mauritius is entitled to certain maritime rights;

The determinations made by the ICJ with respect to the issues of the decolonization of Mauritius in the *Chagos* advisory opinion have legal effect and clear implications for the legal status of the Chagos Archipelago. The United Kingdom's continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations. While the process of decolonization has yet to be completed, Mauritius' sovereignty over the Chagos Archipelago can be inferred from the ICJ's determinations;

Resolution 73/295 of the General Assembly, within the remit of which the modalities necessary for ensuring the completion of the decolonization of Mauritius fall, demanded that the United Kingdom withdraw its administration over the Chagos Archipelago within six months from its adoption. The fact that the time-limit set by the General Assembly has passed without the United Kingdom complying with this demand further strengthens the Special Chamber's finding that its claim to sovereignty over the Chagos Archipelago is contrary to the authoritative determinations made in the advisory opinion.

C. Conclusions of the Special Chamber concerning the first and the second preliminary objection

1. With respect to the first preliminary objection

247. In light of the above findings, the Special Chamber considers that, whatever interests the United Kingdom may still have with respect to the Chagos Archipelago, they would not render the United Kingdom a State with sufficient legal interests, let alone an indispensable third party, that would be affected by the delimitation of the maritime boundary around the Chagos Archipelago. In the Special Chamber's view, it is inconceivable that the United Kingdom, whose administration over the Chagos Archipelago constitutes a wrongful act of a continuing character and thus must be brought to an end as rapidly as possible, and yet who has failed to do so, can have any legal interests in permanently disposing of maritime zones around the Chagos Archipelago by delimitation.

248. For these reasons, the Special Chamber concludes that the United Kingdom is not an indispensable party to the present proceedings. Accordingly, the first preliminary objection of the Maldives is rejected.

2. With respect to the second preliminary objection

249. The question the Special Chamber has to answer is whether Mauritius is the State with an opposite or adjacent coast to the Maldives in respect of the Chagos Archipelago within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention.

250. The Special Chamber considers that the above findings as a whole provide it with sufficient basis to conclude that Mauritius can be regarded as the coastal State in respect of the Chagos Archipelago for the purpose of the delimitation of a maritime boundary even before the process of the decolonization of Mauritius is completed. In the Special Chamber's view, to treat Mauritius as such State is consistent with the determinations made in the *Chagos* arbitral award, and, in particular, the determinations made in the *Chagos* advisory opinion which were acted upon by UNGA resolution 73/295.

251. For these reasons, in the circumstances of the present case, the Special Chamber is satisfied that Mauritius can be regarded as the State with an opposite or adjacent coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention and the concerned State within the meaning of paragraph 3 of the same articles. Accordingly, the second preliminary objection of the Maldives is rejected.

VII. Third preliminary objection: Requirement under articles 74 and 83 of the Convention

252. The Special Chamber will now consider the Maldives' third preliminary objection that "Articles 74 and 83 of UNCLOS stipulate that negotiations between the parties are a procedural precondition to jurisdiction" and that "this precondition has not been – and cannot meaningfully be – fulfilled in the present case."

A. Interpretation of articles 74 and 83 of the Convention

253. The Special Chamber will first examine the question as to whether articles 74 and 83 of the Convention oblige States Parties to the Convention to engage in maritime boundary negotiations prior to having recourse to compulsory dispute settlement.

254. The Maldives argues that,

> [p]ursuant to the plain terms of Articles 74 and 83, *before* resorting to the procedures provided for in Part XV, States with opposite or adjacent coasts are under a mandatory obligation to negotiate with a view to effecting "by agreement" the relevant delimitation. It is only once such negotiations have been engaged in, and the attempt to reach an agreement has failed, that either State can resort to the procedures provided for in Part XV UNCLOS.

255. Relying on the Judgment in the *Dispute concerning delimitation of the maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean* (hereinafter "*Ghana/Côte d'Ivoire*"), the Maldives observes that the Special Chamber in that case stated that "the obligation under article 83, paragraph 1, of the Convention to reach an agreement on delimitation necessarily entails negotiations to this effect." The Maldives observes further that the Special Chamber emphasized "that the obligation to negotiate in good faith occupies a prominent place in the Convention, as well as in general international law."

256. The Maldives explains that "[i]t is, of course, recognised that Articles 74 and 83 'do not require that delimitation negotiations should be successful', but 'like all similar obligations to negotiate in international law, the negotiations have to be conducted in good faith'."

257. According to the Maldives, this requires, *inter alia*, States to conduct themselves with a view to actually reaching an agreement. It notes that "in the *Gulf of Maine* case the ICJ referred to the 'duty to negotiate with a view to reaching agreement, and to do so in good faith, with a genuine intention to achieve a positive result'."

258. The Maldives argues that

> [t]he fact that the precondition of negotiation appears outside of but before Part XV … strengthens the Maldives' argument that the subsequent Part XV procedures are only relevant where negotiations under Parts V and VI have been first exhausted. That was the clear intention of the drafters. States Parties should not rush to adversarial litigation. They are entitled to invoke Part XV, and, in particular, compulsory procedures entailing binding decisions under Section 2, only where negotiations have failed.

