

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA



2020

Public sitting

held on Thursday, 15 October 2020, at 2 p.m.,

at the International Tribunal for the Law of the Sea, Hamburg,

President of the Special Chamber, Judge Jin-Hyun Paik, presiding

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

Preliminary Objections

(Mauritius/Maldives)

Verbatim Record

Special Chamber
of the International Tribunal for the Law of the Sea

<i>Present:</i>	President	Jin-Hyun Paik
	Judges	José Luís Jesus
		Stanislaw Pawlak
		Shunji Yanai
		Boualem Bouguetaia
		Tomas Heidar
		Neeru Chadha
		Judges <i>ad hoc</i>
		Nicolaas Schrijver
	Registrar	Ximena Hinrichs Oyarce

Mauritius is represented by:

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

as Agent;

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

as Co-Agent;

and

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

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

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

as Counsel and Advocates;

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

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

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

as Counsel;

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

as Adviser;

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

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

as Technical Advisers;

Ms Lea Main-Klingst, Germany,

as Assistant.

Maldives is represented by:

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as Agent;

and

Ms Khadeedja Shabeen, Deputy Attorney General,

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

as Representatives;

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

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

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

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

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

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

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

as Assistants.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Good afternoon. Today the
2 Special Chamber will hear Mauritius' first round of pleading regarding the preliminary
3 objection raised by Maldives. I now give the floor to the Co-Agent of Mauritius, His
4 Excellency Mr Jagdish Dharamchand Koonjul, Ambassador and Permanent
5 Representative of Mauritius to the United Nations, to deliver his statement on behalf
6 of the Agent of Mauritius, Dheerendra Kumar Dabee. You have the floor, sir.
7

8 **MR KOONJUL:** Honourable Members of the Special Chamber, Honourable Agent
9 and members of the delegation of the Republic of Maldives, it is a privilege and an
10 honour to appear before you, in my capacity as Co-Agent of the Republic of
11 Mauritius, to open the oral pleadings on behalf of the Republic of Mauritius.
12

13 I sincerely thank you, Mr President and Members of the Special Chamber, for
14 holding this hearing and for making it possible for some counsel to appear virtually in
15 these incredibly special and difficult circumstances because of the COVID-19
16 pandemic. We are also grateful to the International Tribunal for the Law of the Sea
17 and, in particular, to its Registrar and her staff for the exemplary manner in which
18 they have been carrying out their mandate, not least in arranging this hearing during
19 such trying times. We welcome the opportunity that this hearing offers to engage
20 with our colleagues from the Maldives delegation.
21

22 Mr President, Members of the Special Chamber, these proceedings, which are
23 aimed at settling a friendly dispute between the Republic of Mauritius and the
24 Republic of Maldives, touch upon a matter of high importance to both countries,
25 namely the delimitation of their maritime boundaries. This matter has remained
26 unsettled for more than a decade, and that is why proceedings were instituted before
27 an UNCLOS Annex VII arbitral tribunal, prior to their transfer to this Special
28 Chamber.
29

30 Such transfer to a special chamber of ITLOS is in line with the strong support
31 expressed by developing countries for ITLOS, which itself is a creation of the post-
32 colonial era, one that reflects the recognition of the role of States that have emerged
33 in the process of decolonization.
34

35 Mr President, on Tuesday last, the Maldives, throughout their oral presentation,
36 repeated one refrain to the effect that Mauritius has come to this Special Chamber to
37 resolve, or to achieve what it failed to achieve at the Annex VII proceedings
38 concerning the "Marine Protected Area" and at the International Court of Justice in
39 respect of what they call, the "territorial dispute" between Mauritius and the United
40 Kingdom. Allow me to set the record straight. Mauritius does not seek, nor has it
41 ever sought, to use these proceedings to settle a territorial dispute. In fact, there is
42 no territorial dispute because the Chagos Archipelago is recognized under
43 international law as forming an integral part of the territory of Mauritius.
44

45 Our Application makes this very clear. We have requested only one thing from this
46 Special Chamber: that it delimit our maritime boundary with the Maldives. We have
47 not brought before you any territorial issue. If that issue is before you, it is because it
48 was raised by the Maldives in their preliminary objections, not by Mauritius. There
49 was no need for them to have done so. The overwhelming majority of States, in fact
50 all but a very small handful, clearly understand the ICJ to have determined that the

1 Chagos Archipelago is, and always has been, an integral part of the territory of
2 Mauritius.

3
4 It has also been alluded by the Honourable Agent of the Maldives that Mauritius has
5 incorrectly and unjustifiably portrayed Maldives as being opposed to decolonization.
6 He has attempted to demonstrate his country's commitment to the principles of self-
7 determination, decolonization and to international law by referring to the explanation
8 of vote by the Permanent Representative of the Maldives at the United Nations after
9 the adoption, by an overwhelming majority, of UN General Assembly resolution
10 73/295. That resolution affirmed the determinations of the ICJ and set out the
11 responsibilities, under international law, of States, UN Agencies and specialized
12 bodies in respect of the decolonization process of Mauritius. It is unfortunate that the
13 Maldives was the only developing country in the world to vote against that resolution
14 as well as resolution 71/292, which requested an advisory opinion of the ICJ
15 precisely on the question of the decolonization of Mauritius. Mr President, actions
16 speak louder than words.

17
18 Let me also express my delegation's disappointment with the tone and content of the
19 Maldives' concluding presentation, which accused Mauritius and its Counsel of bad
20 faith. Such comments are not in keeping with the spirit of friendliness and co-
21 operation that characterizes our bilateral relationship, and are beneath the dignity of
22 this Special Chamber. We will not respond further to them. As the former First Lady
23 of the United States has said: when they go low, we go high.

24
25 Mr President, Members of the Special Chamber, let me now briefly describe the
26 geographical setting of Mauritius.

27
28 As you can see from the map which is on the screen, the Republic of Mauritius
29 consists of a group of islands located in the Indian Ocean. The main Island of
30 Mauritius is about 900 kilometres east of Madagascar. In addition to the main Island,
31 in the Republic of Mauritius we have:

- 32
33 (a) Cargados Carajos, which lie 402 kilometres to the north;
34 (b) Rodrigues, situated at 560 kilometres to the north-east;
35 (c) Agalega, located at 933 kilometres to the north;
36 (d) Tromelin, situated at 580 kilometres to the north-west; and
37 (e) The Chagos Archipelago, including Diego Garcia, which is about
38 2,200 kilometres to the north-east. The Chagos Archipelago is about
39 517 kilometres from Maldives, with which it has an undelimited overlapping
40 maritime claim.

41
42 Mr President, Members of the Special Chamber, Mauritius and Maldives enjoy very
43 friendly and cordial relations. We are both Small Island Developing States. We face
44 common challenges, such as the effects of climate change, vulnerabilities – both
45 economic and environmental – as well as inherent structural handicaps such as
46 distance from the markets, and dependence on tourism which, as we are all aware,
47 have been compounded by the COVID-19 pandemic.

48
49 Both Mauritius and Maldives belong to the Commonwealth as well as other
50 international organizations. More often than not, we take a common position on

1 world issues. Relations between Mauritius and Maldives have been growing over the
2 years with an increasing level of Mauritian investments in the banking and tourism
3 sectors in Maldives.

4
5 High-level visits have also been taking place, the highest one being the State visit of
6 former President Nasheed in 2011, during which he was presented with the highest
7 Mauritian Award – the Grand Commander of the Order of the Star and Key of the
8 Indian Ocean (GCSK). Other visits by dignitaries from Maldives have followed, the
9 latest one being that of the President of Maldives in July of last year in the context of
10 the Indian Ocean Island Games hosted by Mauritius.

11
12 As small island countries, we both appreciate the value of marine and ocean
13 resources for our economy. For many decades, because of lack of capacity, islands
14 have not been able to fully exploit their resources for the benefit of their peoples.
15 Despite these challenges, Mauritius has, over the past decades, endeavoured to
16 conclude negotiations with neighbouring countries towards the delimitation of our
17 maritime boundaries. In the same vein, in line with article 76 of UNCLOS, Mauritius
18 has made submissions for an extended continental shelf in different regions of
19 Mauritius. In the Mascarene Plateau region, in 2009, Mauritius and Seychelles, as
20 two mid-ocean small island States, made a joint submission to the Commission on
21 the Limits of the Continental Shelf (CLCS), and in 2011, the Commission endorsed
22 an area of 396,000 square kilometres of extended continental shelf, which Mauritius
23 and Seychelles are currently managing jointly.

