WRITTEN OBSERVATIONS IN REPLY TO THE WRITTEN OBSERVATIONS OF THE REPUBLIC OF MAURITIUS, SUBMITTED BY THE MALDIVES ON 15 APRIL 2020

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

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

THE REPUBLIC OF MAURITIUS / THE REPUBLIC OF MALDIVES

WRITTEN OBSERVATIONS OF THE REPUBLIC OF MALDIVES IN REPLY TO THE WRITTEN OBSERVATIONS OF THE REPUBLIC OF MAURITIUS

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CHAPTER 1
INTRODUCTION

1. In accordance with the Special Chamber's Order of 19 December 2019, the Republic of the Maldives ('the Maldives') submits these Written Observations in Reply to the Written Observations of the Republic of Mauritius ('Mauritius') dated 17 February 2020. Mauritius' Written Observations were submitted in response to the Maldives' Written Preliminary Objections dated 18 December 2019 in respect of the dispute submitted to the Special Chamber by the Special Agreement concluded on 24 September 2019. The Maldives continues to rely on its Written Preliminary Objections in full.

2. For the reasons set out below, the Special Chamber lacks jurisdiction over Mauritius' claims, most obviously because the Chagos Archipelago remains the subject of an ongoing, unresolved sovereignty dispute between Mauritius and the United Kingdom. The Special Chamber cannot carry out the maritime delimitation sought by Mauritius without first resolving that sovereignty dispute, but it lacks the jurisdiction to do so.

3. Crucially, the Maldives rejects the core contention on which Mauritius' Written Observations rely — namely, that the sovereignty dispute between Mauritius and the United Kingdom has been definitively resolved by the International Court of Justice ('ICJ') in the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* Advisory Opinion ('*Chagos* Advisory Opinion').[1]

4. Contrary to Mauritius' assertion,[2] the Maldives does *not* suggest that the advice rendered by the ICJ in the *Chagos* Advisory Opinion was wrong or lacking in authority.[3] The Maldives fully supports self-determination for all colonial territories, including the Chagos Archipelago, in accordance with the Charter of the United Nations.[4] However, it takes the view that Mauritius has misrepresented the Advisory Opinion and drawn erroneous conclusions from it with respect to the rights and obligations of parties to the 1982 United Nations Convention on the Law of the Sea ('UNCLOS'), including the Maldives.

5. These Written Observations in Reply are set out in four chapters.

6. **Chapter 1** serves as an Introduction.

7. **Chapter 2** establishes that the sovereignty dispute between Mauritius and the United Kingdom concerning the Chagos Archipelago remains unresolved. It argues as follows:

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1 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019.

2 See e.g. Written Observations of Mauritius, para. 1.4.

3 *Ibid.*, para. 3.4.

4 See the Maldives' expression of this commitment in United Nations General Assembly, 73rd session, 83rd plenary meeting, 22 May 2019, A/73/PV.83 (Maldives' explanation of vote) (**Written Preliminary Objections of the Maldives, Annex 18**), p. 24.

(a) The award in the *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)* of 18 March 2015 ('*Chagos Marine Protected Area Arbitration*')[5] held that an UNCLOS tribunal could not exercise jurisdiction insofar as doing so would require it to resolve the underlying sovereignty dispute between the United Kingdom and Mauritius. Further, at least until that sovereignty dispute is resolved, the award accepted that the United Kingdom was entitled to exercise the powers of a coastal State with regard to the Chagos Archipelago, subject to the conditions set out in UNCLOS. This award retains *res judicata* force between the United Kingdom and Mauritius (**Section I**).

(b) The sovereignty dispute between the United Kingdom and Mauritius has not been resolved by the *Chagos* Advisory Opinion of the ICJ.[6] That Opinion does not address the question of sovereignty because the questions posed by the United Nations General Assembly ('UNGA') did not require it to do so. In giving its opinion the ICJ was advising the UNGA on the law relating to self-determination, not settling a sovereignty dispute between two member States. In any event, 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) (**Section II**).

(c) UNGA Resolution 73/295 of 24 May 2019 ('the UNGA Resolution')[7] likewise had no effect on the sovereignty dispute. It was 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 (**Section III**).

8. **Chapter 3** addresses Mauritius' responses to the Maldives' five preliminary objections. The Maldives' core contention is that the question whether Mauritius is a State with a relevant 'opposite or adjacent coast' (within the meaning of Articles 74 and 83 of UNCLOS) is not a question that can be settled in UNCLOS Part XV proceedings without determining the question of sovereignty over the Chagos Archipelago, which the Special Chamber lacks jurisdiction to do.

(a) **Section I** shows that the United Kingdom is a necessary third party in these proceedings. Its absence means that Mauritius' claims must be dismissed for want of jurisdiction.

(b) **Section II** establishes that the question of sovereignty over the Chagos Archipelago is not a dispute concerning the interpretation or application of UNCLOS. It thus falls outside the jurisdiction of a chamber constituted under Part XV of UNCLOS pursuant to Article 288 of the Convention.

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5 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015.

6 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019.

7 UNGA Resolution 73/295, "Advisory Opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", 24 May 2019, A/RES/73/295 (**Written Preliminary Objections of the Maldives, Annex 19**).

(c) **Section III** explains that Articles 74 and 83 of UNCLOS stipulate that negotiations between the parties are a procedural precondition to jurisdiction, and shows that this precondition has not been — and cannot meaningfully be — fulfilled in the present case.

(d) **Section IV** reiterates that Mauritius has failed to establish the existence of a "dispute", which is an essential requirement of jurisdiction within the meaning of Article 288 of UNCLOS (as Mauritius accepts).

(e) **Section V** establishes that Mauritius' pursuit of the present claims constitutes an abuse of process and refutes Mauritius' suggestion that the Maldives, in insisting on fidelity to the scope and effect of the *Chagos* Advisory Opinion, has itself committed an abuse of process.

9. **Chapter 4** contains the Maldives' Submissions.

CHAPTER 2
THE SOVEREIGNTY DISPUTE BETWEEN MAURITIUS AND THE UNITED KINGDOM

10. Mauritius does not contest that, if the sovereignty dispute over the Chagos Archipelago between itself and the United Kingdom remains unresolved, then the Special Chamber cannot exercise jurisdiction over its claims. Instead, it stakes it entire argument on the claim that this dispute *has* been resolved. The Maldives disagrees.

11. There are three important milestones in relation to the sovereignty dispute. The first is the award of the Annex VII tribunal in the *Chagos Marine Protected Area Arbitration* of 18 March 2015.[8] The effect of this award on the sovereignty dispute is set out in **Section I** below. Mauritius considers this *res judicata* award to be simply irrelevant. The Maldives considers this award to remain relevant for the reasons set out below.[9]

12. The second and third milestones, respectively, are the *Chagos* Advisory Opinion of 25 February 2019[10] and the UNGA Resolution of 24 May 2019.[11] Mauritius characterises these two events as "conclusive developments"[12] which determined, in a manner binding on the United Kingdom and all other States, that the United Kingdom has no valid claim to sovereignty over the Chagos Archipelago. In reality, neither the *Chagos* Advisory Opinion nor the UNGA Resolution resolved the sovereignty dispute, as set out in **Sections II and III**, respectively, below.

I. The award in the *Chagos Marine Protected Area Arbitration* did not resolve the sovereignty dispute and remains *res judicata* between Mauritius and the United Kingdom

13. In its Written Observations, Mauritius does not dispute the Maldives' characterisation of the award in the *Chagos Marine Protected Area Arbitration*. It also does not dispute that this award, at least at the time it was rendered, had the force of *res judicata* between Mauritius and the United Kingdom. Instead, Mauritius makes two submissions with respect to the Annex VII award.

14. First, Mauritius claims that there have been "critical developments" since the arbitral award was rendered — namely that the *Chagos* Advisory Opinion and the UNGA Resolution have since "ma[d]e 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".[13]

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8 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015.

9 See paras. 13–25, 73–78 below.

10 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019.

11 UNGA Resolution 73/295, "Advisory Opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", 24 May 2019, A/RES/73/295 (**Written Preliminary Objections of the Maldives, Annex 19**).

12 Written Observations of Mauritius, para. 2.31.

13 *Ibid.*, para. 3.71.

15. The implication is that the *Chagos Marine Protected Area Arbitration* has been superseded and is not relevant to the present proceedings because the question of sovereignty that the Annex VII tribunal could not resolve has now been conclusively resolved by the ICJ. This argument relies on Mauritius establishing *both* that:

(a) The ICJ gave advice on resolution of the sovereignty dispute; *and*

(b) Such advice had the legal consequence of overruling the binding arbitral award.

16. As set out below, the Maldives does not accept that either of these premises is correct.[14]

17. Secondly, in response to the Maldives' fifth preliminary objection, Mauritius states that it "is not seeking the same decision which it sought in the *Chagos MPA Arbitration*" and 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".[15]

18. The Maldives 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. But the Maldives does argue that the Annex VII award is a relevant fact in the present proceedings for three reasons, all of which are elaborated below:

(a) It is relevant to ascertaining whether the ICJ, either expressly or impliedly, resolved the sovereignty dispute between Mauritius and the United Kingdom;[16]

(b) It is relevant to whether the United Kingdom is an indispensable party to this claim;[17] and

(c) It is relevant to the Maldives' fifth preliminary objection on the basis that Mauritius is abusing these proceedings to circumvent the final and binding ruling of the Annex VII tribunal.[18]

19. The Maldives explained in its Preliminary Objections that the Annex VII tribunal in the *Chagos Marine Protected Area Arbitration* found that there existed a sovereignty dispute between Mauritius and the United Kingdom and further expressly declined to resolve this dispute, finding that to do so would be outside its jurisdiction.[19]

20. Specifically, the tribunal found that "the record ... clearly indicates that a dispute between the Parties exists with respect to sovereignty over the Chagos Archipelago" and noted that "the pleadings in these proceedings are replete with assertions of

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14 See paras. 30–60, 73–78 below.
15 Written Observations of Mauritius, paras. 3.71–3.72.
16 See paras. 73–78 below.
17 See para. 110(d) below.
18 See paras. 137–143 below.
19 Written Preliminary Objections of the Maldives, paras. 13, 60(a).