259. Referring to articles 74 and 83 of the Convention, the Maldives argues that in the case law from the ICJ the obligation of negotiation contained in these provisions has been interpreted as a precondition to jurisdiction. In this regard, the Maldives refers to the decision of the ICJ on preliminary objections in *Maritime Delimitation in the Indian Ocean* (hereinafter "*Somalia* v. *Kenya*"). According to the Maldives,

> [t]he Court accepted that 'Article 83, paragraph 1, of UNCLOS, in providing that delimitation shall be effected by way of agreement, requires that there be negotiations conducted in good faith' before the parties resorted to the dispute resolution procedures in Part XV of UNCLOS…. In other words, good faith negotiations were required *before* either party resorted to Part XV dispute resolution, and a failure to do so would prevent the Court from exercising jurisdiction.

260. Responding to Mauritius' argument that articles 74 and 83 are not located in Part XV but in Parts V and VI of the Convention, the Maldives submits that "Mauritius has not pointed to any rule of treaty interpretation – and there is none – that says that all jurisdictional requirements must be contained in the same part of a treaty that sets out the dispute resolution procedures."

261. With respect to Mauritius' claim that the only procedural precondition for exercise of the Special Chamber's jurisdiction is contained in article 283, the Maldives contends that "article 283 concerns a different obligation. It requires States to exchange views once a dispute has arisen. It does not contain an obligation to negotiate."

262. Mauritius argues that articles 74 and 83 of the Convention impose no obligation to negotiate as a jurisdictional precondition to invoking the procedures provided for in Part XV of the Convention. The position of Mauritius is that

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

263. Mauritius refutes the assertion of the Maldives that articles 74 and 83 of the Convention "require that Mauritius must negotiate with the Maldives prior to commencing proceedings to delimit the maritime boundary under Part XV of the Convention." According to Mauritius,

> [t]here 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.

264. Mauritius observes that articles 74 and 83 are located not in Part XV of the Convention, which governs the settlement of disputes, but in Parts V and VI, which concern States' substantive obligations in relation to the exclusive economic zone and continental shelf.

265. Mauritius argues that

> courts and tribunals that have exercised jurisdiction under UNCLOS to delimit maritime boundaries … have never found – or even considered – that a separate obligation to negotiate, rather than merely an exchange [of] views, emanating from Articles 74 and 83, must be satisfied before ITLOS or an Annex VII tribunal may exercise jurisdiction.

266. Referring to the decision of the Special Chamber in *Ghana/Côte d'Ivoire*, Mauritius submits that 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."

* * *

267. Articles 74 and 83 of the Convention provide in relevant parts:

> 1. The delimitation of the [exclusive economic zone/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.

268. The Special Chamber will first interpret these provisions before applying them to the facts and circumstances of the present preliminary objections proceedings. The Special Chamber observes that articles 74 and 83 of the Convention are identical in their content, differing only in respect of the designation of the maritime area to which they apply. It will therefore address them together.

269. These articles apply respectively to areas where the entitlements of two coastal States to an exclusive economic zone in accordance with article 57 of the Convention overlap and to areas where their entitlements to a continental shelf in accordance with article 76 of the Convention overlap. Article 74, paragraph 1, and article 83, paragraph 1, of the Convention establish an obligation for States with opposite or adjacent coasts to effect the delimitation of the exclusive economic zone and the continental shelf by agreement. Paragraph 2 imposes an obligation on them to resort to the procedures provided for in Part XV of the Convention, if no agreement can be reached within a reasonable period of time.

270. In this regard, the Special Chamber recalls the following statement of the ICJ:

> By its terms, Article 83, paragraph 1, of UNCLOS sets out the manner in which delimitation of the continental shelf is to be effected by States

> parties thereto, namely by way of agreement as distinct from unilateral action; it is a provision on the establishment of a maritime boundary between States with opposite or adjacent coasts in respect of the continental shelf, which does not prescribe the method for the settlement of any dispute relating to the delimitation of the continental shelf. This is made clear by paragraph 2 of Article 83, which requires that, if no agreement can be reached within a reasonable time, the States concerned shall resort to the dispute settlement procedures of Part XV, entitled "Settlement of disputes".
> (*Maritime Delimitation in the Indian Ocean* (*Somalia* v. *Kenya*), *Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 3, at p. 37, para. 90)

271. The Special Chamber wishes to state that the main purpose of article 74, paragraphs 1 and 2, and article 83, paragraphs 1 and 2, of the Convention is to ensure that, where States with opposite or adjacent coasts are confronted with overlapping claims regarding the exclusive economic zone and the continental shelf, no State shall settle its maritime limits unilaterally and such limits shall rather be effected by agreement between the States concerned or by resorting to the procedures provided for in Part XV, if no agreement can be reached within a reasonable period of time.

272. In the Special Chamber's view, these means – reaching an agreement through negotiation or resorting to Part XV of the Convention – are both conducive to achieving "an equitable solution" in the delimitation of the exclusive economic zone and the continental shelf, on the basis of international law, as referred to in Article 38 of the Statute of the ICJ, as opposed to unilateral delimitation carried out by the States concerned.