24
25 Mauritius has also made a submission in respect of the southern region of the
26 Chagos Archipelago and another one in respect of the Rodrigues region, both of
27 which are awaiting consideration by the CLCS.

28
29 What remains for Mauritius is the preparation of a submission in respect of the
30 northern region of the Chagos Archipelago, where there exists an overlap with the
31 extended continental shelf claimed by Maldives. As a prerequisite for such a
32 submission, it is necessary to delimit the maritime boundary between Mauritius and
33 Maldives. The conclusion of such boundaries may also lead to the possibility of
34 making – should the two States agree – a joint submission in respect of the extended
35 continental shelf. The absence of such a boundary stops this process. It is unsettling
36 and it undermines the rule of law.

37
38 As Counsel for Mauritius will elaborate in their presentations, Mauritius and Maldives
39 held discussions on delimitation in 2010. At that time, Maldives raised no concern
40 about it being “expected to take sides” in a dispute, as the Honourable Agent for
41 Maldives now appears to claim.¹ In fact, following those discussions, Mauritius has
42 been expecting that Maldives would take certain steps which would enable Mauritius
43 to withdraw its objections to the Maldives’ extended continental shelf submission and
44 which would allow for the continuation of the delimitation talks. Unfortunately, despite
45 several attempts, it has not been possible to move further from this longstanding
46 stalemate. The Maldives continues to elude all discussions pertaining to maritime
47 delimitation. That is why we are here today.

48

¹ ITLOS/PV/20C28/1, p. 5, line 44 (Mr Riffath).

1 We consider that the Special Chamber plainly has the jurisdiction to hear this matter,
2 and that there exists, equally plainly, no bar to the exercise of that jurisdiction. It is
3 our hope that the Special Chamber will, in due course, apply the appropriate
4 provisions of UNCLOS to delimit our maritime boundaries. In so doing, it will resolve
5 the dispute between Mauritius and Maldives. It will enhance the rule of law, offering
6 respect for the International Court of Justice, as well as the rules and principles that
7 the Court applied to complete the decolonization of Mauritius. To accede to the
8 request of the Maldives, and to decline to exercise jurisdiction, will, we fear, diminish
9 the standing of the Court and the Tribunal, undermine the rule of law, and give rise to
10 fragmentation among international courts and tribunals. At a time when the
11 International Court of Justice and the Tribunal have enhanced a common vision for
12 matters of international law, including the law of the sea, and are sharing a
13 commonality of judges, and even a Registrar, it would be dispiriting indeed to see
14 these two international judicial bodies taking different approaches.

15

16 Mr President, Members of the Special Chamber, Counsel for Mauritius will go into
17 greater details on the premise of our request, including the determinations of
18 international law made by the ICJ in its Advisory Opinion on the legal consequences
19 of the separation of the Chagos Archipelago from Mauritius in 1965.

20

21 Mauritius considers the ICJ findings to be unambiguous: the Chagos Archipelago is,
22 and has always been, an integral part of the territory of Mauritius. Therefore, as the
23 lawful sovereign over the Chagos Archipelago, Mauritius is the only State lawfully
24 entitled to conclude maritime boundaries with its neighbours. Maldives has
25 characterized Mauritius' position in terms that the ICJ "resolved" a 40-year-old
26 sovereignty dispute. That is not our position. The ICJ was not asked to do so nor
27 was it required to do so. The Court made it clear that there is no, nor has there ever
28 been, an "unresolved sovereignty dispute". Instead, the Court determined that the
29 Chagos Archipelago was unlawfully detached from the territory of Mauritius in 1965,
30 three years prior to its independence. It follows that there is no basis for the Special
31 Chamber to decline to exercise its jurisdiction, or to refrain from delimiting the
32 maritime boundary between the two Parties.

33

34 Before I conclude, I wish to record the objection of Mauritius to the contents of a
35 document entitled "List of Issues in Dispute", which was included in the Judges'
36 folder submitted to you by Maldives on Tuesday. We only saw that document for the
37 first time that evening, when the Judges' folder was sent to us at 8:28pm, almost two
38 hours after the adjournment of the hearing. That document purports to set out a list
39 of issues that, according to the Maldives, are agreed between the Parties. This is
40 absolutely not the case. That document reflects only the erroneous views of
41 Maldives on various matters. The position of Mauritius is clearly set out in the written
42 pleadings, and will be elaborated upon in the presentations that follow.

43

44 Let me also place on record that we have given copies of our own Judges' folder to
45 the Maldives delegation shortly before the beginning of today's proceedings.

46

47 Mr President, Members of the Special Chamber, let me end my presentation by
48 setting out the order in which Counsel for Mauritius will be making their
49 presentations. First, Professor Philippe Sands QC will address the legal status of the
50 Chagos Archipelago following the Advisory Opinion of the International Court of

1 Justice. He will be followed by Mr Paul Reichler, who will present by video
2 conference the arguments on why the Special Chamber should reject the preliminary
3 objections of the Republic of Maldives. He will respond to the first two preliminary
4 objections, which are, in their own words: (1) that you have no jurisdiction to
5 determine what they call an “unresolved sovereignty dispute” over the Chagos
6 Archipelago between Mauritius and the United Kingdom; and (2) that, in such
7 circumstances, the United Kingdom is an indispensable party, whose absence from
8 these proceedings deprives you of jurisdiction. Finally, Professor Pierre Klein will
9 respond, also by video conference, to the last three preliminary objections and
10 demonstrate that there is indeed a dispute between Mauritius and the Maldives
11 which the Parties have thus far been unable to resolve and that the request made by
12 Mauritius does not in any manner constitute an abuse of process.
13

14 Mr President, Members of the Special Chamber, it is a distinct privilege for Mauritius
15 to participate in these hearings. My Delegation will remain available to provide any
16 such assistance as you might need. We will be pleased to offer our fullest co-
17 operation to the delegation of the Maldives in making these proceedings as helpful
18 as possible to the Special Chamber. We welcome, of course, questions from the
19 Special Chamber at any time during the course of the proceedings, and we will do
20 our utmost to respond to those questions in a timely and comprehensive manner.
21

22 To assist the Special Chamber, we have made available a folder for each Judge, to
23 which your attention will be directed during our presentations.
24

25 Mr President, I now respectfully request that you invite Professor Philippe Sands QC
26 to make his presentation. Thank you, Mr President.
27

28 **THE PRESIDENT OF THE SPECIAL CHAMBER:** I thank Mr Koonjul and now give
29 the floor to Mr Philippe Sands to make his statement. You have the floor, sir.
30

31 **MR SANDS:** Mr President, Members of the Special Chamber, it is a privilege to
32 appear before you on behalf of Mauritius and, I should say, a personal happiness to
33 be here in person.
34

35 Mr President, in its written pleadings Maldives has conjured up five supposedly
36 distinct preliminary objections. Tuesday’s restatement repeated them, although it did
37 so with so many mischaracterizations and selective uses – on the process of
38 decolonization, on the ICJ Advisory Opinion, on the General Assembly resolutions
39 that preceded and followed that Opinion – that it is necessary for us to spend a little
40 more time this afternoon on some rather basic matters. We know this to be a most
41 diligent Tribunal and Special Chamber, sir, and we know that you will look at each
42 act and each decision with the great care they deserve, but we do need this
43 afternoon, given what you heard on Tuesday, to set the record straight.
44

45 At the heart of the Maldives’ five objections – and of just about every statement it
46 made on Tuesday – is the reality that they have, each of them, one thing in common:
47 each is based on a “core” premise, as Maldives puts it, that there is an “unresolved
48 sovereignty dispute between Mauritius and the United Kingdom ... with respect to

1 the Chagos Archipelago.”¹ If the Maldives is wrong on its “core” premise, then each
2 and every one of its preliminary objections collapses. Mr President, the Maldives is
3 wrong. There is no “unresolved sovereignty dispute” before you which you are asked
4 to, or must, decide before proceeding to the delimitation of the maritime boundaries.
5 There is no interest of any other State which could “constitute the very subject-matter
6 of the judgment to be rendered on the merits of our Application”.² There is no bar to
7 the Special Chamber proceeding with the task entrusted to it under the Special
8 Agreement, namely to delimit the maritime boundary between Mauritius and the
9 Maldives in the Indian Ocean.