Mauritian sovereignty over the Chagos Archipelago".[20] It concluded that "the Parties' dispute with respect to Mauritius' First Submission is properly characterized as relating to land sovereignty over the Chagos Archipelago", while the parties' "differing views on the 'coastal State' for the purposes of [UNCLOS] are simply one aspect of this larger dispute".[21]

21. The tribunal proceeded to find that "to read Article 298(1)(a)(i) [of UNCLOS] as a warrant to assume jurisdiction over matters of land sovereignty on the pretext that the Convention makes use of the term 'coastal State' would do violence to the intent of the drafters of the Convention to craft a balanced text and to respect the manifest sensitivity of States to the compulsory settlement of disputes relating to sovereign rights and maritime territory" — sensitivities which "arise to an even greater degree in relation to land territory".[22] Accordingly, the tribunal declined jurisdiction over each of Mauritius' submissions that would require it to rule on the sovereignty dispute.[23]

22. The tribunal held, however, that it could exercise jurisdiction over Mauritius' fourth submission — namely, that the United Kingdom's declaration of the marine protected area violated its obligations under, *inter alia*, Articles 2, 55, 56, 63, 64, 194 and 300 of UNCLOS. It concluded that the United Kingdom's declaration involved a breach of Articles 2(3), 56(2) and 194(4) of UNCLOS because, in exercising the powers of a coastal State, it had failed to consult with or have due regard to the interests of Mauritius.[24] Articles 2(3), 56(2) and 194(4) of UNCLOS require a coastal State to respect or have regard for the rights of other states when exercising sovereignty or sovereign rights in the territorial sea and exclusive economic zone respectively.

23. The tribunal's findings necessarily treat the United Kingdom as the relevant coastal State for the purpose of managing maritime zones around the Chagos Archipelago. Indeed, the very fact that Mauritius alleged a breach of these provisions of UNCLOS implies that it accepted the right of the United Kingdom to act as a coastal State, subject to the relevant provisions of UNCLOS.

24. The findings of the Annex VII tribunal have the force of *res judicata* between Mauritius and the United Kingdom.[25] The *res judicata* principle:

> "establishes the finality of the decision adopted in a particular case (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007 (I), p. 90, para. 115; *Request for Interpretation*

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20 *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015, para. 209.

21 *Ibid.*, para. 212.

22 *Ibid.*, para. 219.

23 *Ibid.*, paras. 221, 229–230.

24 *Ibid.*, para. 547(B).

25 *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 126, para. 61: "The decision of the Court is contained in the operative clause of the judgment. However, in order to ascertain what is covered by *res judicata*, it may be necessary to determine the meaning of the operative clause by reference to the reasoning set out in the judgment in question."

> *of the Judgment of 11 June 1998 in the Case concerning the Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)*, Preliminary Objections (Nigeria v. Cameroon), Judgment, I.C.J. Reports 1999 (I), p. 36, para. 12; *Corfu Channel (United Kingdom v. Albania)*, Assessment of Amount of Compensation, Judgment, I.C.J. Reports 1949, p. 248)."[26]

25. Accordingly, 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, albeit only after consulting and cooperating with Mauritius in order to ensure that the latter's rights are respected and given due regard.

II. The *Chagos* Advisory Opinion did not resolve the sovereignty dispute

26. Every aspect of Mauritius' response to the Maldives' preliminary objections rests on an assertion that the *Chagos* Advisory Opinion "disposed of any question as to territorial sovereignty over the Chagos Archipelago, leaving no doubt that Mauritius alone is sovereign over that territory".[27] It is an assertion that Mauritius repeats (in various formulations) dozens of times.[28] Mauritius goes so far as to state that, by virtue of the Advisory Opinion, "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".[29]

27. This characterisation of the *Chagos* Advisory Opinion is simply wrong. It is beyond doubt that an advisory opinion of the ICJ cannot conclusively resolve a bilateral dispute. The principle of consent to jurisdiction[30] makes that impossible. Even if it were hypothetically possible for an advisory opinion to do so, contrary to Mauritius' submission, the *Chagos* Advisory Opinion does not resolve, or purport to resolve, the sovereignty dispute that exists between Mauritius and the United Kingdom. Also contrary to Mauritius' submissions, the Advisory Opinion did not render Mauritius the relevant "coastal State" for the purposes of UNCLOS.

28. Declining jurisdiction in this case would not, as Mauritius claims, place the Special Chamber in a position of "direct conflict" with the ICJ[31] or require it "to disregard and effectively overrule" the Advisory Opinion.[32] To the contrary, by declining jurisdiction, the Chamber would simply act in accordance with the true scope and

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26 *Ibid.*, p. 125, para. 58.

27 Written Observations of Mauritius, para. 3.6.

28 *Ibid.*, paras. 1.2, 1.4, 1.5, 1.6, 2.3, 2.21, 3.4, 3.5, 3.6, 3.11, 3.13, 3.15, 3.16, 3.27, 3.28, 3.31, 3.32, 3.37, 3.68, 3.70, 3.71, 3.72.

29 *Ibid.*, para. 1.4. See also para. 3.71, which alleges that the "consequence" of the Advisory Opinion is "that Mauritius — and Mauritius alone — is the coastal State for purposes of maritime delimitation with the Maldives".

30 See e.g. *Case of the Monetary Gold Removed from Rome in 1943 (Preliminary Question) (Italy v. France)*, Judgment of June 15th, 1954, ICJ Reports 1954, p. 19 at pp. 32–33; *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 90 at pp. 101, 105, paras. 26, 34–35; *M/V "Norstar" Case (Panama v. Italy)*, Judgment on Preliminary Objections, 4 November 2016, para. 172.

31 Written Observations of Mauritius, para. 1.4.

32 *Ibid.*, para. 3.28. See also para. 3.32.

legal effect of the Court's opinion, as well as the established principles of international law on the competence of courts and tribunals under such circumstances.

29. There are four reasons why Mauritius' characterisation of the *Chagos* Advisory Opinion is false:

(a) The 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 (**subsection A** below);

(b) The sovereignty dispute is not resolved as an implied or necessary consequence of the ICJ's Advisory Opinion (**subsection B** below);

(c) Even if the ICJ had given an opinion on the sovereignty dispute, any such opinion would not have been binding on States (**subsection C** below); and

(d) The ICJ was not asked, had no authority, and did not purport to overrule the award of the Annex VII tribunal in the *Chagos Marine Protected Area Arbitration* (**subsection D** below).

A. The Court was not asked to, and did not, advise on the sovereignty dispute

30. Mauritius' position is that the ICJ has issued a "ruling"[33] that "the United Kingdom has no sovereign rights in regard to the Chagos Archipelago".[34]

31. In reality, neither of the questions which the UNGA posed to the Court concerned sovereignty or required the Court to give an opinion on the sovereignty dispute between Mauritius and the United Kingdom. The Court's advice was directed to the UNGA, not to the United Kingdom and Mauritius (or any other State). Moreover, the Court expressly recognised that "[t]he General Assembly ha[d] not sought the Court's opinion to resolve a territorial dispute between two States".[35]

32. The Court's express conclusion on this point is borne out by the questions posed by the UNGA. The first question was 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?"

33. This question makes no mention of the sovereignty dispute. Further, in considering what this question required the Court to advise on, the Court expressly found that:

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[33] *Ibid.*, para. 3.70.

[34] *Ibid.*, para. 3.32.

[35] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 86.

> "In 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*."[36]

34. The second question posed by the UNGA Resolution was as follows:

> "*(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?"

35. The Court's answer was as follows:

> "In response to Question *(b)* of the General Assembly, relating to the consequences under international law that arise from the continued administration by the United Kingdom of the Chagos Archipelago, 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."[37]

36. These are the only legal consequences identified in the Court's answer to the second question. The Advisory Opinion did little to amplify them. At no point did the Court state that the United Kingdom lacked sovereignty over the Chagos Archipelago. That was simply not a matter on which it had been asked to give an opinion and it was not one of the "consequences under international law" to which the Court considered the United Kingdom's continued administration of the Chagos Archipelago gave rise.

37. Indeed, it was specifically on the basis that it had not been asked to resolve the sovereignty dispute that the Court 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".[38] The logical corollary is that, if the Court had considered that the UNGA's questions *did* require it to resolve the sovereignty dispute, that would circumvent the principle of consent and prevent the Court from exercising its advisory jurisdiction.

38. In the course of the advisory proceedings, Mauritius itself failed to adopt a clear or consistent position on whether the UNGA's questions implicated the sovereignty dispute between Mauritius and the United Kingdom. On the one hand, in arguing that the UNGA's requests were within the Court's advisory jurisdiction, its position was that the questions did not require the Court to resolve the sovereignty dispute. It stated:

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36 *Ibid.*, para. 136 (emphasis added).
37 *Ibid.*, para. 182.
38 *Ibid.*, para. 90.

> "As regards the Court's jurisdiction, Mauritius notes that 31 of the 32 Written Statements recognise that the Court has jurisdiction to give the Advisory Opinion requested. The solitary exception is Australia, which argues that while the questions posed '*ostensibly* concern decolonization, their *true* purpose and effect is to seek the Court's adjudication over a question of sovereignty.' This unfortunate and misconceived contention, which conveys doubt about the General Assembly's good faith, cannot deprive the Court of jurisdiction, as will be shown in Section I."[39]

39. Despite claiming that it was "unfortunate and misconceived" for another State to suggest that the true effect of the UNGA's request would be for the Court to advise on the sovereignty dispute, Mauritius proceeded expressly to invite the Court to reach conclusions doing precisely that. The Court did not accede to this invitation on any occasion.

40. For example, Mauritius invited the Court to find that "in these proceedings sovereignty over the Chagos Archipelago is entirely derivative of, subsumed within, and determined by the question of whether decolonisation has or has not been lawfully completed".[40] The Court 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.[41]

41. Mauritius also invited the Court to find that:

> "The administering power is under an obligation to consult and cooperate with Mauritius *inter alia* to: (a) advance the economic well-being of the Mauritian people; (b) give Mauritius access to the Chagos Archipelago's natural resources; (c) ensure that its environment is fully protected; (d) allow Mauritius to participate in the authorisation, oversight and regulation of scientific research in and around the Archipelago; (e) permit Mauritius to make submissions to the U.N. Commission on the Limits of the Continental Shelf; and (f) allow Mauritius to proceed to a delimitation of its maritime boundaries with the Maldives."[42]

42. It is telling that, in enunciating these proposed consequences, Mauritius did not even ask the Court to advise that Mauritius was sovereign over the Chagos Archipelago: if it were already sovereign, why would it require the United Kingdom as administering power to consult and cooperate with it in delimiting a maritime boundary? Again, the Court declined Mauritius' invitation to articulate even these consequences which are more modest than a sovereignty claim. Nothing in the Advisory Opinion expressly or

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39 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Comments of the Republic of Mauritius, 15 May 2018, para. 2.2 (emphasis added by Mauritius; internal citations omitted).

40 *Ibid.*, para. 2.16. See also para. 4.73.

41 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, paras. 86, 136.

42 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Comments of the Republic of Mauritius, 15 May 2018, para. 4.145. See also *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Statement of Mauritius, 1 March 2018, paras. 7.45–7.61.

impliedly addresses any of these points. The Court's failure to address the specific consequences advocated by Mauritius is fully consistent with the conclusion that it was not contemplating legal consequences that included Mauritius establishing a maritime boundary with the Maldives in advance of the United Kingdom's departure from the Archipelago. The Court's silence is certainly not consistent with the claim that the sovereignty dispute has been resolved in favour of Mauritius.