273. The Special Chamber considers that article 74, paragraph 1, and article 83, paragraph 1, of the Convention entail an obligation to negotiate in good faith with a view to reaching an agreement on delimitation. However, this obligation does not require the States concerned to reach such agreement. As the ICJ stated in *Somalia* v. *Kenya*,

> Article 83, paragraph 1, of UNCLOS, in providing that delimitation shall be effected by way of agreement, requires that there be negotiations conducted in good faith, but not that they should be successful.
> (*Maritime Delimitation in the Indian Ocean* (*Somalia* v. *Kenya*), *Preliminary Objections, Judgment, I.C.J. Reports 2017* , p. 3, at p. 37, para. 90)

274. In the Special Chamber's view, there can be a number of reasons for which the States concerned cannot reach an agreement. They may not be able to do so after exhaustive negotiations or because one State refuses to negotiate or withdraws from negotiations after initially engaging in them. If no agreement can be reached within a reasonable period of time, the States concerned are required to resort to the dispute settlement procedures of Part XV rather than carrying out unilateral delimitation.

275. In the view of the Special Chamber, article 74, paragraphs 1 and 2, and article 83, paragraphs 1 and 2, of the Convention, in a mutually reinforcing way, establish substantive obligations for the States concerned not to delimit their exclusive economic zones and continental shelves unilaterally but to do so by way of agreement or, failing such agreement, by resorting to the dispute settlement procedures under Part XV of the Convention.

B. Application of articles 74 and 83 of the Convention

276. The Special Chamber now turns to the issue of whether the Parties engaged in negotiations concerning their maritime boundary.

277. The Maldives maintains that "bilateral negotiations between Mauritius and the Maldives addressing delimitation of the EEZ and continental shelf have not taken place." It acknowledges, however, that "Mauritius has in the past requested that the Maldives meet to discuss a maritime boundary delimitation." The Maldives considers that, in circumstances where the sovereignty dispute between Mauritius and the United Kingdom remains unresolved, Mauritius and the Maldives cannot meaningfully engage in the negotiations mandated by articles 74 and 83 of the Convention.

278. The Maldives is of the view that, until such dispute is settled, it "is unable to negotiate a maritime boundary agreement with Mauritius" and that, "[f]or the same reasons, it is neither possible nor appropriate for the parties to seek to negotiate the provisional arrangements envisaged by Articles 74(3) and 83(3)."

279. With respect to the first meeting on maritime delimitation and the submission regarding the extended continental shelf of 21 October 2010 and the joint communiqué of 12 March 2011, the Maldives submits, in its response to the first question posed by the Special Chamber (see paragraph 47 above), that

these bilateral exchanges were of "a strictly diplomatic nature with a view to exploring possible solutions to a potential overlap of the Parties' extended continental shelf."

280. The Maldives maintains that the procedural precondition mandated in articles 74 and 83 of the Convention has not been fulfilled and therefore the Special Chamber is unable to exercise jurisdiction.

281. Mauritius contends that, before it "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." It states that the Maldives' allegation that no negotiations took place is belied by the diplomatic record. According to Mauritius, "[t]his record confirms that the Parties attempted to delimit by agreement their overlapping claims in the EEZ and continental shelf, until the Maldives unilaterally ended the negotiations."

282. Mauritius outlines several steps that were taken in this regard, namely:

> On 21 September 2010, Mauritius objected to the maritime claims depicted in the Maldives' submission to the CLCS. 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.

283. Mauritius explains that

> [s]hortly 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.' 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.'

Mauritius states that 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." Recognizing the existence of overlapping claims, according to Mauritius, the Maldives further "agreed that both sides [would] work jointly on the area of the overlap". Mauritius asserts that, "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."

284. Mauritius adds that

> [t]he 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.' The matter remained unresolved for the following eight years.

285. In response to the first question posed by the Special Chamber (see paragraph 47 above), Mauritius submits that the meeting of 21 October 2010, together with the joint communiqué of 12 March 2011, reflects "the momentum behind the two States at that time with a view to arriving at an agreement on the delimitation of their maritime boundary."

286. Mauritius states that,

> [o]n 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 of discussions.' 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.

287. Mauritius claims that recourse to judicial dispute settlement methods under Part XV of the Convention is justified because the maritime delimitation dispute between it and Maldives is manifestly one that cannot be settled by agreement. In particular, it argues that,

> [b]ecause the delimitation of the EEZ and continental shelf cannot be reached by agreement as prescribed by paragraph 1 of [a]rticles 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'.

* * *

288. The Special Chamber notes that, on the basis of the records before it, Mauritius, on several occasions, attempted to engage the Maldives in negotiations concerning the delimitation of their claimed overlapping exclusive economic zones and continental shelves.

289. These records also show that, while the Maldives at times had shown interest in meeting and even had met with Mauritius "to discuss a potential overlap of the extended continental shelf and to exchange views on maritime boundary delimitation between the two respective States", the Maldives, for most of the time, refused to negotiate with Mauritius, arguing that,

> [a]s jurisdiction over the Chagos Archipelago is not exercised by the Government of Mauritius, 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.

290. By persisting in its position that, "in circumstances where the sovereignty dispute between Mauritius and the United Kingdom remains unresolved, Mauritius and the Maldives … cannot meaningfully engage … in the negotiations mandated by Articles 74 and 83 UNCLOS", the Maldives demonstrates that "no agreement can be reached within a reasonable period of time", whatever time could have been reserved for that negotiation.