10
11 There is no “unresolved sovereignty dispute”, as the Maldives puts it, for the reason
12 made clear by the International Court of Justice in The Hague, the principal judicial
13 organ of the United Nations, without a single dissent on the merits, not even by one
14 judge: the Chagos Archipelago is, and has always been, an integral part of the
15 territory of Mauritius, the Court made clear. It was an integral part of Mauritius before
16 the British conquest of 1810, and it continued to be so through British colonial rule,
17 until that ended in 1968, and it continued to be so at all times thereafter, as the ICJ
18 explicitly found. It continues to be so today, as the ICJ also expressly found. This is
19 not because Mauritius says so, or because the African Union says so, or anyone
20 else of a political nature; this is because the International Court of Justice has said
21 so. Its Advisory Opinion has been endorsed by the United Nations General
22 Assembly, and subsequently applied by the United Nations Secretary-General.
23 Without ambiguity, without blinking, the Court made it absolutely clear that the
24 Chagos Archipelago has always been a part of the territory of Mauritius, and that it
25 remains an integral part of the territory of Mauritius today. Before 1968 it was part of
26 a colony of Mauritius, and since 1968 it has been part of the territory of the
27 independent sovereign State of Mauritius, even if it has been under the
28 “administration” of the United Kingdom. The question of the territorial status of the
29 Chagos Archipelago is not a matter that requires judicial determination. That has
30 been done. It has been done definitively and authoritatively. It is a settled matter
31 under international law, not as a political matter, but as a consequence of the
32 expression of the principal judicial organ of the United Nations.

33
34 Let us be clear. This case is totally different from any of the ones cited by the
35 Maldives on Tuesday, including, for example, *Ukraine v. Russia*. That is because this
36 case is about decolonization, and it is also because, unlike any of those cases, there
37 is an Advisory Opinion of the ICJ, a determination by the ICJ, that addresses the
38 core issue. In none of the cases referred to by Professor Thouvenin – none – was
39 there any ICJ determination directly on point.³ Nor was there such a determination
40 back in 2015 when the Annex VII arbitral tribunal gave its award. This case is not
41 one in which the Tribunal is required to make a determination on competing territorial
42 claims over the Chagos Archipelago, because last year the ICJ conclusively
43 determined that the Archipelago is part of the territory of Mauritius, that the attempt
44 at dismemberment in 1965 was unlawful, and that the subsequent colonial

¹ Written Preliminary Objections of the Republic of Maldives under article 294 of the United Nations Convention on the Law of the Sea and article 97 of the Rules of the International Tribunal for the Law of Sea (18 December 2019) (hereinafter “Maldives’ Preliminary Objections”), para. 5.

² *Certain Phosphate Lands in Nauru (Nauru v. Australia)*, Preliminary Objections, Judgment, I.C.J. Reports 1992, p. 24, at para. 55.

³ ITLOS/PV.20/C28/2, Mr Thouvenin, pp. 6-15 (uncorrected).

1 “administration” is an international legal wrong of a continuing character that must be
2 terminated as rapidly as possible.⁴ I hope you will forgive me for belabouring these
3 points but you heard nothing about any of this from the Maldives earlier this week. It
4 was though they were taking you to a completely different advisory opinion.

5
6 The determination of the Court has been adopted and affirmed by the United Nations
7 General Assembly, in resolution 73/295, just last year, by an overwhelming vote.⁵
8 Mr President, you have already heard there is only a single developing country in the
9 whole world that voted against that resolution on decolonization: it was the Maldives,
10 which, incidentally, also voted against the initial resolution requesting the Court to
11 give an opinion on decolonization. Remarkably - even more remarkably - the
12 Maldives, a former British colony, is alone among all the States in the world that
13 have achieved independence since 1945 to have voted against either resolution.
14 Mr President, on Tuesday we heard the Maldives profess its commitment to self-
15 determination, to decolonization and to territorial integrity: its actions, its votes, and
16 its arguments this week all offer a very different impression.

17
18 In the eyes of the world – the Court in The Hague, the General Assembly, the United
19 Nations Secretary-General, every African country, every developing country – under
20 international law the situation of Mauritius is entirely without any ambiguity: its
21 territory includes the Chagos Archipelago, period. As the International Court made
22 clear, self-determination, decolonization, independence and territorial integrity are, in
23 international law, a part of a seamless whole. They go together.

24
25 In other words, in applying the law of self-determination and decolonization, as it did,
26 the International Court necessarily had to and did express a view on the territorial
27 integrity of Mauritius. It did so explicitly. Did the Court get it wrong? No. Did the Court
28 lack authority? No. Does the Maldives disagree with what I have just said? No. Let
29 us look at what they said in their Written Observations of 15 April 2020: “The
30 Maldives does not suggest that the advice rendered by the ICJ in the *Chagos*
31 *Advisory Opinion* was wrong or lacking in authority.”⁶ That is a huge concession. In
32 fact, it is dispositive, in fact, because the ICJ got it absolutely right.

33
34 Mr Reichler and Professor Klein will address you specifically on the five preliminary
35 objections. I will just address the factual and legal framework within which these
36 questions fall to be considered, in more detail than I expected because the Maldives
37 on Tuesday drove a coach and horses through that framework. First, I will offer you a
38 reminder of the broad legal context, the law of self-determination and decolonization,
39 matters on which the Maldives has said virtually nothing in its written pleadings, and
40 even less on Tuesday. Then I will return to the factual background of this case and
41 the circumstances in which it reaches you, including, significantly, the circumstances
42 in which Mauritius achieved independence. This too Maldives has totally ignored.

⁴ *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion of 25 February 2019, ICJ Reports 2019* (hereinafter “*Advisory Opinion on the Chagos Archipelago*”).

⁵ 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) (hereinafter “UNGA Res. 73/295”).

⁶ Written Observations of the Republic of Maldives in reply to the Written Observations of the Republic of Mauritius (15 April 2020), para. 4 (emphasis in the original).

1 Third, I will summarize the legal developments post-independence for Mauritius that
2 put beyond doubt the territorial integrity of Mauritius, including the Chagos
3 Archipelago.

4
5 I turn to the law of decolonization and self-determination. It is part of the applicable
6 law to be applied by this International Tribunal, which we say should follow exactly
7 the decision of the International Court of Justice. The origins of that law may be
8 found in the mandate system embodied in article 22 of the Covenant of the League
9 of Nations. This provided for certain territories which had become detached from
10 defeated powers following the end of the First World War to come under the
11 “tutelage” of Mandatory States on behalf of the League, which would then hold them
12 as part of a “sacred trust of civilization” until such time as they would be “able to
13 stand by themselves under the strenuous conditions of the modern world”.⁷ The
14 mandate system envisaged self-determination as the ultimate outcome of that
15 “sacred trust”.

16
17 At the time of the San Francisco Conference in 1945, nearly one third of the world’s
18 population, more than 750 million human beings, lived in non-self-governing
19 territories – words that offer a euphemism for colonies.⁸ The Conference galvanized
20 a significant shift in attitude, a move to an anti-colonialist sentiment. It applied the
21 principles of the Atlantic Charter, signed by British Prime Minister, Winston Churchill,
22 and United States President, Franklin Roosevelt, in August 1941. You can see it on
23 your screen. I might just say, Mr President and Members of the Tribunal, that you will
24 find all these documents at tab 12 of the Judges’ folder, and this one is figure 2. The
25 third paragraph, at tab 12, figure 2, the Atlantic Charter, is a commitment that the
26 peoples shall “choose the form of government under which they will live”.⁹ Those
27 words are the origins of what followed.