43. Mauritius makes two specific claims about the *Chagos* Advisory Opinion which require correction. First, it claims at several points in its Written Observations that the ICJ concluded that the Chagos Archipelago "is, and always has been, a part of the territory of Mauritius".[43] The Court reached no such view. Instead, the Court's opinion is limited to the statement 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]".[44] It did not express any opinion that the Chagos Archipelago *remained* a part of Mauritius after 1965; instead, the balance of its opinion is premised on the separation of the Archipelago from Mauritius from 1965 onwards.

44. Secondly, Mauritius quotes two isolated passages which it claims indicate the Court's opinion that the Chagos Archipelago is currently part of Mauritius' sovereign territory.[45] Read properly and in context, neither of the passages support that conclusion.

(a) Mauritius refers to the Court's advice that the United Kingdom should bring an end to its administration of the Chagos Archipelago so as to enable "Mauritius to complete the decolonization of its territory".[46] However, this statement directly follows the Court's reference to "the separation of the Chagos Archipelago from Mauritius" in 1965,[47] which points against reading the Court's statement to mean that Mauritius' sovereign territory *currently* includes the Chagos Archipelago. Read in context, the words quoted by Mauritius most readily refer to the United Kingdom's obligation to complete the decolonisation of the entire territory of Mauritius *as it stood in 1965*.

(b) Mauritius also quotes the Court's statement 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".[48] Again, that passage appears in a part of the Court's judgment dealing with the detachment of the Chagos Archipelago from the colony of Mauritius and its incorporation into a new colony.[49] In context, it is best understood as a reference to the territorial

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43 Written Observations of Mauritius, para. 2.21. See also paras. 1.4, 1.6, 3.13, 3.37.

44 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 170 (emphasis added).

45 Mauritius' Written Observations, para. 3.15.

46 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 178.

47 *Ibid.*, para. 177.

48 *Ibid.*, para. 173.

49 *Ibid.*, paras. 172–174.

integrity of Mauritius as it stood in 1965, and the United Kingdom's obligation to complete the process of decolonisation in respect of that entire territory.

45. In short, the Court was not asked to, and did not in its Advisory Opinion purport to, resolve the sovereignty dispute between the United Kingdom and Mauritius.

B. Resolution of the sovereignty dispute is not an implied or necessary consequence of the Court's advice

46. No doubt in recognition of the fact that the Court's Advisory Opinion did not expressly resolve the sovereignty dispute, Mauritius has resorted to arguing that the Opinion can be taken to have resolved the sovereignty dispute by necessary implication. For example, it states that it is "[s]elf-evident[]" that "a State that has no right to administer a territory has no sovereignty or other legal rights in relation to that territory".[50] It also asserts that, although the UNGA's questions and the Advisory Opinion only "concerned decolonisation", "once the lawfulness of decolonisation is determined, the question of territorial sovereignty no longer arises".[51] Mauritius relies on what it says are the "inescapable" or "inexorabl[e]" consequences of the Advisory Opinion,[52] rather than what is stated in the Advisory Opinion itself.

47. As noted above, during the advisory proceedings, Mauritius expressly invited the Court to advise that the question of sovereignty was "entirely derivative of, subsumed within, and determined by the question of whether decolonisation has or has not been lawfully completed".[53] Also as noted above, the Court declined to do so.

48. Mauritius' 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. But the Court's refusal to make such express 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.

49. What Mauritius is asking the Special Chamber to do is not simply to read the Advisory Opinion but to derive implied legal consequences from it. That is not a task involving the "interpretation or application" of UNCLOS pursuant to Article 288(1), as set out more fully below.[54] Accordingly, the Maldives is not required to enter into a debate on whether Mauritius' view of the implied consequences of the Advisory Opinion is correct. Nonetheless, the Maldives notes three points.

50. First, whatever Mauritius' own interpretation is, it cannot deny that there is a dispute between itself and the United Kingdom over the consequences of the Advisory Opinion for the sovereignty dispute between them.[55] Mauritius' position is that, by

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50 Written Observations of Mauritius, para. 2.28.

51 *Ibid.*, para. 3.5.

52 *Ibid.*, para. 3.11.

53 See para. 40 above; *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Comments of the Republic of Mauritius, 15 May 2018, para. 2.16.

54 See Chapter 3, section II below.

55 See Written Preliminary Objections of the Maldives, paras. 16–20.

virtue of the Advisory Opinion, the sovereignty dispute has been resolved in its favour.[56] The United Kingdom's position is that the Advisory Opinion did not deprive it of sovereignty over the Chagos Archipelago.[57]

51. Secondly, on its face, Mauritius' claim that the *Chagos* Advisory Opinion resolved the sovereignty dispute by necessary implication is not convincing. 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. Indeed, Mauritius has never suggested that the United Kingdom lacked sovereignty over the colony of Mauritius prior to 1965, although it claims that the obligation on administering States to complete the process of decolonisation existed prior to that date.[58] The existence of an obligation to complete the process of decolonisation is neither necessarily nor automatically accompanied by an instant loss of sovereignty.

52. Thirdly, although Mauritius refers to both of them in its Written Observations, neither the *Namibia* nor *Western Sahara* Advisory Opinions assists Mauritius in establishing that the sovereignty dispute was resolved as a necessary consequence of the *Chagos* Advisory Opinion.

53. Regarding the *Namibia* Advisory Opinion, in its Written Observations Mauritius claims that "[t]he Court's Advisory Opinion on the legal status of the Chagos Archipelago is as dispositive on the issue of sovereignty as its 1971 Advisory Opinion in relation to South West Africa".[59] It also states that the United Kingdom is an illegal occupier of the Chagos Archipelago "just as South Africa was an illegal occupier of South West Africa (Namibia) after the ICJ's 1971 Advisory Opinion".[60]

54. But the factual and legal situations addressed in each of these Advisory Opinions are distinguishable in crucial respects.

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56 Communiqué of the Mauritius Prime Minister's Office, 30 April 2019 <http://pmo.govmu.org/English/Documents/Communiqué%20and%20Reports/Communiqué%20on%20ICJ%20Advisory%20Opinion.pdf> accessed 16 November 2019 (**Written Preliminary Objections of the Maldives, Annex 14**); Diplomatic Note No 08/19 from the Permanent Mission of the Republic of Mauritius to the United Nations to the Permanent Mission of the Republic of Maldives to the United Nations, 7 March 2019 (**Written Preliminary Objections of the Maldives, Annex 16**).

57 Foreign and Commonwealth Office of the United Kingdom, "British Indian Ocean Territory: Written statement", Doc HCWS10, 26 June 2017 <https://www.parliament.uk/business/publications/writtenquestions-answers-statements/written-statement/Commons/2017-06-26/HCWS10/> accessed 16 November 2019 (**Written Preliminary Objections of the Maldives, Annex 17**); Foreign and Commonwealth Office of the United Kingdom, "British Indian Ocean Territory: Written statement", Doc HCWS90, 5 November 2019 <https://www.parliament.uk/business/publications/written-questions-answers-statements/writtenstatement/Commons/2019-11-05/HCWS90/> accessed 16 November 2019 (**Written Preliminary Objections of the Maldives, Annex 3**).

58 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Statement of Mauritius, 1 March 2018, paras. 6.29, 6.32.

59 Written Observations of Mauritius, para. 3.27.

60 *Ibid.*, para. 1.8.

(a) South West Africa was a League of Nations mandated territory. In contrast, Mauritius was a longstanding colony, ceded by France to the United Kingdom in 1814 with all its dependencies.[61]

(b) In relation to South West Africa, the fundamental principle of non-annexation meant that the mandatory power did not acquire sovereignty over mandated territory, but instead administered that territory as a "sacred trust" under an agreement with the League of Nations.[62] In contrast there is no dispute that the United Kingdom did historically possess sovereignty over Mauritius when it was a colony.[63]

(c) Once the mandate agreement over South West Africa had been lawfully terminated by the United Nations, South Africa had no right or title of any kind to administer Namibia.[64] The right to administer South West Africa (subsequently Namibia) passed to and was exercised by the United Nations Council for South West Africa[65] (subsequently renamed the United Nations Council for Namibia). The *Chagos* Advisory Opinion makes clear that the right of administration remains with the United Kingdom until it departs.[66]

(d) The passage of a binding Security Council resolution ensured that all States were compelled to recognise the illegality and invalidity of South Africa's presence in Namibia.[67] There is no Security Council resolution relating to the Chagos Archipelago, and, for the reasons set out below,[68] neither the Court's Advisory Opinion nor the subsequent resolution of the UNGA can be taken as having equivalent binding legal effect.

55. In any event, the *Namibia* Advisory Opinion was not "dispositive on the issue of sovereignty" as Mauritius alleges.[69] South Africa had never annexed South West

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61 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 27.

62 Covenant of the League of Nations, opened for signature 28 June 1919, entered into force 10 January 1920, Article 22(1); *International Status of South-West Africa*, Advisory Opinion, ICJ Reports 1950, p. 128 at p. 132 ("the creation of this new international institution did not involve any cession of territory or transfer of sovereignty to the Union of South Africa"); *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 28, para. 45 ("As the Court recalled in its 1950 Advisory Opinion on the *International Status of South-West Africa,* in the setting-up of the mandates system 'two principles were considered to be of paramount importance: the principle of non-annexation and the principle that the well-being and development of such peoples form a 'sacred trust of civilization'' (*I.C.J. Reports 1950*, p. 131)").

63 See para. 51 above.

64 *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at pp. 50 and 54, paras. 105 and 118.

65 UNGA Resolution 2248, "Question of South West Africa" (19 May 1967), A/RES/2248.

66 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 178.

67 *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 54, paras. 117, 119.

68 See paras. 61–72, 79–84 below.

69 Written Observations of Mauritius, para. 3.27.

Africa,[70] and the arguments in the case were concerned only with interpretation and application of Article 22 of the Covenant of the League of Nations and the mandate agreement between the League and South Africa.[71] The Court's discussion of sovereignty occurred only in that context.[72] What was at issue was the extent of South Africa's obligations as a mandatory power, not a claim to sovereignty which it had never made.

56. It is no doubt for these reasons that the ICJ itself did not accede to Mauritius' invitation to draw a comparison between the situation in the Chagos Archipelago and that of Namibia,[73] or refer in any other way to the *Namibia* Advisory Opinion when advising on the consequences of the United Kingdom's continued administration of the Chagos Archipelago.

57. As regards the *Western Sahara* Advisory Opinion, Mauritius claims that in those proceedings "the Court rejected the argument put forward by some States taking part in those proceedings that it should decline to provide the requested opinion because the request was said to concern a 'bilateral dispute' over territorial sovereignty".[74] The Maldives agrees that the two sets of proceedings are similar insofar as the Court also held in the *Chagos* Advisory Opinion that it had not been asked to advise on or resolve a bilateral dispute over territorial sovereignty.[75]

58. Mauritius proceeds to claim that, in the *Western Sahara* Advisory Opinion, "the Court determined that it should issue an opinion because the request fundamentally raised a question of decolonisation, and the matter of sovereignty was subsumed within and incidental to that question".[76] To the contrary, the basis on which the ICJ rejected Spain's objections to the *Western Sahara* advisory proceedings was precisely the opposite: it stated that 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 Court stated that:

(a) "The settlement of this issue will not affect the rights of Spain today as the administering Power";[77]

(b) The questions posed by the UNGA "do not put Spain's present position as the administering Power of the territory in issue before the Court: resolution 3292

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70 South Africa argued only that "C" mandates were "in their practical effect not far removed from annexation": *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 28, para. 45.