291. In particular, by not responding to Mauritius' invitation of 7 March 2019, to a second round of discussions following the *Chagos* advisory opinion, it became clear that there was nothing more that Mauritius could have accomplished in insisting on having delimitation negotiations with the Maldives. This is confirmed by the Maldives' own admission during the hearing that "no amount of unilateral attempts by Mauritius to commence maritime delimitation negotiations [in respect of the Chagos Archipelago] can change the fact that those negotiations, as things stand today, would not be meaningful and could not achieve an agreement."

292. The Special Chamber is of the view that, in situations in which "no agreement can be reached", to resort to the procedures of Part XV of the Convention, as set out in paragraph 2 of each of articles 74 and 83, is not only justified but also an obligation of the States concerned.

293. On the basis of the foregoing, the Special Chamber concludes that the obligation under article 74, paragraph 1, and article 83, paragraph 1, of the Convention has been fulfilled. Accordingly, the third preliminary objection of the Maldives is rejected.

VIII. Fourth preliminary objection: Existence of a dispute

294. The Special Chamber now turns to the Maldives' preliminary objection that "there is no maritime boundary dispute between the Parties, and the [Special Chamber] manifestly lacks jurisdiction over this case."

295. The Maldives submits that "UNCLOS Article 288(1) makes explicit that only disputes concerning the interpretation or application of UNCLOS fall within the Tribunal's jurisdiction" and that "[a] claim will concern 'the interpretation or application' of Articles 74(1) and 83(1) only if it addresses the 'delimitation of the exclusive economic zone [or continental shelf] between States with opposite or adjacent coasts'."

296. The Maldives further submits that Mauritius' claim to be a State with a relevant opposite or adjacent coast to the Maldives is predicated on its assertion that it has sovereignty over the Chagos Archipelago, which is disputed

by the United Kingdom. For the Maldives, there can be no dispute between the Maldives and Mauritius over maritime delimitation until such time as Mauritius becomes the undisputed opposite coastal State within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention.

297. The Maldives argues "[a]dditionally and alternatively" 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 Mauritius and the Maldives at the time that proceedings under Part XV of UNCLOS were initiated.

It contends that

> Mauritius … must demonstrate that … the parties held clearly opposite views in respect of the delimitation of the maritime boundary between Mauritius and the Maldives in the Indian Ocean in the EEZ and the continental shelf, and that such views had been expressed with sufficient clarity.

According to the Maldives, Mauritius has not provided any evidence of a dispute, consisting of positively opposed claims as to their respective maritime zones, between the Parties.

298. The Maldives maintains that it is insufficient merely to show that there could be a potential dispute because of notional overlap between the Parties' maximum possible entitlements. It argues that "[a] dispute requires disagreement on where the actual maritime boundary should lie; otherwise, any State with an adjacent coast, or an opposite coast less than 400 nautical miles from another State's coast, could be hauled before ITLOS."

299. The Maldives submits that the Notification of Mauritius has not pointed to any dispute or positive opposition between the Parties regarding their respective maritime boundary claims. Furthermore, none of the exchanges between the Maldives and Mauritius referred to in the Notification establish that a dispute exists.

300. The Maldives further submits that

> the Special Agreement dated 24 September 2019 by which the parties submitted Mauritius' claim to a special chamber does not establish the existence of a dispute. First, it was made after the critical date (18 June 2019, when Mauritius filed its case) and second, it was made without prejudice to the Maldives' right to make objections to jurisdiction, including as regards whether a dispute existed at all. Accordingly, no dispute had crystallised at the critical date, and the Tribunal lacks jurisdiction over Mauritius' claims.

301. Regarding the crystallization of the dispute, the Maldives contends that,

> even on Mauritius' own theory that the International Court's Advisory Opinion somehow granted it sovereignty, less than four months elapsed before Mauritius filed its Notification and Statement of Claim. A dispute would need to have crystallized during this brief window.

302. Regarding legislation adopted by the Parties, the Maldives maintains that it "does not establish the existence of a dispute … For one thing, the legislation did not create a dispute of sufficient clarity to ground the Special Chamber's jurisdiction. This much is evident from the Parties' subsequent diplomatic exchanges". Furthermore, according to the Maldives, its legislation

> does not purport to set down an immutable maritime boundary claim either in respect of its EEZ or its continental shelf. It merely sets out as a point of departure the maximum extent of the Maldives' entitlement to an EEZ under UNCLOS, subject to agreement with relevant opposing or adjacent coastal States.

In its view, the mere existence of an overlap is not evidence of a dispute. Referring to "the so-called 'official depictions of overlapping boundary claims'", the Maldives contends that Mauritius has presented none of these.

303. The Maldives argues that, in subsequent diplomatic exchanges, the Parties spoke of a potential dispute which they might attempt to pre-empt

through negotiations and that there were no claims affirmatively opposed and rejected.