28
29 In 1945 – we are now at figure 3 of tab 12 – the League’s mandate system was
30 replaced by the trusteeship system, and Chapters XII and XIII of the Charter. “[S]elf-
31 determination of peoples” was explicitly identified as one of the four purposes of the
32 United Nations, in article 1, paragraph 2 ; and article 76 promotes what it calls the
33 “progressive development towards self-government or independence ... and the
34 freely expressed wishes of the peoples concerned”.¹⁰

35
36 By 1960, many countries had achieved independence, as the move to decolonization
37 accelerated. In that year alone, 18 countries gained their independence, including 17
38 from Africa.¹¹ There are many people on this bench who are far more aware than I
39 am of what happened in that period. In the autumn of 1960, self-determination
40 reached centre stage at the General Assembly. In November, a draft “Declaration on
41 the granting of independence to colonial countries and peoples” was debated, over

⁷ Covenant of the League of Nations, Article 22.

⁸ United Nations Department of Public Information, *What the U.N. Can Do to Assist Non-Self-Governing Territories* (June 2017), p. 8 available at: https://www.un.org/dppa/decolonization/sites/www.un.org.dppa.decolonization/files/what_the_un_can_do_1.pdf (last accessed 19 September 2020).

⁹ The Atlantic Charter (14 August 1941), available at: <https://www.un.org/en/sections/history-united-nations-charter/1941-atlantic-charter/index.html> (last accessed 19 September 2020).

¹⁰ Charter of the United Nations, Articles 1(2) and 76.

¹¹ *Advisory Opinion on the Chagos Archipelago*, para. 150.

1 two intense weeks.¹² On 14 December 1960, resolution 1514 (XV) was adopted. You
2 will find it at figure 4 of tab 12.

3
4 Resolution 1514 set out the key principles, of which, for today's purposes, three are
5 paramount: first, that "[a]ll peoples have the right to self-determination"; second, that
6 self-determination requires the free and genuine consent of the population
7 concerned, namely the "[i]mmediate steps" to transfer "all powers to the peoples ...
8 without any conditions or reservations, in accordance with their freely expressed will
9 and desire"; and, critically for our purposes, third, that the right to self-determination
10 prohibits "[a]ny attempt aimed at the partial or total disruption of the national unity
11 and the territorial integrity of a country". "Territorial integrity"; the words come alive in
12 1960.

13
14 On its terms, resolution 1514 set out "the basis for the process of decolonization".
15 Eighty-nine Member States voted in favour; not one voted against. There were nine
16 abstentions, including the United Kingdom. In the years that followed, in the 1960s, a
17 further 28 non-self-governing territories exercised the right to self-determination.¹³
18 One of those was Mauritius. Another, we thought, was the Maldives.

19
20 Six decades later, the International Court of Justice, in the *Advisory Opinion on the*
21 *Chagos Archipelago*, noted that resolution 1514 represented, as it put it, "a defining
22 moment in the consolidation of State practice on decolonization", and that it
23 "clarifie[d] the content and scope of the right to self-determination."¹⁴ The Court also
24 made clear, at paragraph 160 of its Opinion, that the maintenance of territorial
25 integrity is a key element of the right to self-determination and the law on
26 decolonization – a "key element" – and that "any detachment ... is contrary to the
27 right of self-determination". In other words, self-determination, territorial integrity,
28 decolonization and independence with territorial integrity are part of a seamless
29 process, at the end of which an independent State emerges with undisputed
30 sovereignty over the entirety of its territory.

31
32 As resolution 1514 was being debated in 1960, the situation of South West Africa
33 came into view. Colonized by Germany in the late nineteenth century, South West
34 Africa – which, of course, today is known as Namibia – was occupied by South Africa
35 in 1915. The League of Nations conferred a mandate for the territory upon "His
36 Britannic Majesty to be exercised on his behalf by the Government of the Union of
37 South Africa."¹⁵

38
39 After 1945, South West Africa could, and some say should, have become a trust
40 territory under Chapter XII of the UN Charter. But South Africa stopped that and
41 insisted that it would "continue to administer the Territory ... [under] the Mandate",¹⁶
42 and also "to seek international recognition for the Territory of South-West Africa as
43 an integral part of the Union." The UN General Assembly turned to the Court, which

¹² Letter to President of the General Assembly (A/4501, 23 September 1960). See:
<https://digitallibrary.un.org/record/1304736?ln=en> (last accessed 15 September 2020).

¹³ *Advisory Opinion on the Chagos Archipelago*, para. 150.

¹⁴ *Ibid.*

¹⁵ *International Status of South-West Africa*, Advisory Opinion, ICJ Reports 1950, p. 128 (hereinafter
"*International Status of South-West Africa*") at p. 132.

¹⁶ *Ibid.*, pp. 134-135.

1 gave three advisory opinions on the matter, in 1950, 1955 and 1956.¹⁷ The Court
2 found that South Africa's obligation to submit to supervision had not disappeared,
3 that the supervisory functions should be exercised by the United Nations, and that
4 the status of that territory could only be modified "with the consent of the United
5 Nations."¹⁸

6
7 In November 1960, at the precise moment that resolution 1514 emerged, Ethiopia
8 and Liberia filed two cases at the International Court, alleging violations by South
9 Africa of its obligations to the UN under the mandate. The focus was South Africa's
10 practice of apartheid and the suppression of the rights of inhabitants of the territory
11 essential to their orderly evolution towards self-government.¹⁹

12
13 The International Court joined the two South West Africa cases.²⁰ South Africa filed
14 preliminary objections. It argued that Ethiopia and Liberia had no legal interest in the
15 rights of the population of South West Africa. "Stop this case", they said.²¹ But, in
16 1962 the Court rejected the preliminary objections of South Africa.²² Then things
17 changed. The composition of the Court changed. In 1966, on the casting vote of the
18 President, Percy Spender, an Australian, supported by Sir Gerald Fitzmaurice, from
19 the United Kingdom, the Court totally unexpectedly revisited its earlier decision,
20 departed from it, and rejected the claims of Ethiopia and Liberia. Colonialism was
21 back, it might be said, with a vengeance. The Court ruled that Ethiopia and Liberia
22 had no standing to bring the cases but only the League had standing.²³ The Court
23 had no jurisdiction to exercise. The judgment was widely seen as an outrage, and it
24 plunged the Court into a controversy. I commend to you in particular the dissenting
25 opinion of Judge Jessup. It is the only dissenting opinion that he ever wrote. It
26 castigates the Court for, as he put it, "stopping at the threshold of the case" and
27 "avoiding a decision" on a "fundamental question".²⁴ In this case, our case, at this
28 stage, the "fundamental question" is analogous. The effect of the Advisory Opinion is
29 centre stage. Will the International Tribunal for the Law of the Sea depart from the
30 determination of the International Court of Justice? Is the Special Chamber of the
31 Tribunal going to give effect to the Opinion or is it going to ignore the Opinion, as the
32 Maldives asks you to do? Is the Special Chamber going to recognize and give effect

¹⁷ *International Status of South-West Africa, Advisory Opinion, ICJ Reports 1950*, p.128; *South-West Africa – Voting Procedure, Advisory Opinion, ICJ Reports 1955*, p.67; *Admissibility of hearings of petitioners by the Committee on South West Africa, Advisory Opinion, ICJ Reports 1956*, p. 23.

¹⁸ *International Status of South-West Africa*, p. 144.

¹⁹ *Application Instituting Proceedings by the Government of Ethiopia* (4 November 1960), available at: <https://www.icj-cij.org/files/case-related/46/9261.pdf> (last accessed on 20 September 2020); *Application Instituting Proceedings by the Government of Liberia* (4 November 1960), available at: <https://www.icj-cij.org/files/case-related/47/10723.pdf> (last accessed on 20 September 2020).

²⁰ *South West Africa Cases (Ethiopia v Union of South Africa); Liberia v Union of South Africa*, *Order of 20 May 1961, ICJ Reports 1961*, p. 13.

²¹ *Preliminary Objections filed by the Government of the Republic of South Africa* (30 November 1961), available at: <https://www.icj-cij.org/files/case-related/46/9267.pdf> (last accessed 20 September 2020), para. 49.