71 *Ibid.*, pp. 28–31, paras. 45–51.

72 At *ibid.*, p. 30, para. 50 the Court rejected South Africa's view of Article 22 of the Covenant of the League of Nations, stating: "the final outcome of the negotiations, however difficult of achievement, was a rejection of the notion of annexation. It cannot tenably be argued that the clear meaning of the mandate institution could be ignored by placing upon the explicit provisions embodying its principles a construction at variance with its object and purpose."

73 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Statement of Mauritius, 1 March 2018, paras. 7.11–7.12.

74 Written Observations of Mauritius, para. 3.5.

75 See paras. 30–37 above.

76 Written Observations of Mauritius, para. 3.5.

77 *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p. 12 at p. 27, para. 42.

(XXIX) itself recognizes the current legal status of Spain as administering Power";[78]

(c) "[T]he request for an opinion does not call for adjudication upon existing territorial rights or sovereignty over territory";[79] and

(d) Nothing in the procedure "convey[ed] any implication that the present case relates to a claim of a territorial nature".[80]

59. To the extent that the Court gave an opinion on sovereignty, it was in the context of answering the second question posed to the Court: namely, "What were the legal ties of this territory [i.e. Western Sahara] with the Kingdom of Morocco and the Mauritanian Entity?" That question directly required the Court to consider whether, in 1884, Morocco had held sovereignty over or enjoyed any other legal ties with Western Sahara.[81] Its opinion on historical sovereignty was explicit: the evidence did not establish "any legal tie of sovereignty between Western Sahara and the Moroccan State".[82]

60. Accordingly, the question of sovereignty as a historical fact, not linked to any present obligation to complete decolonisation, was not, as Mauritius suggests, "subsumed within" or "incidental to" the questions asked of the Court in the *Western Sahara* proceedings. Rather, 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 at the time of the Advisory Opinion, which is what Mauritius is asking the Special Chamber to do in the present proceedings.

C. If the Court had given advice on the sovereignty dispute (which it did not), that advice would not have the legal consequence of resolving that dispute

61. Mauritius' case requires the Special Chamber to accept not only that the Court gave an express or implied opinion on the sovereignty dispute, but also that any such opinion was binding on the United Kingdom (and the Maldives). This proposition is, of course, manifestly wrong.

62. The crucial point is that the authority of an advisory opinion lies in the advice it gives to the organ requesting it. For all the reasons set out above, nothing in the *Chagos* Advisory Opinion purports to give advice on the sovereignty dispute between the United Kingdom and Mauritius. If the Court's advice does not address the issue in dispute then the question of its authority has no relevance.

63. In any case, Mauritius concedes that it is "beyond dispute that advisory opinions are not as such directly binding on Member States".[83] The Court itself has confirmed on numerous occasions that its advisory opinions are not binding even on the organs

78 *Ibid.*, p. 28, para. 43.
79 *Ibid.*
80 *Ibid.*
81 *Ibid.*, p. 56, para. 129.
82 *Ibid.*, pp. 56–57, para. 129.
83 Written Observations of Mauritius, para. 3.18.

which request them, let alone on other entities such as States.[84] For example, in the *South West Africa* cases, the Court held that the Council of the League of Nations under the mandates system "could of course ask for an advisory opinion of the Permanent Court but that opinion would not have binding force, and the Mandatory could continue to turn a deaf ear to the Council's admonitions".[85] Accordingly, there is simply no basis for suggesting that the sovereignty dispute between the United Kingdom and Mauritius has been "authoritatively and definitely settled"[86] by the Court expressing an opinion.

64. Mauritius provides examples that it says illustrate the binding effect of the Court's advisory opinions, but in reality none of them do so. For example, contrary to Mauritius' suggestion, developments subsequent to the *Namibia* Advisory Opinion do not "demonstrate[] the immediate and authoritative legal effect of the ICJ's Advisory Opinion".[87] The conduct of the Council for Namibia and other States in that instance was mandated not by the Court's opinion but by a Security Council resolution which was binding by virtue of Article 25 of the Charter of the United Nations.[88]

65. Mauritius further asserts 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".[89] As authority for this proposition, Mauritius refers to two cases decided by the Court of Justice of the European Union ('CJEU'), namely *Council of the European Union v. Front Polisario* (Case C-104/16P), and *Organisation juive européenne & Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances* (Case C-363/18).[90]

66. In reality, neither of these cases supports Mauritius' position. Although it is possible, under Article 273 of the Treaty on the Functioning of the European Union, for the

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84 See e.g. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, ICJ Reports 1950, p. 65 at p. 71 ("The Court's reply is only of an advisory character: as such it has no binding force"); *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, Advisory Opinion, ICJ Reports 1956, p. 77 at p. 84 (a provision of a statute which stated that the Court's opinion would be binding "goes beyond the scope attributed by the Charter and by the Statute of the Court to an Advisory Opinion"); *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, ICJ Reports 1962, p. 151 at p. 168 ("the opinion which the Court is in course of rendering is an *advisory* opinion" (emphasis in original)); *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, ICJ Reports 1989, p. 177 at p. 188, para. 31 ("These opinions are advisory, not binding"); *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, Advisory Opinion, ICJ Reports 1999, p. 62 at p. 77, para. 25 ("A distinction should thus be drawn between the advisory nature of the Court's task and the particular effects that parties to an existing dispute may wish to attribute, in their mutual relations, to an advisory opinion of the Court, which, 'as such, … has no binding force'").

85 *South West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, ICJ Reports 1962, p. 319 at p. 337.

86 Written Observations of Mauritius, para. 1.9.

87 *Ibid.*, para. 3.27.

88 *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16 at p. 54, paras. 117, 119.

89 Written Observations of Mauritius, para. 3.23.

90 *Ibid.*, paras. 3.23–3.24.

CJEU to resolve inter-State disputes,[91] it was not performing this role in either of the cases referred to by Mauritius. In fact, in neither case was a Member State a party to the dispute at all. Equally importantly, in neither of these cases did the CJEU consider an advisory opinion of the ICJ to be "binding".

67. In Case C-104/16P, the CJEU was seized of an appeal against a first-instance judgment addressing an action for annulment brought by the Front Polisario against Council Decision 2012/497/EU of 8 March 2012. Neither the General Court of the European Union nor the CJEU's Grand Chamber (on appeal) was asked to resolve or take a position on an inter-State dispute in application of international law. Rather, they had to deal with a claim raised by a private party, the Front Polisario, alleging that a decision of the European Council was inconsistent with European Union ('EU') law and therefore should be annulled. In this case, the CJEU acted as a domestic court of the EU legal order, assessing only the legality of an EU organ's acts under EU law.

68. Both the General Court and the CJEU's Grand Chamber were required to determine the meaning of a treaty concluded between the EU and Morocco insofar as the EU was concerned. The European Council and the Commission failed to convince the General Court that the treaty was not intended to be, and could not be interpreted as, applicable to Western Sahara.[92] On appeal, the Grand Chamber found that the words "territory of the Kingdom of Morocco" set out in the treaty could not "be interpreted in such a way that Western Sahara is included within the territorial scope of that agreement".[93] Before reaching this conclusion, the Grand Chamber referred to the ICJ's *Western Sahara* Advisory Opinion insofar as that Advisory Opinion: (i) mentioned "the customary principle of self-determination referred to in particular in Article 1 of the Charter of the United Nations";[94] and (ii) recalled various resolutions of the UNGA on Western Sahara.[95] At no point did the Grand Chamber suggest that the Advisory Opinion was binding on it or on any EU organ or Member State. Its task was to carry out an orthodox exercise in treaty interpretation.

69. In Case C-363/18, the CJEU was seized of a request for a preliminary ruling under Article 267 TFEU concerning the interpretation of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011. The question of interpretation to be addressed was "whether Article 9(1)(i) of Regulation No 1169/2011, read in conjunction with Article 26(2)(a) of that regulation, must be interpreted as meaning that foodstuffs originating in a territory occupied by the State of Israel must bear not only the indication of that territory but also, where those foodstuffs come from an Israeli settlement within that territory, the indication of that provenance".[96] Contrary to Mauritius' assertion, the CJEU did not "uph[o]ld the

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91 Article 273 of the Treaty on the Functioning of the European Union states: "The Court of Justice shall have jurisdiction in any dispute between Member States which relates to the subject matter of the Treaties if the dispute is submitted to it under a special agreement between the parties."

92 *Front Polisario v. Council of the European Union*, Case T-512/12, Judgment of General Court, 10 December 2015, paras. 74–75, 103.

93 *Council of the European Union v. Front Polisario*, CJEU Case C-104/16P, Judgment of Grand Chamber, 21 December 2016, para. 92.

94 *Ibid.*, para. 88.

95 *Ibid.*, para. 91.

96 *Organisation juive européenne & Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances*, CJEU Case C-363/18, Judgment of Grand Chamber, 12 November 2019, para. 21.

regulation",[97] because the validity of the regulation was not challenged; instead, the CJEU was tasked only with interpreting the regulation. Again, the CJEU acted as a domestic court of the EU legal order, rather than as an international court.

70. The Court interpreted the term "country of origin" as encompassing not only the State in which a product originated, but also entities other than States,[98] including in particular "geographic spaces which, whilst being under the jurisdiction or the international responsibility of a State, nevertheless have a separate and distinct status from that State under international law".[99] On this basis, the Court held that the regulation required reference to an Israeli settlement as the "country of origin", in order not to mislead consumers.[100]

71. The CJEU's references to the ICJ's *Wall* Advisory Opinion were limited to observing that the ICJ had: (i) "noted" that the Palestinian people enjoys a right to self-determination;[101] (ii) "noted" that the transfer of population from Israel to the occupied territory is a "violation of the rules of general international humanitarian law, as codified in the sixth paragraph of Article 49 of the Convention relative to the Protection of Civilian Persons in Time of War, signed in Geneva on 12 August 1949";[102] and (iii) characterised some rules as "fundamental" under international law.[103] It also referred to resolutions condemning Israel's settlement policy by the United Nations Security Council.[104] At no point did the CJEU suggest that the Advisory Opinion was binding on it or on any EU organ or Member State.

72. In summary, whatever the legal effect of an advisory opinion for States, none of the precedents cited by Mauritius supports its claim that in its *Chagos* Advisory Opinion the ICJ authoritatively expressed or implied any view on the sovereignty dispute between Mauritius and the United Kingdom.