304. Referring to the meeting between the Parties on 21 October 2010, the Maldives contends that the meeting concerned its submission to the CLCS a few months earlier and that, in the meeting, "Mauritius stated only that 'to the north of the Chagos Archipelago there is an area of *potential overlap* of the extended continental shelf of the Republic of Maldives and the Republic of Mauritius'." It adds that, during the meeting, "both sides agreed that they would 'exchange coordinates of their respective base points … in order to facilitate the eventual discussions on the maritime boundary'." For the Maldives, this was a mere expression of intention to discuss a maritime boundary in the future. It argues that its

> offer to amend its submission to the CLCS was not evidence of opposing claims: all that the Maldives' representative stated was that the Maldives' CLCS submission would in due course be amended 'in consultation with the Government of the Republic of Mauritius'.

305. With reference to the joint communiqué of 12 March 2011, the Maldives submits that it "states that the Parties 'agreed to make bilateral arrangements on the overlapping area of extended continental shelf' between them." In the view of the Maldives, this is obviously an intention to cooperate before a dispute is crystallized.

306. As to the diplomatic note sent by Mauritius to the Secretary-General of the United Nations on 24 March 2011, the Maldives asserts that this note made only vague statements about Maldives' submission not taking into account the exclusive economic zone around the Chagos Archipelago without any clarification as to an area of overlapping claims.

307. In response to the third question posed by the Special Chamber (see paragraph 47 above), the Maldives expresses its view on Mauritius' claim in relation to article 74, paragraph 3, and article 83, paragraph 3, of the Convention stated in paragraph 28 of the Notification. In particular, the Maldives argues that any claim relating to either of these obligations would be outside the jurisdiction of the Special Chamber, as Mauritius has never produced any evidence and never even suggested that

> it has either invited the Maldives to enter into negotiations concerning any provisional arrangements of a practical nature or that the Maldives is carrying out any unilateral activities causing irreparable prejudice to Mauritius that would require such negotiations.

308. For its part, Mauritius rejects the contention of the Maldives 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". For Mauritius, "[t]his 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."

309. Mauritius submits that 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. According to Mauritius,

> [t]here 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.

310. Mauritius further submits that the objection of the Maldives "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" has no factual or legal support.

311. In response to the contention of the Maldives that there has been no "positive opposition between the Parties regarding their respective maritime boundary claims", Mauritius asserts that the untenable nature of this argument is revealed by the contemporaneous official documents and communications between the Parties, including official depictions of overlapping boundary claims.

312. As to the crystallization of the dispute, Mauritius contends that

> [t]he dispute between the two Parties to these proceedings concerning the extent of their maritime areas does not date from only recently, or even from the filing of the document instituting proceedings by the Republic of Mauritius, as the other Party seems to be suggesting. The evidence in the file shows that the existence of this dispute is clearly established and that the overlapping of their respective claims was recognized by the Parties themselves as of 2010.

313. Regarding the argument of the Maldives that a dispute would need to have crystallized during the "brief window" after the ICJ had rendered the Advisory Opinion and before Mauritius had filed its Notification, Mauritius maintains that it is

> entirely without merit. The Court clearly found that the separation of Chagos was not consistent with international law when it took place in 1965 and that those islands have, at all times, continued to be part of the territory of the Republic of Mauritius. That was clearly also the case in 2010–2011, when the exchanges … took place.

314. With respect to legislation adopted by the Parties, Mauritius submits that overlaying the maritime claims made by the two States, as they appear in their respective legislation, leaves no doubt as to the fact that they necessarily create a conflict affecting an area of some 96,000 square kilometres. In its view, graphic representations illustrate the extent of the Parties' claims and the fact that those claims inevitably create a situation of conflict. According to Mauritius, this state of affairs was, moreover, confirmed in no uncertain terms by the Parties themselves in the course of their exchanges on the delimitation of their maritime areas.

315. Referring to the meeting between the Parties on 21 October 2010, Mauritius states that it "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.'" Mauritius contends that,

> [i]n 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.' 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.' Recognising the existence of overlapping claims, the Maldives further 'agreed that both sides will work jointly on the area of the overlap.'

316. Mauritius argues that, in subsequent exchanges between the Parties, including the joint communiqué of 12 March 2011, the disappearance of the qualifier "potential" is confirmed and reference is made clearly and exclusively to an established overlapping area between the maritime zones of the two States.

317. Mauritius asserts that,

> 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.'

318. Mauritius contends that, even if it were assumed that the extent of the area of overlap resulting from the Parties' opposing claims must be specified for a dispute to be deemed to exist, which it does not think to be the case, all the ingredients were thus present, from that moment, in order to determine precisely the contours of the area of overlap. It adds that,

> [w]hat the note from Mauritius strikingly confirms is the existence of an established disagreement between the two States over the extent of their respective maritime areas. When a State protests formally, at the highest possible multilateral level, against claims put forward by another State to maritime areas which it deems to fall within its jurisdiction, it is proclaiming – to the world, what is more – the existence of a dispute between the States in question.

319. In response to the third question posed by the Special Chamber (see paragraph 47 above), Mauritius expresses its view that "there is no bar to the exercise by this Special Chamber of jurisdiction in relation to the Parties' obligations under paragraph 3 of articles 74 and 83." Mauritius adds that if, however, the Special Chamber finds that it cannot exercise jurisdiction to delimit the Parties' maritime boundaries, "then we have difficulty in seeing how it could exercise jurisdiction in relation to those obligations."