²² *South West Africa Cases (Ethiopia v. Union of South Africa); Liberia v. Union of South Africa*, *Preliminary Objections, Judgment of 21 December 1962, ICJ Reports 1962*, p. 319.

²³ *South West Africa, Second Phase, Judgment, ICJ Reports 1966*, p. 6.

²⁴ *South West Africa, Second Phase, Dissenting Opinion of Judge Jessup*, available at: <https://www.icj-cij.org/files/case-related/46/046-19660718-JUD-01-07-EN.pdf> (last accessed 20 September 2020), p. 1.

1 to Mauritius' right to self-determination or is it going to stop at the threshold, as the
2 Maldives asks you to do?
3

4 As you ponder that question, it is perhaps worth recalling what happened after the
5 Court made its fateful judgment in 1966. The UN General Assembly adopted
6 resolution 2145. You can see it on the screen; it is figure 5 at tab 12. By 114 votes to
7 two, the Assembly reaffirmed "the inalienable right of the people of South West
8 Africa to freedom and independence" in accordance with the UN Charter and
9 resolution 1514.²⁵ It declared that "South Africa has failed to fulfil its obligations", and
10 it terminated the mandate, putting South West Africa under the "direct responsibility
11 of the United Nations."²⁶ The following year the Assembly created the UN Council
12 for South West Africa (later renamed the Council for Namibia).²⁷ In 1973 the Council
13 began to represent Namibia in the negotiations for the Law of the Sea Convention.²⁸
14 It did so despite South Africa's continued unlawful administration of the territory.
15

16 In 1970, the Security Council requested an advisory opinion from the Court on the
17 legal consequences of the occupation.²⁹ You can see that at figure 6 of tab 12. By a
18 large majority, and with a changed composition, the Court confirmed that South
19 Africa's continued presence in Namibia was illegal, that South Africa "is under
20 obligation to withdraw its administration from Namibia immediately" – I pause there
21 to ask whether those words are familiar to you – and that all Member States were
22 obliged to refrain from any acts "implying recognition of the legality of, or lending
23 support or assistance to, such presence and administration".³⁰ Again, as you will
24 see, those are very familiar words. The Court also decided that the termination of the
25 mandate by the Assembly was binding and dispositive. Again, we are dealing here
26 with an advisory opinion. You may wish in due course to remind yourselves of
27 Sir Gerald Fitzmaurice's bitter dissent because, I have to say, in terms and in tone it
28 sounded remarkably similar to what we heard on Tuesday from Counsel for the
29 Maldives.³¹
30

31 Mr President, Members of the Special Chamber, contrary to what Professor Boyle
32 told you,³² the case before you today does raise analogous issues to those faced by
33 the International Court in the *South West Africa* cases: the law of self-determination
34 and decolonization, the dispositive effect of an ICJ advisory opinion, and the fact of
35 an unlawful or illegal occupation or administration not being treated in any way that it
36 could give rise to any legal rights whatsoever. We say, not with any happiness, that
37 the situation of the United Kingdom in relation to the Chagos Archipelago today is

²⁵ United Nations General Assembly, resolution 2145 (XXI), *Question of South West Africa* (27 October 1966), Preamble.

²⁶ *Ibid.*, paras. 3 & 4.

²⁷ United Nations General Assembly, resolution 2248, *Question of South West Africa* (19 May 1967).

²⁸ See e.g. *Report of the United Nations Council for Namibia*, Official Records: Twenty-Eighth Session, Supplement No. 24 (A/9024) (April 1974), at pp. 35 and 82, available at: https://digitallibrary.un.org/record/724946/files/A_9624%5EVol-I%5E-EN.pdf (last accessed 20 September 2020).

²⁹ United Nations Security Council, resolution 284 (29 July 1970).

³⁰ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, ICJ Reports 1971, p. 16, at p. 46.

³¹ *Ibid.*, at p. 220.

³² ITLOS/PV.20/C28/2, Prof. Boyle, pp. 1-6 (uncorrected).

1 akin to that of South Africa in relation to South West Africa after the 1971 Advisory
2 Opinion. Back then, one might ask oneself the question: would South Africa have
3 had a right under international law to be engaged in the delimitation of Namibia's
4 maritime boundary with, let us say, Angola? You only have to pose the question for
5 the obvious answer to appear. Having decided that Britain's administration in
6 Chagos was unlawful and that it must be ended forthwith, do we really think that the
7 Court was saying that the unlawful administrator nevertheless had a right to delimit
8 the maritime boundary between Chagos and Maldives? Is that really what the Court
9 said in February 2019, as we are being told here? Again, you only have to pose that
10 question to recognize the implications – and, frankly, the absurdity – of the path that
11 the Maldives is inviting you to take. When the Court says that a State has no right to
12 administer a territory, it follows inexorably, as night follows day, that it can have no
13 right to be involved in the delimitation of the maritime boundaries of that territory.
14

15 Any other conclusion risks casting this Tribunal into a wilderness, just as the
16 International Court, after 1966, in failing to exercise jurisdiction in a matter of
17 decolonization, was cast for many years into a legal wilderness. It took two decades
18 for the Court in The Hague to regain the trust of many States. Maldives urges you on
19 a path that leads to the wilderness. We have trust in the International Tribunal for the
20 Law of the Sea and for its respect for the rule of law, for the law on decolonization
21 and self-determination and for its wisdom.
22

23 Mr President, if I may, I will move to the circumstances in which Mauritius obtained
24 its independence – again something that Maldives chose to ignore completely.
25 However, since Maldives invites you to ignore history and since history is important,
26 we have no choice. Mauritius was initially a French colony, and after 1810 a British
27 colony.³³ Throughout colonial rule, and for as long as there was human settlement,
28 the Chagos Archipelago was always governed as an integral part of the territory of
29 Mauritius.³⁴ That is a finding of law and fact by the International Court.
30

31 By the early 1960s, the process of decolonization of Mauritius was firming up.
32 A series of constitutional conferences reflected a gradual move towards internal
33 autonomy. But, unknown to Mauritius' elected representative at the time, the United
34 Kingdom was devising a secret plan to detach a part of the territory of Mauritius – the
35 Chagos Archipelago – to keep certain islands for defence purposes.³⁵ Against the
36 background of resolution 1514 – you can see the relevant internal documents from
37 the United Kingdom on your screen was and at figure 7 - the British Government
38 recognized nevertheless that it would be, as it put it, "desirable to secure [Mauritian
39 Ministers'] positive consent, or failing that, at least their acquiescence", to the
40 detachment of the Chagos Archipelago.³⁶ These secretive minutes of the British
41 Government proceed to state that "it would suit us better to confront the Mauritians
42 with a *fait accompli* or at most tell them at the last moment what we are doing."³⁷

³³ Written Statement of the Republic of Mauritius (1 March 2018), *Advisory Opinion on the Chagos Archipelago*, (hereinafter "Written Statement of Mauritius ICJ"), para. 2.13.

³⁴ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, (hereinafter "Chagos MPA Award"), paras. 58-60.

³⁵ Written Statement of Mauritius ICJ, para. 3.15 et seq.

³⁶ UK Foreign Office, Colonial Office and Ministry of Defence, US Defence Interests in the Indian Ocean, DO (O)(64)23, FCO 31/3437 (23 Apr. 1964), at p. 4 (available at: <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-01-EN.pdf>). Judges' Folder, Tab 8.

³⁷ *Ibid.*

1 As Mauritius moved closer to independence, the secret plan to detach the Chagos
2 Archipelago proceeded. In June 1964, Dr Ramgoolam, the then Premier of Mauritius,
3 was first told about the plan to detach the Chagos Archipelago. The British Governor,
4 Sir John Rennie, reported that Premier Ramgoolam had “reservations on
5 detachment”.³⁸ The locally elected Mauritian Council of Ministers was consulted in
6 July 1965 and strongly objected to detachment.³⁹

7
8 In September 1965, as a fourth Constitutional Conference was held in London, the
9 prospects for the independence of Mauritius remained uncertain.⁴⁰ The International
10 Court’s Advisory Opinion sets out in very considerable detail what happened next.⁴¹
11 In short, the British Government made the independence of Mauritius conditional on
12 Mauritian Ministers “agreeing” to detachment, linking “both matters in a possible
13 package deal”.⁴² On the penultimate day of the Conference, Premier Ramgoolam
14 was invited to a one-on-one meeting with the British Prime Minister, Harold Wilson.
15 A note was prepared by Mr Wilson’s Private Secretary, which you will be able to find
16 at figure 8 of tab 12. This sets out in the starkest possible terms what colonialism
17 means and what the object of that meeting was, and I will read it full.