D. The Court was not asked, had no power, and did not purport to overrule the award of the Annex VII tribunal in the *Chagos Marine Protected Area Arbitration*

73. As set out above,[105] Mauritius claims that the *Chagos* Advisory Opinion has rendered the award in the *Chagos Marine Protected Area Arbitration* irrelevant to the question of jurisdiction in the present proceedings.[106]

74. But, contrary to Mauritius' assertion, the *Chagos* Advisory Opinion makes clear that the Court had no intention of overruling the arbitral award, either expressly or impliedly. It stated:

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97 Written Observations of Mauritius, para. 3.24.

98 *Organisation juive européenne & Vignoble Psagot Ltd v. Ministre de l'Economie et des Finances*, CJEU Case C-363/18, Judgment of Grand Chamber, 12 November 2019, para. 30.

99 *Ibid.*, para. 31.

100 *Ibid.*, paras. 36–37.

101 *Ibid.*, para. 35.

102 *Ibid.*, para. 48.

103 *Ibid.*, para. 56.

104 *Ibid.*, para. 48.

105 See paras. 14–16 above.

106 Written Observations of Mauritius, para. 3.71.

> "The Court observes that the principle of *res judicata* does not preclude it from rendering an advisory opinion. When answering a question submitted for an opinion, the Court will consider any relevant judicial or arbitral decision. In any event, the Court further notes that the issues that were determined by the Arbitral Tribunal in the *Arbitration regarding the Chagos Marine Protected Area* (see paragraph 50 above) are not the same as those that are before the Court in these proceedings."[107]

75. This passage records the Court's acknowledgement that a "relevant … arbitral decision" has *res judicata* effect between the parties to that decision. That would include the award in the *Chagos Marine Protected Area Arbitration*. The Court could not have considered itself to be overturning an existing award with binding effect: had it done so it would surely have declined to answer the General Assembly's questions on the basis that doing so would be contrary to the principle of *res judicata*.[108]

76. The Court proceeded to confirm that it could distinguish the issues that came before the Annex VII tribunal from those that the UNGA had requested it to address. Crucially, the Court noted that the sovereignty dispute between the United Kingdom and Mauritius was one of the issues the arbitrators had addressed, stating that "the Tribunal observed that '[t]he parties' dispute regarding sovereignty over the Chagos Archipelago does not concern interpretation or application' of UNCLOS".[109] The Court denied neither that there existed a sovereignty dispute between the United Kingdom and Mauritius nor that such a dispute did not concern the interpretation or application of UNCLOS.

77. The Court also noted that the Annex VII tribunal ruled (as explained in Chapter 2, section I above) that the United Kingdom had breached certain obligations owed by coastal States — as set out in Articles 2(3), 56(2) and 194(4) of UNCLOS.[110] But at no point did it suggest that this finding was displaced or overruled by its Advisory Opinion.

78. To reiterate, the Maldives does not suggest that the decision of the arbitrators in the *Chagos Marine Protected Area Arbitration* is *res judicata* between itself and Mauritius. But it does observe that, with respect to the United Kingdom, Mauritius is bound by an arbitral award which has *res judicata* effect — which, in turn, to quote the ICJ, "establishes the finality of the decision adopted"[111] in that case. It is that final and binding arbitral award which the ICJ in its Advisory Opinion was careful to distinguish from its own advice to the UNGA. Contrary to what Mauritius claims, that award has not been overruled by the ICJ nor has it been nullified by the Advisory Opinion.

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107 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 81.

108 *Ibid.*, para. 82.

109 *Ibid.*, para. 50.

110 *Ibid.*, para. 50.

111 *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100 at p. 125, para. 58, and see paragraph 24 above.

III. The 2019 UNGA Resolution had no effect on the sovereignty dispute

79. Mauritius quotes UNGA Resolution 73/295 ('the UNGA Resolution') as stating that "[t]he Chagos Archipelago forms an integral part of the territory of Mauritius".[112]

80. However, as the Maldives has already indicated,[113] in making this claim the UNGA 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".[114]

81. The UNGA Resolution does not provide evidence that the sovereignty dispute between Mauritius and the United Kingdom has been resolved, for three reasons.

82. First, the UNGA Resolution is not binding on States in its own right.[115] Mauritius has never suggested that it is.

83. Secondly, the UNGA Resolution cannot be read as amplifying or providing an authoritative interpretation of the *Chagos* Advisory Opinion. There would be no basis for endowing it with such authority, and Mauritius has not suggested that there would be. Thus, the Resolution's claim that the Chagos Archipelago "forms an integral part of the territory of Mauritius" has no effect on the Court's more circumscribed opinion.

84. Thirdly, as a matter of fact, it is clear that the sovereignty dispute has remained live since the UNGA Resolution was passed.[116] There is therefore no basis for assuming that Mauritius and the United Kingdom have accepted it as resolving their dispute.

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112 Written Observations of Mauritius, para. 2.31, quoting UNGA Resolution 73/295, "Advisory Opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", 24 May 2019, A/RES/73/295 (**Written Preliminary Objections of the Maldives, Annex 19**), para. 2(b).

113 Written Preliminary Objections of the Maldives, para. 24.

114 *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, ICJ, 25 February 2019, para. 170 (emphasis added).

115 See Charter of the United Nations, Article 10: "The General Assembly … except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council …"

116 Written Preliminary Objections of the Maldives, paras. 27–28 and evidence cited therein.

CHAPTER 3
THE MALDIVES' PRELIMINARY OBJECTIONS

85. The Maldives has advanced five distinct preliminary objections. The first is that the Special Chamber should decline to exercise jurisdiction in the present proceedings in the absence of the United Kingdom, an indispensable third party (**section I** below). The second is that even if the United Kingdom were a party to these proceedings, the Special Chamber could not exercise its jurisdiction to determine the sovereignty dispute between the United Kingdom and Mauritius, which is a prerequisite to entertaining Mauritius' claims (**section II** below). The third objection points to the absence, and the impossibility, of negotiations between the Parties before the initiation of these proceedings (**section III** below). The fourth objection is that there cannot be a dispute between the Parties susceptible of UNCLOS Part XV proceedings (**section IV** below). The fifth objection maintains that, insofar as Mauritius intends to resolve the sovereignty dispute between itself and the United Kingdom through UNCLOS Part XV proceedings, they constitute an abuse of process (**section V** below).

86. Mauritius has elected to respond to these objections in a different order, addressing the second, first, fourth, third and then fifth objections in that sequence. However, the Maldives maintains the order of presentation of its preliminary objections for the sake of logic.

I. The absence of the United Kingdom, as an indispensable party, deprives the Special Chamber of jurisdiction

87. This section summarises the parties' positions — including the common ground between them — on this preliminary objection (**subsection A** below), establishes that there is an extant sovereignty dispute between the United Kingdom and Mauritius (**subsection B** below), and explains why the Monetary Gold Principle therefore prevents the Special Chamber from exercising jurisdiction over Mauritius' claim (**subsection C** below).

A. The positions of the parties

88. In its Preliminary Objections, the Maldives explained that, under the well-established Monetary Gold Principle, a court or tribunal cannot exercise its jurisdiction in the absence of an indispensable party,[117] and that this Principle plainly applies and prevents the Special Chamber from exercising jurisdiction in the current case.

89. Entertaining Mauritius' claims that it, not the United Kingdom, is the coastal State with respect to the Chagos Archipelago, necessarily requires a prior ruling on those States' respective sovereignty claims. Since the Special Chamber has no jurisdiction to rule on the United Kingdom's claims without its consent, the Monetary Gold Principle applies,[118] and the Special Chamber should decline to exercise jurisdiction.

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117 Written Preliminary Objections of the Maldives, paras. 47–52.

118 *Ibid.*, paras. 53–58.

90. It is apparent from Mauritius' Written Observations that the parties agree on three basic points:

(a) They agree on the existence and effect of the Monetary Gold Principle;[119]

(b) They agree that Mauritius' claims can succeed only if the Special Chamber accepts that Mauritius has sovereignty over the Chagos Archipelago;

(c) They agree that, as a matter of fact, the United Kingdom has made official statements "after the ICJ Advisory Opinion and UN General Assembly Resolution 73/295, by which it asserts that it has sovereignty over the Archipelago".[120] These statements consist of "one statement made in the House of Commons on 30 April 2019 by the United Kingdom's Minister of State for Europe and the Americas ('we have no doubt about our sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814'), and another made on 5 November 2019 by the Minister of State for Foreign and Commonwealth Affairs to the British Parliament ('[t]he UK has no doubt of our sovereignty over the British Indian Ocean Territory')".[121]

91. Mauritius also does not contest that, if there is indeed an extant sovereignty dispute between the United Kingdom and Mauritius, the Monetary Gold Principle would prevent the Special Chamber from exercising jurisdiction. Indeed, the only argument by Mauritius against the application of the Monetary Gold Principle in the present case is that "the ICJ has made clear [that the United Kingdom] has no plausible claim of sovereignty or sovereign rights".[122] On Mauritius' view, "the Special Chamber is not called upon to rule on the lawfulness of the United Kingdom's actions or claims, as the ICJ has already determined that the United Kingdom's past and ongoing conduct is unlawful [and] that it has no rights as a sovereign over the Chagos Archipelago".[123]

92. Accordingly, the Parties disagree only insofar as:

(a) According to Mauritius, the Advisory Opinion has "already determined that the United Kingdom has no sovereign rights in regard to the Chagos Archipelago",[124] so that the Special Chamber should consider that the United Kingdom's claim to sovereignty or sovereign rights is not plausible; while

(b) The Maldives considers 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.

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119 Written Observations of Mauritius, paras. 3.29–3.30.

120 *Ibid.*, para. 2.1.

121 *Ibid.*

122 *Ibid.*, para. 3.31. See also para. 3.6: "The fact that the United Kingdom, in defiance of the Court's ruling, is attempting to maintain a claim to sovereignty over the Chagos Archipelago does not mean that that claim is plausible or even arguable."

123 *Ibid.*, para. 3.33.

124 *Ibid.*, para. 3.32.

B. A sovereignty dispute exists between the United Kingdom and Mauritius over the Chagos Archipelago

93. It is a fact, as recalled above, that since the adoption of the *Chagos* Advisory Opinion the United Kingdom has maintained its sovereignty claim over the Chagos Archipelago.[125] Mauritius acknowledges this fact, and has publicly opposed the United Kingdom's sovereignty claim.[126] However, Mauritius argues that this does not prove the existence of a sovereignty dispute between the United Kingdom and Mauritius because the United Kingdom's claim is not "plausible".

94. This contention is unsustainable, because:

(a) It is beyond doubt that there is a sovereignty dispute between the United Kingdom and Mauritius as a matter of fact;

(b) The plausibility or implausibility of the United Kingdom's legal position is irrelevant to the determination of whether or not a dispute exists; and

(c) In any event, Mauritius has not established that the United Kingdom's sovereignty claim is implausible.