* * *

320. The Special Chamber notes that the Maldives' objection under consideration is based on two principal arguments. First, the Maldives argues that there can be no dispute between it and Mauritius over maritime delimitation until such time as Mauritius becomes the undisputed State with an opposite coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention. Second, the Maldives argues that there was no dispute, consisting of positively opposed claims as to their respective maritime zones, between it and Mauritius when the proceedings under Part XV of the Convention were initiated.

321. With respect to the first argument, the Special Chamber notes that it concluded in paragraph 251 above that it is satisfied that Mauritius can be regarded as the State with an opposite or adjacent coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention. The Special Chamber, therefore, finds that this argument is without a basis.

322. With respect to the second argument, the Special Chamber recalls the jurisprudence of the Tribunal to the effect that, for it to have jurisdiction *ratione materiae* to entertain a case, "a dispute concerning the interpretation or application of the Convention between the Parties must have existed at the time of the filing of the Application" (*M/V "Norstar"* (*Panama* v. *Italy*), *Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at p. 65, para. 84; see also *M/V "Louisa"* (*Saint Vincent and the Grenadines* v. *Kingdom of Spain*), *Judgment, ITLOS Reports 2013*, p. 4, at p. 46, para. 151).

323. The Special Chamber notes that, in the *Southern Bluefin Tuna Cases*, the Tribunal stated that

> a dispute is a 'disagreement on a point of law or fact, a conflict of legal views or of interests' (*Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2*, p. 11), and '[i]t must be shown that the claim of one party is positively opposed by the other' (*South West Africa, Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328).
> (*Southern Bluefin Tuna* (*New Zealand* v. *Japan; Australia* v. *Japan*), *Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999*, p. 280, at p. 293, para. 44; see also *M/V "Norstar"* (*Panama* v. *Italy*), *Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44, at pp. 65–66, para. 85)

324. The Special Chamber further notes that, in *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament*, the ICJ held that, in order for a dispute to exist,

> [t]he evidence must show that the parties 'hold clearly opposite views' with respect to the issue brought before the Court … As reflected in previous decisions of the Court in which the existence of a dispute was under consideration, a dispute exists when it is demonstrated, on the basis of the evidence, that the respondent was aware, or could not have been unaware, that its views were 'positively opposed' by the applicant (*Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea* (*Nicaragua* v. *Colombia*), *Preliminary Objections, Judgment, I.C.J. Reports 2016* (*I*), p. 26, para. 73; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v. *Russian Federation*), *Preliminary Objections, Judgment, I.C.J. Reports 2011* (*I*), p. 99, para. 61, pp. 109–110, para. 87, p. 117, para. 104).
> (*Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (*Marshall Islands* v. *United Kingdom*), *Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833, at pp. 850–851, para. 41)

325. The Special Chamber observes that, by its Maritime Zones Act of 1977, Mauritius declared an exclusive economic zone extending to a distance of 200 nautical miles from the baseline (section 6) and a continental shelf extending to the outer edge of the continental margin, or to a distance of 200 nautical

miles from the baseline where the outer edge does not extend up to that distance (section 5). This was reaffirmed in Mauritius' Maritime Zones Act of 2005 (sections 14 and 18).

326. By Law No. 30/76 of 1976, the Maldives declared an exclusive economic zone, indicating the coordinates of its outer limits. In its Maritime Zones Act No. 6/96 of 1996, which repealed Law No. 30/76, the Maldives declared an exclusive economic zone extending up to 200 nautical miles from the archipelagic baselines (section 6). Section 7 of this Act further provides that

> [i]n 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.

327. The Special Chamber notes that it is clear from the national legislation adopted by the Parties that their respective claims to an exclusive economic zone in the relevant area overlap. This is further illustrated by the graphic representations made by Mauritius in these proceedings.

328. The Special Chamber observes that, on 26 July 2010, the Maldives submitted information to the CLCS on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured.

329. The Special Chamber notes that the Parties met on 21 October 2010 "to discuss a potential overlap of the extended continental shelf and to exchange views on maritime boundary delimitation between the two respective States." According to the Minutes of the meeting,

> [r]egarding the submission of the Republic of Maldives on the extended continental shelf to the Commission on the Limits of the Continental Shelf (CLCS), [the Minister of Foreign Affairs of the Maldives] said that the Expert working on the submission of Maldives has acknowledged that in the submission to the CLCS the exclusive economic zone (EEZ) coordinates of the Republic of Mauritius in the Chagos region were

not taken into consideration. He 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 the Republic of Mauritius.

330. At the same meeting, Mauritius stated "that the Mauritius side also noted that to the north of the Chagos archipelago there is an area of potential overlap of the extended continental shelf of the Republic of Maldives and the Republic of Mauritius". The Maldives "agreed that both sides will work jointly on the area of overlap." In a joint communiqué of 12 March 2011, following a meeting between the President of the Maldives and the Prime Minister of Mauritius, the Parties "agreed to make bilateral arrangements on the overlapping area of extended continental shelf of the two States around the Chagos Archipelago."