18
19 PRIME MINISTER

20
21 Sir Seewoosagur Ramgoolam is coming to see you at 10:00 tomorrow
22 morning. The object is to frighten him with hope: hope that he might get
23 independence; Fright lest he might not unless he is sensible about the
24 detachment of the Chagos Archipelago.⁴³

25
26 The British Prime Minister received advice: “make some oblique reference” he was
27 told “to the fact that [Her Majesty’s Government] have the legal right to detach
28 Chagos by Order in Council, *without* Mauritius’ consent ...”.⁴⁴ This Harold Wilson did,
29 and in this way procured the supposed but reluctant “agreement” of Premier
30 Ramgoolam and two of his colleagues to the detachment of the Chagos Archipelago.
31 You will be aware that, in the later Annex VII Arbitration, Judges Kateka and Wolfrum
32 of this Tribunal described the “agreement”, if it can be called that, as having been
33 obtained by “duress”.⁴⁵

34
35 Back in 1965 the Mauritians returned home and the British turned to the timing and
36 modality of detachment. At figure 10 of tab 12 you will find a note from the British
37 Colonial Secretary warning the Prime Minister, Harold Wilson, in the following terms:

38
39 From the United Nations point of view the timing is particularly awkward. ...
40 We shall be accused of creating a new colony in a period of decolonization ...
41 The Fourth Committee of the United Nations has now reached the item on

³⁸ Written Statement of Mauritius ICJ, para. 3.21.

³⁹ *Ibid.*, para. 3.36.

⁴⁰ *Ibid.*, para. 3.40.

⁴¹ *Advisory Opinion on the Chagos Archipelago*, paras. 94-131.

⁴² *Ibid.*, para. 102.

⁴³ UK Colonial Office, Note for the Prime Minister’s Meeting with Sir Seewoosagur Ramgoolam, Premier of Mauritius, PREM 13/3320 (22 Sept. 1965) (available at: <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-01-EN.pdf>). Judges’ Folder, Tab 9.

⁴⁴ *Advisory Opinion on the Chagos Archipelago*, para. 106 (emphasis in the original).

⁴⁵ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Dissenting and Concurring Opinion (18 March 2015), para. 77.

1 Miscellaneous Territories and may well discuss Mauritius and Seychelles next
2 week. If they raise the question of defence arrangements on the Indian Ocean
3 Islands before we have detached them, the Mauritius Government will be
4 under considerable pressure to withdraw their agreement to our proposals.
5 Moreover we should lay ourselves open to an additional charge of dishonesty
6 if we evaded the defence issue in the Fourth Committee and then made the
7 Order in Council immediately afterwards. It is therefore important that we
8 should be able to present the U.N. with a *fait accompli*.⁴⁶
9

10 And so, create a new colony is exactly what the British purported to do. Just three
11 days later, on 8 November 1965, the Privy Council passed an Order in Council which
12 purported to detach the Chagos Archipelago from Mauritius, to create what it called
13 the “British Indian Ocean Territory”, or BIOT. The Order in Council also amended the
14 Constitution of Mauritius and deleted the words “Chagos Archipelago” from the
15 definition of “Mauritius”.⁴⁷ There is here one important point to make: the British
16 claim to create the colony, and the supposed rights over the territory of the Chagos
17 Archipelago, of which our friends from the Maldives make so much, were premised
18 exclusively on that moment in 1965, on that supposed “agreement” of the Mauritians.
19 Strip that away and there is no other basis for a claim. With its preliminary
20 objections, Maldives, which claims to be so committed to decolonization and
21 self-determination, is actually in effect saying that what happened in 1965 was either
22 lawful, plausible or arguable. The ICJ found otherwise, with no dissent on the merits.
23 I can be crystal clear: what the Maldives is asking you to do is to set yourselves
24 apart from the prior determination of the International Court of Justice.
25

26 Britain’s actions in 1965 were immediately criticized by the international community,
27 which saw straight through the subterfuge. In December 1965 – this is figure 10A –
28 the UN General Assembly adopted resolution 2066. It expressed “deep concern”
29 about the detachment and invited the United Kingdom “to take no action which would
30 dismember the territory of Mauritius and violate its territorial integrity”.⁴⁸ The British
31 simply ignored the resolution.
32

33 On 30 December 1966, by a secret exchange of notes, the UK and the US
34 concluded an agreement providing for the Chagos Archipelago to be made available
35 for an initial period of 50 years to “meet the needs of both Governments for
36 defense.”⁴⁹ Shortly thereafter, between 1967 and 1973, the British Government
37 forcibly removed and deported the entire population of the Chagos Archipelago,
38 approximately 1,500 men, women and children, many of whom had spent their entire
39 lives living on the islands of the Archipelago. To deal with that, the British
40 Government would assert in the UN and in its own Parliament – directly contrary to
41 the facts that were known to it – that there was no “permanent population” in the
42 Chagos Archipelago.⁵⁰
43

⁴⁶ UK Foreign Office, Minute from Secretary of State for the Colonies to the Prime Minister, FO 371/184529 (5 Nov. 1965) (available at: <https://www.icj-cij.org/files/case-related/169/169-20180301-WRI-05-02-EN.pdf>). Judges’ Folder, Tab 10.

⁴⁷ Written Statement of Mauritius ICJ, para. 3.96.

⁴⁸ United Nations General Assembly, resolution 2066 (XX), *Question of Mauritius* (16 December 1965). Judges’ Folder, Tab 2.

⁴⁹ Written Statement of Mauritius, ICJ, para. 3.98.

⁵⁰ *Ibid.*, para. 3.102.

1 Let us look at a note of a senior British official dating to that time – figure 11 of
2 tab 12:

3
4 We must surely be very tough about this. The object of the exercise is to get
5 some rocks which will remain *ours*; there will be no indigenous population
6 except seagulls.⁵¹

7
8 It continues with a response:

9
10 Unfortunately along with the Birds go some few Tarzans or Men Fridays whose
11 origins are obscure, and who are being hopefully wished on to Mauritius etc.
12 When this has been done, I agree we must be very tough.⁵²

13
14 Many Chagossians have expressed a desire to return to their homes ever since
15 then, and that wish remains unfulfilled. The forcible removal by the United Kingdom
16 has been followed by a continuing denial of their right to return, and that continues
17 even after last year's Advisory Opinion.

18
19 In the decades after the purported detachment, there has been sustained criticism
20 directed at the UK, from Mauritius and around the world, including at the UN. As
21 early as December 1966 the General Assembly adopted resolution 2232. That
22 resolution reiterated that:

23
24 any attempt aimed at the partial or total disruption of the national unity and the
25 territorial integrity of colonial Territories ... is incompatible with the purposes
26 and principles of the Charter of the United Nations and ... resolution 1514
27 (XV).⁵³

28
29 Over the intervening 50 years, five decades of international condemnation, you will
30 find at figure 12 of tab 12 a list of all the resolutions condemning what has happened
31 – from the African Union, before that the OAU, the non-Aligned Movement, the
32 Group of 77 and China, the Africa-South America Summit and the Africa, Caribbean
33 and Pacific Group of States.⁵⁴

34
35 Mr President, that brings me to the circumstances that led to us to being before you
36 today. In April 2010, the British Government purported to create a new “marine
37 protected area” around the Chagos Archipelago, spanning some 640,000 square
38 kilometres of Indian Ocean, on which there would be no activity and no right for
39 anyone to return. Mauritius learned about the “MPA” from a newspaper article. In
40 December 2010, it began proceedings under UNCLOS, seeking declarations on two
41 points: first, that the UK had no right to create the MPA because it was not a coastal

⁵¹ *Ibid.*, para. 3.103 (emphasis in the original).