95. First, the existence of a dispute between the United Kingdom and Mauritius over the Chagos Archipelago is "a matter of objective determination by the Court which must turn on an examination of the facts".[127] To carry out such an objective determination, 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 parties.[128] In order for a dispute to exist, "[i]t must be shown that the claim of one party is positively opposed by the other and that the two sides must 'hold clearly opposite views' concerning the question of the performance or non-performance of certain international obligations".[129]

96. In the present case, it is clear that a dispute, as this concept is defined by the well-established and widely accepted jurisprudence recalled above, exists with respect to sovereignty over the Chagos Archipelago. It will suffice to recall here that:

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125 See paras. 50, 84, 90(c) above.

126 Written Preliminary Objections of the Maldives, para. 28; Seventh National Assembly of the Republic of Mauritius, Parliamentary Debates (Hansard) (Unrevised), First Session, 21 November 2019, pp. 26–27 (**Written Preliminary Objections of the Maldives, Annex 23**).

127 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 2016, p. 255 at p. 270, para. 36; see also p. 269, para. 34. See also *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70 at p. 84, para. 30; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Gambia v. Myanmar)*, Order, ICJ, 23 January 2020, para. 28; *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, para. 164.

128 *The Mavrommatis Palestine Concessions*, Judgment (Objection to the Jurisdiction of the Court), PCIJ Series A No. 2, p. 11.

129 *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 2016, p. 255 at p. 269, para. 34.

(a) In its Written Observations, Mauritius claims that the United Kingdom has no right to claim sovereignty or sovereign rights over the Chagos Archipelago,[130] and that "there is no doubt that the Archipelago is under the sovereignty of Mauritius";[131] and

(b) It is admitted by Mauritius in its Written Observations that the United Kingdom disagrees with Mauritius.[132] According to Mauritius itself, it is a "fact" that the United Kingdom "is attempting to maintain a claim to sovereignty over the Chagos Archipelago".[133]

97. Thus, there is no doubt about the factual existence of a dispute — that is "a disagreement on a point of law or fact, a conflict of legal views or of interests"[134] — between the United Kingdom and Mauritius over which of them is sovereign over the Chagos Archipelago. Since the *Chagos* Advisory Opinion was rendered by the ICJ, it is difficult to dispute that one of the elements of this dispute concerns the interpretation and effect of that Advisory Opinion. Mauritius interprets this Advisory Opinion as holding that it is sovereign over the Chagos Archipelago, while the United Kingdom maintains another interpretation of its content and effect according to which it remains currently sovereign over the Chagos Archipelago.

98. Secondly, 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".

99. This matter was recently considered by the Annex VII tribunal established in the *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)* ('the *Coastal State Rights* case'). [135] The tribunal in that case[136] held in a unanimous award dated 21 February 2020 that it was "not convinced by the existence of a plausibility test" to be applied in order to determine the existence of a sovereignty dispute.[137]

100. In this case, Ukraine had argued that the Russian Federation's claim to sovereignty over Crimea following its invasion and annexation of that territory was legally implausible, both on its face and in light of various resolutions of the UNGA. Even under such circumstances, the tribunal refused to take account of such considerations in assessing whether there was a sovereignty dispute that prevented it from exercising jurisdiction. Rather, it took the view that:

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130 Written Observations of Mauritius, Chapter 2.

131 *Ibid.*, para. 2.3.

132 *Ibid.*, para. 2.1.

133 *Ibid.*, paras. 3.6, 3.16.

134 *The Mavrommatis Palestine Concessions*, Judgment (Objection to the Jurisdiction of the Court), PCIJ Series A No. 2, p. 11.

135 *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020.

136 The tribunal comprised: Judge Jin-Hyun Paik (Presiding arbitrator); Judge Boualem Bouguetaia; Judge Alonso Gómez-Robledo; Professor Vaughan Lowe QC; Judge Vladimir Golitsyn.

137 *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020, para. 187.

> "the key question upon which it should focus is whether a dispute as to which State has sovereignty over Crimea exists. The Arbitral Tribunal already referred in paragraphs 163 and 164 to the various formulations employed by the Permanent Court of International Justice and the ICJ for the determination of the existence of a dispute. The Arbitral Tribunal considers that those formulations are flexible enough to leave considerable room for judgment on its part in verifying the existence of a dispute. The Arbitral Tribunal further considers that the jurisprudence of international courts or tribunals also shows that the threshold for establishing the existence of a dispute is rather low. Certainly a mere assertion would be insufficient in proving the existence of a dispute. However, it does not follow that the validity or strength of the assertion should be put to a plausibility or other test in order to verify the existence of a dispute."[138]

101. The tribunal proceeded to find that the Russian Federation's sovereignty claim was not "a mere assertion or one which was fabricated solely to defeat its jurisdiction".[139] It noted that since 2014 the Parties had "held opposite views on the status of Crimea, and this situation persists today", as was evident in the fact that "[t]he Parties have engaged in the controversy regarding sovereignty before and outside these proceedings, including in various international fora such as in debates at the UNGA".[140]

102. In the same manner, in the present case the Special Chamber is not competent to determine whether the United Kingdom's sovereignty claim, which cannot be considered "a mere assertion" or "fabricated solely to defeat jurisdiction", is plausible or not, but must only assess whether it exists. The answer to this question is inescapable: the United Kingdom's claim has been publicly asserted in many different fora over many years, including during debates at the UNGA, both before and after the ICJ rendered its Advisory Opinion. The United Kingdom and Mauritius obviously hold opposite views on the status of the Chagos Archipelago, and this situation persists today.

103. It should be added 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. The Special Chamber is not required to reach any such conclusion in order to ascertain jurisdiction. In the *Coastal State Rights* case, by acknowledging the existence of the sovereignty dispute the tribunal found that it would:

> "recognize this reality without engaging in any analysis of whether the Russian Federation's claim of sovereignty is right or wrong. In this regard, the Arbitral Tribunal recalls the statement of the ICJ in *East Timor* that Portugal, similarly to the Russian Federation in this case, 'has, rightly or wrongly,

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138 *Ibid.*, para. 188.
139 *Ibid.*, para. 189.
140 *Ibid.*

> formulated complaints of fact and law against Australia which the latter has denied. By virtue of this denial, there is a legal dispute.'"[141]

104. Thirdly, if the Special Chamber were to find, contrary to *the Costal State Rights* case, 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.

105. Mauritius' claim can proceed only if the Special Chamber accepts that the ICJ gave an opinion on the sovereignty dispute, that any such opinion was binding on the United Kingdom (and the Maldives), and that any such opinion overruled the binding award rendered in the *Chagos Marine Protected Area Arbitration*. For the reasons given elsewhere, the Maldives respectfully invites the Special Chamber not to accept Mauritius' submissions on any of these matters.[142]

C. The United Kingdom is an indispensable party, so that the Monetary Gold Principle applies

106. Since the prerequisite to proceeding to the merits of the present case would be for the Special Chamber to resolve the sovereignty dispute between the United Kingdom and Mauritius, the Monetary Gold Principle plainly applies.

107. Mauritius attempts to distinguish the present case from others in which the indispensable third party rule has applied, but these attempts do not withstand scrutiny.

108. In the *Monetary Gold* case, to which Italy and other States, but not Albania, were parties, the Court observed that Italy's first submission:

> "centres around a claim by Italy against Albania, a claim to indemnification for an alleged wrong. Italy believes that she possesses a right against Albania for the redress of an international wrong which, according to Italy, Albania has committed against her. In order, therefore, to determine whether Italy is entitled to receive the gold, it is necessary to determine whether Albania has committed any international wrong against Italy, and whether she is under an obligation to pay compensation to her; and, if so, to determine also the amount of compensation. In order to decide such questions, it is necessary to determine whether the Albanian law of January 13th, 1945, was contrary to international law. In the determination of these questions — which relate to the lawful or unlawful character of certain actions of Albania vis-à-vis Italy — only two States, Italy and Albania, are directly interested. To go into the merits of such questions would be to decide a dispute between Italy and Albania."[143]

109. Likewise, in the present case, Mauritius' claims against the Maldives "centres around" a sovereignty claim which Mauritius has made against the United Kingdom

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141 *Ibid.*, para. 178, quoting *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 90, at p. 100, para. 22.

142 See Chapter 2, section II above.

143 *Case of the Monetary Gold Removed from Rome in 1943 (Preliminary Questions) (Italy v. France)*, Judgment of June 15th, 1954, ICJ Reports 1954, p. 19 at p. 32.

over many years in different fora, and which the United Kingdom has consistently rejected. To entertain the merits of this case, the Special Chamber would necessarily have to determine this sovereignty dispute. To enter the merits of this sovereignty dispute would be to decide on a dispute between Mauritius and the United Kingdom, which the Chamber cannot do. Mauritius argues that it this dispute has already been determined but, as explained above,[144] this is not the case.

110. This is not the only way in which Mauritius' present claims require the Special Chamber to rule on rights and obligations of the United Kingdom. In addition, it requires the 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.

111. The Maldives has already drawn attention to the striking similarities between the present case and the *East Timor* case.[145] That case, like the *Chagos* advisory proceedings, related to decolonisation of a non-self-governing territory and concerned the rights and obligations in that process of a State not involved in the colonial relationship (in that case, Australia). The Court declined jurisdiction over Portugal's claim because to exercise jurisdiction would require it to rule on whether Indonesia "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", which it could not do in the absence of Indonesia's consent.[146] In precisely the same vein, Mauritius' present claims require the Special Chamber to accept that the United Kingdom is not sovereign over the Chagos Archipelago and that Mauritius has the exclusive right to negotiate and litigate the Archipelago's maritime boundaries.

112. Mauritius' only response is to claim that the present case is different from the *East Timor* case because "[h]ere, by contrast, the Special Chamber is not called upon to rule on the lawfulness of the United Kingdom's actions or claims, as the ICJ has already determined that the United Kingdom … has no rights as a sovereign over the Chagos Archipelago".[147]

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144 See Chapter 2 above.

145 Written Preliminary Objections of the Maldives, paras. 55–56.

146 *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 90, at p. 102, para. 28.

147 Written Observations of Mauritius, para. 3.33.

113. But, contrary to Mauritius' submissions, and as demonstrated above,[148] the *Chagos* Advisory Opinion simply could not, and did not, resolve the sovereignty dispute between the United Kingdom and Mauritius. The situation is therefore the same as in the *East Timor* case, where in order to exercise jurisdiction the Special Chamber would be required to rule upon a legal dispute involving a third State that has not yet been resolved. The Maldives takes the view that this is precisely what the Special Chamber has no jurisdiction to do.

II. The Special Chamber has no jurisdiction to determine the sovereignty dispute over the Chagos Archipelago

114. Mauritius' position is simply that there is no sovereignty dispute, that dispute having already been resolved by the *Chagos* Advisory Opinion.[149]

115. Mauritius does not contest the Maldives' claim that, if there remains a live sovereignty dispute, its claims would require the Special Chamber to resolve that dispute and would therefore be outside the Special Chamber's jurisdiction because it would not be a dispute concerning the interpretation or application of UNCLOS.