331. The Special Chamber notes that, despite the assurance by the Maldives that an addendum to its submission to the CLCS would be made to take into consideration the coordinates of Mauritius' exclusive economic zone, no such addendum was submitted. As a consequence, Mauritius sent a diplomatic note to the Secretary-General of the United Nations on 24 March 2011, "protest[ing] 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."

332. In the view of the Special Chamber, it is clear from the above that there is an overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles and the claim of Mauritius to an exclusive economic zone in the relevant area. In light of the formal protest of Mauritius, in its diplomatic note of 24 March 2011, to the submission by the Maldives to the CLCS, the Parties clearly hold opposite views and the claim of the Maldives is positively opposed by Mauritius.

333. The Special Chamber cannot accept the Maldives' argument that "[a] dispute requires disagreement on where the actual maritime boundary should lie". In the Special Chamber's view, maritime delimitation disputes are not limited to disagreement concerning the location of the actual maritime boundary and may arise in various other forms and situations.

334. The Special Chamber notes the contention of the Maldives that a dispute would need to have crystallized during the "brief window" after the ICJ had rendered the *Chagos* advisory opinion and before Mauritius had filed its Notification. In the view of the Special Chamber, it is clear from the above that a disagreement existed between the Parties regarding maritime delimitation long before the *Chagos* advisory opinion was rendered. While the Maldives may have been justified in having reservations with respect to the existence of a dispute between it and Mauritius before the ICJ rendered the advisory opinion, this is no longer the case now that the advisory opinion has been rendered. In this regard, the Special Chamber also takes note of the invitation by Mauritius to the Maldives to a second round of discussions on maritime delimitation in a diplomatic note of 7 March 2019, to which the Maldives did not respond. As the ICJ stated,

> the existence of a dispute may be inferred from the failure of a State to respond to a claim in circumstances where a response is called for. (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (*Georgia* v. *Russian Federation*), *Preliminary Objections, Judgment, I.C.J. Reports* 2011, p. 70, at p. 84, para. 30; see also *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (*Marshall Islands* v. *India*), *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 2016,* p. 255, at p. 271, para. 37; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (*Marshall Islands* v. *Pakistan*), *Jurisdiction and Admissibility, Judgment*, *I.C.J. Reports 2016,* p. 552, at p. 567, para. 37; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament* (*Marshall Islands* v. *United Kingdom*), *Preliminary Objections, Judgment*, *I.C.J. Reports 2016,* p. 833, at p. 850, para. 40)

335. The Special Chamber, therefore, concludes that in the present case a dispute existed between the Parties concerning the delimitation of their maritime boundary at the time of the filing of the Notification.

336. Accordingly, the fourth preliminary objection of the Maldives is rejected.

IX. Fifth preliminary objection: Abuse of process

337. The Special Chamber now turns to the Maldives' preliminary objection that "Mauritius' claims are inadmissible because they constitute an abuse of process."

338. The Maldives submits that it founds this objection on the well-established procedural rule according to which a claim will be inadmissible and an international court or tribunal must refrain from exercising jurisdiction if the claimant's application constitutes an abuse of process. In this regard, it refers, *inter alia*, to the case law of the ICJ.

339. The Maldives argues that,

> [h]aving failed in the *Chagos Marine Protected Area Arbitration* to obtain a judicial decision against the United Kingdom stating that Mauritius has sovereignty over the Chagos Archipelago, Mauritius now tries to secure the same outcome by initiating UNCLOS proceedings against the Maldives, a third party to the bilateral sovereignty dispute.

In the Maldives' view,

> [t]he use of maritime boundary proceedings in order to promote its claim to sovereignty over the Chagos Archipelago is a clear attempt by Mauritius to 'use proceedings for aims alien to the ones for which the procedural rights at stake have been granted'.

It maintains that "[u]sing UNCLOS compulsory procedures to obtain a ruling on a territorial dispute with a third State is the very definition of an abuse of process."

340. The Maldives disagrees with the position of Mauritius that, by raising preliminary objections in these proceedings, the Maldives has acted inconsistently with the "obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius" stated in the *Chagos* advisory opinion. The Maldives, in its response to the second question posed by the Special Chamber (see paragraph 47 above), submits that "the raising of preliminary

objections … is not in any way inconsistent with its obligation to cooperate in the decolonization of Mauritius."

341. Mauritius contends that the Maldives' objection based on an alleged abuse of process by Mauritius is itself vexatious, and, like all its other preliminary objections, unfounded. Mauritius further contends that it may be that the case law of the ICJ includes instances in which the principle of abuse of process has been invoked. It adds, however, that the Court has never once found the conditions for an application of the principle to be satisfied.

342. Mauritius submits that the Maldives' objection "is patently frivolous" and "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."

343. Mauritius asserts that it does not seek a ruling on sovereignty over the Chagos Archipelago and that such a ruling has already been issued by the ICJ. It further asserts that "the Maldives' reliance on the decision in the *Chagos MPA Arbitration* to demonstrate an alleged abuse of process by Mauritius is entirely ill-founded" since

> [t]here 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.

344. In response to the second question posed by the Special Chamber (see paragraph 47 above), Mauritius submits that the Maldives, by raising a preliminary objection which is based on the argument that the United Kingdom is an indispensable third party to the present proceedings, is taking action in violation of the advisory opinion and UNGA resolution 73/295. According to Mauritius, "[i]f any party has committed an abuse of process, it is the Maldives."