⁵² *Ibid.*

⁵³ United Nations General Assembly, resolution 2232 (XXI), *Question of American Samoa, Antigua, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Cocos (Keeling) Islands, Dominica, Gilbert and Ellice Islands, Grenada, Guam, Mauritius, Montserrat, New Hebrides, Niue, Pitcairn, St. Helena, St. Kitts-Nevis-Anguilla, St. Lucia, St. Vincent, Seychelles, Solomon Islands, Tokelau Islands, Turks and Caicos Islands and the United States Virgin Islands* (19 December 1967), para. 4. Judges' Folder, Tab 3.

⁵⁴ Written Statement of Mauritius, ICJ, para. 4.42 *et seq.* The Africa, Caribbean and Pacific Group of States is now known as the Organisation of African, Caribbean and Pacific States (OACPS).

1 State; and, second, that the MPA was fundamentally incompatible with the rights and
2 obligations provided for by the Convention.

3
4 Unanimously, the Annex VII tribunal ruled that the MPA was indeed illegal, and that
5 its creation violated numerous provisions of the 1982 Convention. By a narrow
6 majority, the Annex VII tribunal declined to exercise jurisdiction in relation to the first
7 request. It made no findings on the question of who was the coastal State. But, two
8 of the five arbitrators, ITLOS Judges Kateka and Wolfrum, concluded that the
9 majority had fallen into error, that the tribunal could and should have concluded that
10 under the applicable law of self-determination and decolonization, Mauritius was
11 indeed “the coastal State” within the meaning of the Convention, so that the UK had
12 no right to create an MPA.⁵⁵ They made clear that their view was limited to the
13 exercise of jurisdiction in a case concerning decolonization: it went no further than
14 that. The majority expressed no view on the merits of this question. The fact is that
15 no other international judge, court or tribunal has ever expressed any disagreement
16 with the views of Judges Kateka and Wolfrum. Their Dissenting Opinion is at tab 4 of
17 your folders.

18
19 But let me be clear, as Ambassador Koonjul said: Mauritius is not inviting the Special
20 Chamber to revisit the matter or to express any views on the conclusion of the
21 majority; nor are we asking you to express any views on the questions that arose in
22 *Ukraine v. Russia*, which is entirely distinguishable from this case because, as I said,
23 it was not about decolonization, and because there was no prior judicial
24 determination of the underlying issues. There is therefore no need for you at all to
25 reconsider the Annex VII tribunal’s Award: the Advisory Opinion is an intervening
26 legal fact; it postdates that Award, and it has definitively identified and applied the
27 relevant rules of international law, and concluded that Chagos is an integral part of
28 the territory of Mauritius, and only Mauritius.

29
30 The ICJ Advisory Opinion could be said to have its roots in the joint opinion of
31 Judges Kateka and Wolfrum, which offered clear support for Mauritius’ position on
32 self-determination, decolonization and territorial integrity. Two judges of ITLOS – a
33 body whose history is steeped in the law and practice of decolonization – catalysed
34 the inclusion of an item on the agenda of the 71st session of the UN General
35 Assembly in 2017, under the heading “Promotion of justice and international law”.
36 Agenda item 87 was titled “Request for an advisory opinion of the International Court
37 of Justice on the legal consequences of the separation of the Chagos Archipelago
38 from Mauritius in 1965.”⁵⁶ The General Assembly debated the item on 22 June 2017,
39 and it adopted resolution 71/292, which you will find at tab 5 of your folders. One of
40 the very few States to vote against the resolution was the Maldives, which, as I have
41 said, is a curious act indeed for a State that claims to be so deeply committed to
42 decolonization. The resolution referred two questions to the ICJ: first,
43

⁵⁵ *Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom)*, PCA Case No. 2011-03, Dissenting and Concurring Opinion (18 March 2015), paras. 92-94. Judges’ Folder, Tab 4.

⁵⁶ United Nations General Assembly, *Agenda of the seventy-first session of the General Assembly: Adopted by the General Assembly at its 2nd plenary meeting, on 16 September 2016, A/71/251* (16 September 2016). Judges’ Folder, Tab 5.

1 was the process of decolonization of Mauritius lawfully completed when
2 Mauritius was granted independence in 1968, following the separation of the
3 Chagos Archipelago from Mauritius and having regard to international law...?
4

5 And secondly:
6

7 What are the consequences under international law, including obligations
8 reflected in the above-mentioned resolutions, arising from the continued
9 administration by the United Kingdom of Great Britain and Northern Ireland of
10 the Chagos Archipelago, including with respect to the inability of Mauritius to
11 implement a programme for the resettlement on the Chagos Archipelago of its
12 nationals, in particular those of Chagossian origin?⁵⁷
13

14 Thirty-one UN Member States, as well as the African Union speaking on behalf of
15 the entire continent – 55 African States - filed written statements with the
16 International Court. The UN Secretariat furnished the Court with a dossier of 6,150
17 pages, “documents likely to throw light upon” the General Assembly’s two
18 questions.⁵⁸ In September 2018 the Court heard oral arguments from 22 UN
19 Member States and the African Union. On 25 February 2019, the Court delivered its
20 Advisory Opinion. Its conclusions were absolutely crystal clear. Not a single judge –
21 not one – dissented from the substance of the findings of the Court. Judge
22 Donoghue declined to address the merits, but for reasons entirely related to
23 jurisdiction; he did not dispute the findings on the merits. You will find the Advisory
24 Opinion at tab 6 in your Judges’ folder.
25

26 The Court unanimously concluded that it had jurisdiction to give the Advisory
27 Opinion.⁵⁹ By 12 votes to two it concluded that there was no reason to decline to
28 exercise its discretionary power to give the Opinion. It rejected the argument that the
29 General Assembly’s questions raised complex and disputed factual issues which
30 were not suitable for determination in advisory proceedings.⁶⁰ It rejected the
31 argument that an Advisory Opinion would not assist the General Assembly.⁶¹ It
32 rejected the argument that the Advisory Opinion “would reopen the findings of the
33 [Annex VII] arbitral tribunal”⁶² as the principle of *res judicata*, it concluded, did not
34 preclude it from proceeding, and the issues determined by the UNCLOS Annex VII
35 arbitral tribunal were “not the same as those before the Court”.⁶³ And, most
36 significantly for our purposes, it rejected the argument, led by the United Kingdom –
37 and which you have heard repeated *ad nauseam* by the Maldives – that, “there is a
38 bilateral dispute between Mauritius and the United Kingdom regarding sovereignty
39 over the Chagos Archipelago and that this dispute is at the core of the advisory
40 proceedings.”⁶⁴ No, said the Court: the Opinion requested was “on the matter of

⁵⁷ United Nations General Assembly, resolution 71/292, *Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965* (22 June 2017).

⁵⁸ See Introductory Note, List of Documents and Parts I - III (Documents received from the Secretariat of the United Nations) (30 November 2017), available at: <https://www.icj-cij.org/en/case/169/request-advisory-opinion> (last accessed 20 September 2020).

⁵⁹ *Advisory Opinion on the Chagos Archipelago*, paras. 59, 62.

⁶⁰ *Ibid.*, para. 69 (Australia, Israel and the United Kingdom).

⁶¹ *Ibid.*, para. 75 (Australia and the United States).

⁶² *Ibid.*, para. 79 (Australia, France, the UK and the US).

⁶³ *Ibid.*, para. 81.

⁶⁴ *Ibid.*, para. 83 (the UK, Australia, Chile, Israel, France and the United States).