116. As amply demonstrated above, contrary to Mauritius' position, sovereignty over the Chagos Archipelago is the subject of an ongoing dispute between Mauritius and the United Kingdom that has not been resolved. That dispute could not be, and has not been, resolved by the *Chagos* Advisory Opinion.[150] Likewise, it could not be, and has not been, resolved by the UNGA Resolution.[151]

117. However, Mauritius contends that "[a]s a matter of law, the United Kingdom can no more claim it has sovereignty over the Chagos Archipelago".[152] Mauritius bases this assertion on its interpretation of the content and effect of the *Chagos* Advisory Opinion — that Mauritius curiously qualifies as a "ruling"[153] despite the fact that it is an opinion. This interpretation of the content and effect of the Opinion is clearly opposed by the United Kingdom which, interpreting the scope and effect of the Advisory Opinion differently, maintains its sovereignty claim.[154]

118. This gives rise to the question of whether the Special Chamber can exercise jurisdiction pursuant to Article 288 of UNCLOS where doing so would require it to accept the contested interpretation of the *Chagos* Advisory Opinion advanced by Mauritius. That question has been answered by the tribunal in the recent *Coastal State Rights* case as follows:

> "[T]he Arbitral Tribunal notes that it has the power to interpret the texts of documents of international organisations, including the resolutions of the UNGA. Ukraine's argument that the Arbitral Tribunal must defer to the UNGA resolutions and need only treat Ukraine's sovereignty over Crimea as

148 See paras. 30–45 above.
149 See para. 26 above, and references therein.
150 See Chapter 2, section II above.
151 See Chapter 2, section III above.
152 Written Observations of Mauritius, para. 3.6.
153 *Ibid.*
154 See paras. 50, 84, 90(c), 93 above.

> an internationally recognised background fact is equivalent to asking the Arbitral Tribunal to accept the UNGA resolutions as interpreted by Ukraine. Apart from the question of the legal effect of the UNGA resolutions, if the Arbitral Tribunal were to accept Ukraine's interpretation of those UNGA resolutions as correct, it would *ipso facto* imply that the Arbitral Tribunal finds that Crimea is part of Ukraine's territory. However, it has no jurisdiction to do so."[155]

119. Here, in the same manner, the Special Chamber cannot enter into the question of whether Mauritius' interpretation of the Advisory Opinion is correct — even apart from the question of the legal effect of advisory opinions — because doing so "would *ipso facto* imply that the Tribunal finds that [the Chagos Archipelago] is part of [Mauritius'] territory". Just as in the *Coastal State Rights* case, "it has no jurisdiction to do so".

III. The procedural precondition of negotiations mandated in Articles 74 and 83 of UNCLOS has not been fulfilled

120. The Maldives has established that the procedural precondition mandated in Articles 74 and 83 of UNCLOS has not been fulfilled and therefore the Special Chamber is unable to exercise jurisdiction.[156]

121. Mauritius has raised two arguments against the Maldives' third preliminary objection, each of which is addressed in turn. First, this section addresses Mauritius' contention that Articles 74 and 83 of UNCLOS do not contain a procedural precondition of negotiations (**subsection A** below). Secondly, it addresses Mauritius' claim that, if such a precondition exists, it has been fulfilled in the present case (**subsection B** below).

A. Articles 74 and 83 contain a procedural precondition of negotiations

122. Mauritius' primary argument is that Articles 74 and 83 of UNCLOS impose substantive obligations on States to negotiate, rather than establishing procedural preconditions to an exercise of jurisdiction under Part XV.[157]

123. That position defies case law from the ICJ in which the obligation of negotiation contained in these provisions has been interpreted as a precondition to jurisdiction. In *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*,[158] the ICJ considered whether the inclusion of a term mirroring Article 83 of UNCLOS[159] prevented the Court from exercising jurisdiction on the basis that it set out a method of settlement of the parties' maritime boundary dispute. The 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

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155 Written Observations of Mauritius, para. 176.
156 Written Preliminary Objections of the Maldives, Chapter 2, section III.
157 Written Observations of Mauritius, paras. 3.53–3.58.
158 *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, ICJ Reports 2017, p. 3.
159 *Ibid.*, pp. 36–37, paras. 89–90.

parties resorted to the dispute resolution procedures in Part XV of UNCLOS.[160] The Court affirmed that Article 83 of UNCLOS did not "preclude recourse to dispute settlement procedures in case agreement could not be reached".[161]

124. 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.

125. The Maldives notes that Mauritius has not disputed the Maldives' submissions on the content of the obligation to negotiate, as set out in its Written Preliminary Objections.[162] The Maldives continues to rely on its Written Preliminary Objections in full.

B. The procedural precondition of negotiations has not been — and cannot be — satisfied in this case

126. Mauritius' submissions that any precondition of negotiation has already been satisfied[163] are premised on a fact already admitted by the Maldives: namely, that "Mauritius has in the past requested that the Maldives meet to discuss a maritime boundary delimitation".[164] But this argument does not address the core of the Maldives' case, as already set out: no negotiations between Mauritius and the Maldives could be meaningful prior to resolution of the sovereignty dispute between Mauritius and the United Kingdom,[165] nor have any such negotiations actually taken place.

127. Mauritius suggests that the Maldives had previously "accepted that Mauritius has sovereign rights in the Chagos Archipelago"[166] and that "[i]t is only now, in setting forth its objections to jurisdiction, that the Maldives has made clear its view that 'bilateral negotiations between Mauritius and the Maldives addressing delimitation of the EEZ and continental shelf … *cannot take place* in any meaningful way".[167] This is plainly false. As long ago as 18 July 2001, the Maldives stated in a note verbale to Mauritius:

> "As the 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."[168]

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160 *Ibid.*, p. 37, para. 90.
161 *Ibid.*, p. 38, para. 91.
162 Written Preliminary Objections of the Maldives, paras. 64–68.
163 Written Observations of Mauritius, paras. 3.61–3.66.
164 Written Preliminary Objections of the Maldives, para. 71.
165 *Ibid.*, paras. 71–72.
166 Written Observations of Mauritius, para. 2.14.
167 *Ibid.*, para. 3.65 (emphasis added by Mauritius).
168 Diplomatic Note Ref. (F1) AF-26-A/2001/03 from the Ministry of Foreign Affairs of the Republic of Maldives to Ministry of Foreign Affairs of the Republic of Mauritius, 18 July 2001 (**Written Preliminary Objections of the Maldives, Annex 25**), quoted in Written Preliminary Objections of the Maldives, footnote 83.

128. The Maldives' position on the impossibility of meaningful negotiations has been consistent, clear, and adopted in good faith.

IV. There is no "dispute" on maritime delimitation between the parties

129. The Maldives presented two reasons why there is no "dispute" on maritime delimitation between the parties. Each reason, and Mauritius' response to it, is addressed in turn. **Subsection A** below addresses the impossibility of a valid dispute on maritime delimitation as long as the sovereignty dispute between the United Kingdom and Mauritius is unresolved. **Subsection B** below addresses the fact that there are no positively opposed claims between the parties.

A. There can be no dispute over maritime delimitation until the sovereignty dispute between Mauritius and the United Kingdom has been resolved

130. As the Maldives has previously set out, Mauritius' claim to be a State with a relevant "opposite or adjacent coast" (which is essential to its claims before the Special Chamber) is predicated on its assertion of sovereignty over the Chagos Archipelago. As long as its dispute over sovereignty with the United Kingdom is unresolved, then a claim premised on Mauritius' sovereignty is not a dispute concerning "the interpretation or application" of UNCLOS, as is required for the Special Chamber to exercise jurisdiction.[169]

131. Mauritius responds to this submission by reciting its claim that "the ICJ has already determined that, under the rules of international law, the Archipelago is — and has always been — an integral part of the territory of Mauritius".[170] This position has already been rebutted.[171] The simple reality is that the sovereignty dispute remains extant. Until it is resolved there cannot be a dispute between the parties concerning a maritime boundary which they may or may not share.

B. Mauritius has not established the existence of "positively opposed" claims regarding the EEZ or continental shelf

132. Mauritius does not contest that, as previously set out by the Maldives, a dispute can exist only if the parties have "positively opposed" claims at the time proceedings are initiated.[172] It also has not contested that any such dispute must exist with "sufficient clarity".[173] Instead, it claims that the existence of positively opposed claims is "revealed by the contemporaneous official documents and communications between the Parties that are annexed to these Observations, including official depictions of overlapping boundary claims".[174]

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169 Written Preliminary Objections of the Maldives, paras. 77–79.

170 Written Observations of Mauritius, para. 3.37.

171 See para. 43 and more generally Chapter 2, section II above.

172 Written Preliminary Objections of the Maldives, paras. 81–90.

173 *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 159; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833, p. 850, para. 41.

174 Written Observations of Mauritius, para. 3.39.

133. As regards the so-called "official depictions of overlapping boundary claims", Mauritius has presented none of these.

(a) It presents three figures produced by a private company ("International Mapping"),[175] only one of which shows any overlapping claims at all. These are not "official" and, in any event, were never presented to the Maldives prior to Mauritius instituting proceedings and therefore cannot form the basis of any "dispute".

(b) Mauritius exhibits one figure contained in the Maldives' submission of 26 July 2010 to the Commission on the Limits of the Continental Shelf ('CLCS').[176] This map does not show any area of overlapping claims. Instead, the yellow line representing the potential EEZ surrounding the Chagos Archipelago simply terminates at the junction point with the Maldives' claimed EEZ. Although the map does not specify which State may have claimed, or may in the future claim, an EEZ indicated by the yellow line, the Maldives subsequently made clear that it had "not taken into consideration" the EEZ claimed by Mauritius,[177] so the map obviously does not purport to depict the Mauritian line, let alone any potential overlap with the EEZ claimed by the Maldives.

134. Mauritius refers to legislation passed by Mauritius (in 1977 and 2005) and the Maldives (in 1996) declaring EEZs extending 200 nautical miles from their baselines.[178] However, these statutes evidently did not create a dispute of "sufficient clarity" because, in more recent exchanges, the parties have employed language showing that they wish to pre-empt a potential dispute, rather than resolve an actual, existing dispute.[179]

135. Mauritius proceeds to refer to a series of exchanges between the parties,[180] each of which (bar one, addressed below) the Maldives has already explained does not provide evidence of a dispute.[181] Mauritius failed to respond to any of the Maldives' analysis. Specifically:

(a) Mauritius refers to a document dated 21 September 2010 that it claims contains its objection to the Maldives' submission to the CLCS.[182] This is a misrepresentation as the note verbale in question does not express any objection, let alone reference to any "dispute" to which the Maldives could possibly be positively opposed. All it states is that the Government of Mauritius "is agreeable to holding formal talks with the Government of the

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175 *Ibid.*, pp. 28, 30, 34, Figures 1, 2, 4.

176 *Ibid.*, p. 32, Figure 3.

177 Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (**Written Preliminary Objections of the Maldives, Annex 26**).