* * *

345. The Special Chamber concluded in paragraph 293 above that the obligation under article 74, paragraph 1, and article 83, paragraph 1, of the Convention has been fulfilled. It concluded further in paragraph 335 above that a dispute existed between the Parties concerning the delimitation of their maritime boundary at the time of the filing of the Notification.

346. Article 74, paragraph 2, and article 83, paragraph 2, of the Convention each provide that, "[i]f no agreement can be reached within a reasonable period of time, the States concerned *shall* resort to the procedures provided for in Part XV" (emphasis added by the Special Chamber).

347. The Special Chamber notes that, by filing its Notification on 18 June 2019, Mauritius resorted to the dispute settlement procedures provided for in Part XV of the Convention, in accordance with article 74, paragraph 2, and article 83, paragraph 2, of the Convention.

348. The Special Chamber recalls that Mauritius' claims, as set out in paragraphs 27 and 28 of the Notification, read as follows:

> 27. Mauritius requests the Tribunal 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 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.
>
> 28. Mauritius also requests the Tribunal to declare that Maldives has violated its obligation to, pending agreement as provided for in paragraphs 1 of Articles 74 and 83 of UNCLOS, make every effort to enter into provisional arrangements of a practical nature and, during such transitional periods, not to jeopardize or hamper the reaching of the final agreement.

As is evident from the above, Mauritius' claims are confined to articles 74 and 83 of the Convention.

349. The Special Chamber, therefore, does not consider that Mauritius' claims constitute an abuse of process.

350. Accordingly, the fifth preliminary objection of the Maldives is rejected.

X. Conclusions on jurisdiction and admissibility

351. For the above reasons, the Special Chamber concludes that it has jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible.

352. The Special Chamber finds it appropriate to defer to the proceedings on the merits questions concerning the extent to which it may exercise its jurisdiction over the above dispute, including questions arising under article 76 of the Convention.

353. Regarding the Parties' views in relation to Mauritius' claim stated in paragraph 28 of its Notification concerning the obligations under article 74, paragraph 3, and article 83, paragraph 3, of the Convention (see paragraphs 307 and 319 above), the Special Chamber finds it appropriate to reserve this matter for consideration and decision in the proceedings on the merits, as this point has not yet been fully argued by the Parties.

XI. Operative provisions

354. For the above reasons, the Special Chamber

(1) Unanimously,

Rejects the first preliminary objection raised by the Maldives on the grounds that the United Kingdom is an indispensable third party to the present proceedings.

(2) By 8 votes to 1,

Rejects the second preliminary objection raised by the Maldives on the grounds that the Special Chamber lacks jurisdiction to determine the disputed issue of sovereignty over the Chagos Archipelago.

IN FAVOUR: Judge PAIK, *President of the Special Chamber*; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judge* ad hoc SCHRIJVER;
AGAINST: *Judge* ad hoc OXMAN.

(3) By 8 votes to 1,

Rejects the third preliminary objection raised by the Maldives relating to articles 74 and 83 of the Convention.

IN FAVOUR: Judge PAIK, *President of the Special Chamber*; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judge* ad hoc SCHRIJVER;
AGAINST: *Judge* ad hoc OXMAN.

(4) Unanimously,

Rejects the fourth preliminary objection raised by the Maldives based on the non-existence of a dispute between the Parties.

(5) Unanimously,

Rejects the fifth preliminary objection raised by the Maldives based on an abuse of process.

(6) By 8 votes to 1,

Finds that it has jurisdiction to adjudicate upon the dispute submitted to it by the Parties concerning the delimitation of the maritime boundary between them in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible; *defers*, however, to the proceedings on the merits questions regarding the extent to which the Special Chamber may exercise its jurisdiction, including questions arising under article 76 of the Convention.

IN FAVOUR: Judge PAIK, *President of the Special Chamber*; *Judges* JESUS, PAWLAK, YANAI, BOUGUETAIA, HEIDAR, CHADHA; *Judge* ad hoc SCHRIJVER;
AGAINST: *Judge* ad hoc OXMAN.

(7) Unanimously,

Reserves for consideration and decision in the proceedings on the merits the question of jurisdiction and admissibility with respect to Mauritius' claim stated in paragraph 28 of its Notification concerning the obligations under article 74, paragraph 3, and article 83, paragraph 3, of the Convention.

Done in English and in French, both texts being equally authoritative, in the Free and Hanseatic City of Hamburg, this twenty-eighth day of January, two thousand and twenty-one, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of the Republic of Mauritius and the Government of the Republic of the Maldives, respectively.

(*signed*)
JIN-HYUN PAIK
President of the Special Chamber

(*signed*)
XIMENA HINRICHS OYARCE
Registrar

Judges ad hoc OXMAN and SCHRIJVER, availing themselves of the right conferred on them by article 125, paragraph 2, of the Rules of the Tribunal, append their joint declaration to the Judgment of the Special Chamber.

Judge ad hoc OXMAN, availing himself of the right conferred on him by article 30, paragraph 3, of the Statute of the Tribunal, appends his separate and dissenting opinion to the Judgment of the Special Chamber.