178 Written Observations of Mauritius, paras. 3.40–3.42.

179 Written Preliminary Objections of the Maldives, footnote 100 and sources cited therein.

180 Written Observations of Mauritius, paras. 3.45–3.48.

181 Written Preliminary Objections of the Maldives, footnote 100.

182 Written Observations of Mauritius, para. 3.45.

Republic of Maldives for the delimitation of the exclusive economic zones (EEZs) of Mauritius and Maldives" and that such talks "are all the more relevant in the light of [the Maldives'] submission to the CLCS", of which it had merely "taken note".[183]

(b) Mauritius refers to a meeting on 21 October 2010.[184] However, the record of this meeting does not disclose any positively opposed claims between the parties. 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".[185] Both sides agreed that they would "exchange coordinates of their respective base points … in order to facilitate the eventual discussions on the maritime boundary".[186] The Maldives' 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".[187] None of these statements evidence positively opposed claims, nor (as Mauritius suggests) that "the Maldives confirmed the existence of a dispute over the maritime boundary".[188]

(c) Mauritius refers next to its diplomatic note to the Secretary-General of the United Nations dated 24 March 2011, in which it objected to the Maldives' submission to the CLCS.[189] However, this note made only vague statements about Maldives' submission not taking into account the EEZ around the Chagos Archipelago without any clarification as to an area of overlapping claims.[190]

(d) Mauritius relies finally on its diplomatic note to the Maldives of 7 March 2019, after the ICJ had issued the *Chagos* Advisory Opinion. However, all this note indicates is that previous discussions over maritime delimitation had been "inconclusive"; it does not assert a positive claim to which Maldives could be opposed.[191]

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183 Diplomatic Note from Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to Ministry of Foreign Affairs, Republic of the Maldives, 21 September 2010 (**Written Observations of Mauritius, Annex 12**).

184 Written Observations of Mauritius, para. 3.46.

185 Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius (**Written Preliminary Objections of the Maldives, Annex 26**) (emphasis added).

186 *Ibid.*

187 *Ibid.*

188 Written Observations of Mauritius, para. 3.46.

189 *Ibid.*, para. 3.47.

190 Diplomatic Note No. 11031/11 from the Permanent Mission of the Republic of Mauritius to the Secretary-General of the United Nations, 24 March 2011 (**Written Preliminary Objections of the Maldives, Annex 27**).

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

136. Mauritius has therefore not provided any evidence of a dispute, consisting of positively opposed claims as to their respective maritime zones, between the parties.

V. Mauritius' claim constitutes an abuse of process and should be rejected as inadmissible

137. Mauritius does not dispute that claims constituting an abuse of process are inadmissible.

138. In its Written Observations Mauritius claims that it:

> "does not seek a ruling on sovereignty over the Chagos Archipelago. Such a ruling has already been issued by the ICJ. Mauritius' sovereignty over the Archipelago is now indisputable, as a matter of international law."[192]

139. But it knows full well that no "ruling" on sovereignty has "already been issued by the ICJ". It knows equally well that sovereignty over the Archipelago is not indisputable but is indeed disputed. And it knows that its maritime boundary case can only proceed if the Special Chamber accepts the invitation to rule on sovereignty. The use of UNCLOS Part XV proceedings against the Maldives to resolve a sovereignty dispute with the United Kingdom is a manifest abuse of process.

140. Throughout its pleading Mauritius has repeated claims and assertions that did not succeed before the ICJ and which are in no sense endorsed by the Court in its Advisory Opinion. Mauritius knows that, if its interpretation of the substance and legal effect of the Advisory Opinion were put before the ICJ, it would be rejected once again. To use UNCLOS proceedings against the Maldives quite deliberately for the purpose of achieving an outcome which it could not obtain from the Court and which clearly falls outside the jurisdiction of an UNCLOS court or tribunal is by definition an abuse of process.

141. Mauritius instead accuses the Maldives of abuse of process in making its preliminary objections, on the grounds that the Advisory Opinion requires that all States should assist with decolonisation. This argument is wholly without merit. The Advisory Opinion does not mandate any particular steps, and in particular does not require third States to ignore the United Kingdom's sovereignty claim and deal with Mauritius as if the sovereignty dispute had been conclusively resolved in a manner binding on the United Kingdom. The Maldives has repeatedly stated that it wishes to maintain amicable relations with both Mauritius and the United Kingdom;[193] it does not wish to be forced to take sides in a bilateral dispute between those two states, and the Advisory Opinion does not require it to do so.

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192 Written Observations of Mauritius, para 3.70.

193 See e.g. United Nations General Assembly, 73rd session, 83rd plenary meeting, 22 May 2019, A/73/PV.83 (Maldives' explanation of vote) (**Written Preliminary Objections of the Maldives, Annex 18**), p. 24; Mauritius' acknowledgement of the Maldives' position in its Notification (Annex 1) at para. 24, citing Diplomatic Note No 08/19 from the Permanent Mission of the Republic of Mauritius to the United Nations to the Permanent Mission of the Republic of Maldives to the United Nations, 7 March 2019 (**Written Preliminary Objections of the Maldives, Annex 16**).

142. Even if the Maldives *had* failed to abide by a binding obligation to assist with decolonisation (which it has not), that would not amount to an abuse of process in these proceedings. An allegation of a breach of obligations flowing from an Advisory Opinion of the ICJ on decolonisation does not concern the interpretation or application of UNCLOS and is not incidental to a case ostensibly about a maritime boundary.

143. Mauritius' attempts to accuse the Maldives of abuse of process merely because it has filed preliminary objections to jurisdiction which are obvious and manifest is disingenuous and only reinforces the evidence of its bad faith in using these proceedings to pressure the Maldives into taking sides in a bilateral dispute between Mauritius and the United Kingdom.

CHAPTER 4
SUBMISSIONS

For the reasons set out in its Preliminary Objections and in these Written Observations in Reply, 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 in its Preliminary Objections and in these Written Observations in Reply, 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.

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4 April 2020

Note by the Registry: The following page is a blank page in the original document.

TABLE OF DOCUMENTS

I. Documents Annexed to Written Preliminary Objections of the Republic of Maldives

Annex No. (to Written Preliminary Objections of the Republic of Maldives)	Title
Annex 3	Foreign and Commonwealth Office of the United Kingdom, "British Indian Ocean Territory: Written statement", Doc HCWS90, 5 November 2019 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2019-11-05/HCWS90/> accessed 16 November 2019
Annex 14	Communiqué of the Mauritius Prime Minister's Office, 30 April 2019 <http://pmo.govmu.org/English/Documents/Communiqué%20and%20Reports/Communiqué%20on%20ICJ%20Advisory%20Opinion.pdf> accessed 16 November 2019
Annex 16	Diplomatic Note No 08/19 from the Permanent Mission of the Republic of Mauritius to the United Nations to the Permanent Mission of the Republic of Maldives to the United Nations, 7 March 2019
Annex 17	Foreign and Commonwealth Office of the United Kingdom, "British Indian Ocean Territory: Written statement", Doc HCWS10, 26 June 2017 <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-06-26/HCWS10/> accessed 16 November 2019
Annex 18	United Nations General Assembly, 73rd session, 83rd plenary meeting, 22 May 2019, A/73/PV.83 (Maldives' explanation of vote)
Annex 19	United Nations General Assembly Resolution 73/295, "Advisory Opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965", 24 May 2019, A/RES/73/295
Annex 23	Seventh National Assembly of the Republic of Mauritius, Parliamentary Debates (Hansard) (Unrevised), First Session, 21 November 2019 (extracts)
Annex 25	Diplomatic Note Ref. (F1) AF-26-A/2001/03 from the Ministry of Foreign Affairs of the Republic of Maldives to Ministry of Foreign

	Affairs of the Republic of Mauritius, 18 July 2001
Annex 26	Minutes of First Meeting on Maritime Delimitation and Submission Regarding the Extended Continental Shelf between the Republic of Maldives and Republic of Mauritius, 21 October 2010, signed by Ahmed Shaheed, Minister of Foreign Affairs, Republic of Maldives and S.C. Seeballuck, Secretary to Cabinet & Head of Civil Service, Republic of Mauritius
Annex 27	Diplomatic Note No. 11031/11 from the Permanent Mission of the Republic of Mauritius to the Secretary-General of the United Nations, 24 March 2011

II. Documents Annexed to Written Observations of the Republic of Mauritius

Annex No. (to Written Observations of the Republic of Mauritius)	**Title**
Annex 12	Diplomatic Note from Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to Ministry of Foreign Affairs, Republic of the Maldives, 21 September 2010

III. Publicly available documents

1. United Nations General Assembly Resolution 2248, "Question of South West Africa" (19 May 1967), A/RES/2248

TABLE OF AUTHORITIES

I. Publicly available cases (chronological order)

1. *The Mavrommatis Palestine Concessions*, Judgment (Objection to the Jurisdiction of the Court), PCIJ Series A No. 2

2. *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, First Phase, Advisory Opinion, ICJ Reports 1950, p. 65

3. *International Status of South-West Africa*, Advisory Opinion, ICJ Reports 1950, p. 128

4. *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*, Advisory Opinion, ICJ Reports 1956, p. 77

5. *Case of the Monetary Gold Removed from Rome in 1943 (Preliminary Question) (Italy v. France)*, Judgment of June 15th, 1954, ICJ Reports 1954, p. 19

6. *Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion, ICJ Reports 1962, p. 151

7. *South West Africa (Ethiopia v. South Africa; Liberia v. South Africa)*, Preliminary Objections, Judgment, ICJ Reports 1962, p. 319

8. *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16

9. *Western Sahara*, Advisory Opinion, ICJ Reports 1975, p. 12

10. *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*, Advisory Opinion, ICJ Reports 1989, p. 177

11. *East Timor (Portugal v. Australia)*, Judgment, ICJ Reports 1995, p. 90

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13. *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*, Preliminary Objections, Judgment, ICJ Reports 2011, p. 70

14. *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, Award, 18 March 2015

15. *South China Sea Arbitration (Philippines v. China)*, Award on Jurisdiction and Admissibility, 29 October 2015

16. *Front Polisario v. Council of the European Union*, Case T-512/12, Judgment of General Court, 10 December 2015

17. *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v. Colombia)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 100

18. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, Jurisdiction and Admissibility, Judgment, ICJ Reports 2016, p. 255

19. *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, Preliminary Objections, Judgment, ICJ Reports 2016, p. 833

20. *M/V "Norstar" Case (Panama v. Italy)*, Judgment on Preliminary Objections, 4 November 2016

21. *Council of the European Union v. Front Polisario*, CJEU Case C-104/16P, Judgment of Grand Chamber, 21 December 2016

22. *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*, Preliminary Objections, Judgment, ICJ Reports 2017, p. 3

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26. *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait (Ukraine v. Russian Federation)*, Award Concerning the Preliminary Objections of the Russian Federation, 21 February 2020

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27. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Statement of Mauritius, 1 March 2018

28. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, Written Comments of the Republic of Mauritius, 15 May 2018