1 decolonization which is of particular concern to the United Nations”, and the issues
2 raised by the request were, as it put it, “located in the broader frame of reference of
3 decolonization, including the General Assembly’s role therein, from which those
4 issues are inseparable”.⁶⁵ In other words, on this last point, the Court recognized, as
5 Mauritius, the African Union and virtually every State that had participated had
6 argued, that once the matter of decolonization is resolved, any issues about
7 territorial sovereignty simply melt away. Even the United Kingdom recognized that
8 reality. It accepted that if the Court was able to answer the General Assembly’s
9 questions, it would, in effect and *de facto*, be making a determination on sovereignty
10 over the Chagos Archipelago. This is because the matter of sovereignty is
11 inextricably embedded in the issue of decolonization. Once decolonization is
12 resolved, the other issue just disappears. In its written statement to the Court, the
13 United Kingdom recognized this:

14
15 If the current Request could be answered without *de facto* determining the
16 longstanding bilateral dispute over sovereignty and related matters, the United
17 Kingdom could and would have no objection. However, this does not appear
18 to be possible (or intended).⁶⁶
19

20 So the Court did answer the Request, and it did “*de facto* determine” that the United
21 Kingdom claim was, as the United Kingdom expected, entirely without merit. The
22 Court engaged in a detailed and thorough examination of the historical and legal
23 record. Thousands of pages of contemporaneous documents, put before it by
24 participating States as well and the UN Secretariat, legal pleadings from nearly three
25 dozen countries, and more if you include the African Union, the Court was nothing if
26 not thorough. The judges affirmed that “[i]t is for the Court to state the law applicable
27 to the factual situation”.⁶⁷ That is what it did: it gave the right to self-determination
28 centre stage, the foundation of the law of decolonization. It is “a fundamental human
29 right” that “has a broad ... application”, the Court stated.⁶⁸ And it made clear that one
30 key aspect of the right of self-determination, in assessing whether the decolonization
31 of Mauritius had been completed, was the matter of territorial integrity and whether
32 that had been maintained. The Court emphasized that resolution 1514 (XV) provides
33 that – you can see it now on the screen, figures 14 and 15 of your folder at tab 12 -
34

35 the right to self-determination of the people concerned is defined by reference
36 to the entirety of a non-self-governing territory Both State practice and
37 *opinio juris* at the relevant time confirm the customary law character of the right
38 to territorial integrity of a non-self-governing territory as a corollary of the right
39 to self-determination. No example has been brought to the attention of the
40 Court in which, following the adoption of resolution 1514 (XV), the General
41 Assembly or any other organ of the United Nations has considered as lawful
42 the detachment by the administering Power of part of a non-self-governing
43 territory, for the purpose of maintaining it under its colonial rule. States have
44 consistently emphasized that respect for the territorial integrity of a non-self-

⁶⁵ *Ibid.*, para. 88.

⁶⁶ Written Statement of the United Kingdom of Great Britain and Northern Ireland (15 February 2018), *Advisory Opinion on the Chagos Archipelago*, para. 7.15.

⁶⁷ *Advisory Opinion on the Chagos Archipelago*, para. 137.

⁶⁸ *Ibid.*, para. 144.

1 governing territory is a key element of the exercise of the right to self-
2 determination under international law.⁶⁹

3
4 You did not hear a word from our friends about that passage in the Advisory Opinion;
5 they just would prefer to ignore it. It was a key element of the Court's approach,
6 which then turned to the application of the law to the facts. A first and decisive
7 question was whether the Chagos Archipelago was, in 1965, an integral part of
8 Mauritius – figure 15 at tab 12. Yes, the Court concluded, without ambiguity or
9 dissent: “At the time of its detachment from Mauritius in 1965, the Chagos
10 Archipelago was clearly an integral part of that non-self-governing territory.”
11 Mauritius included Chagos, which was at that time “a colony, under the authority of
12 the United Kingdom.”⁷⁰

13
14 The Court then turned to the question of whether the people of Mauritius had given
15 their consent to the detachment of a part of their territory. The Court concluded,
16 without ambiguity, that they did not. It was, the Court found,

17
18 not possible to talk of an international agreement, when one of the parties to
19 it, Mauritius, which is said to have ceded the territory to the United Kingdom,
20 was under the authority of the latter.⁷¹

21
22 From this it followed that “heightened scrutiny should be given to the issue of
23 consent in a situation where a part of a non-self-governing territory is separated to
24 create a new colony.”

25
26 The Court then engaged in heightened scrutiny. It reviewed the contemporaneous
27 evidence from the time, the internal papers and documents – some of which I have
28 taken you to. It “reviewed the circumstances in which the Council of Ministers of the
29 colony of Mauritius agreed in principle to the detachment of the Chagos
30 Archipelago”. What did the International Court of Justice conclude? Without dissent,
31 “[T]his detachment was not based on the free and genuine expression of the will of
32 the people concerned.”⁷² That is a finding of law and fact by the principal judicial
33 organ of the United Nations.

34
35 So the Court found that the detachment was unlawful in 1965, and continued to be
36 unlawful in 1968, and at all times thereafter. The *dispositif* reads:

37
38 As a result of the Chagos Archipelago's unlawful detachment and its
39 incorporation into a new colony, known as the BIOT, the process of
40 decolonization of Mauritius was not lawfully completed when Mauritius
41 acceded to independence in 1968.⁷³

42
43 Mr President, Members of the Special Chamber, there is here not a hint of any
44 ambiguity whatsoever. There is no dissent on the substance, and it is simply not
45 possible to read the Advisory Opinion in any other way than to conclude that the
46 purported detachment of the Chagos Archipelago was unlawful and without legal

⁶⁹ *Ibid.*, para. 160.

⁷⁰ *Ibid.*, para. 172.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*, para. 174.

1 effect on the territorial integrity of Mauritius. It follows from this that the Chagos
2 Archipelago was part of Mauritius in 1965, in 1968, and at all times thereafter,
3 including, for your purposes, today. It follows from this, as the Court concluded, that
4 the United Kingdom is in unlawful occupation of the territory, as it has been since
5 8 November 1965. Mr Reichler will take you to the text of the Court's Opinion on this
6 – again, something which the Maldives failed to do in its rather selective approach to
7 the Advisory Opinion, an Opinion which we say deserves to be treated with
8 considerable respect.

9
10 I turn to the second question addressed by the Court, the consequences under
11 international law arising from the continued administration by the United Kingdom of
12 Chagos. On this the Court made three findings that we say are absolutely central to
13 this case. You will find this material at figure 17 of tab 12.

14
15 First, the Court declared that because

16
17 the decolonization of Mauritius was not conducted in a manner consistent with
18 the right of peoples to self-determination, it follows that the United Kingdom's
19 continued administration of the Chagos Archipelago constitutes a wrongful act
20 entailing the international responsibility of that State.

21
22 And the Court went further, stating that the United Kingdom's illegal administration
23 "is an unlawful act of a continuing character".⁷⁴ It is plain from this that the Court
24 concluded that the purported detachment of the Archipelago was without legal effect
25 on the territorial integrity of Mauritius *ab initio*. It was unlawful in 1965, and at no
26 point since 1965 has that unlawfulness disappeared – not a single dissent in the
27 Opinion to that view.

28
29 Second, the Court declared that it followed from its conclusions that

30
31 the United Kingdom is under an obligation to bring an end to its administration
32 of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius
33 to complete the decolonization of its territory in a manner consistent with the
34 right of peoples to self-determination.⁷⁵

35
36 You will note, Mr President – and let us go slowly through this – that the Court used
37 the present tense. It did not refer to the obligation as one that was limited to a past
38 moment; it spoke of "enabling Mauritius to complete the decolonization of its
39 territory". "Its territory" encompasses the Chagos Archipelago. It is part of the
40 "territorial integrity" of Mauritius, not of the United Kingdom, not of any other State,
41 the Court has stated – again, without any dissent on the merits. You will note that the
42 Court did not say that, having ended its administration, the United Kingdom was
43 under an obligation to cede back the territory it had taken. The only reasonable
44 reading of the *dispositif* is that Chagos remains today, and has always been, a part
45 of the territory of Mauritius, and that what is needed is only an end to British
46 "administration" and the start of Mauritian "administration". The territory, its territory,
47 is part of Mauritius.

48

⁷⁴ *Ibid.*, para. 177.

⁷⁵ *Ibid.*, para. 178.

1 And third, the Court found that the right to self-determination is an obligation *erga*
2 *omnes*, and because of this

3
4 all States have a legal interest in protecting that right” and “[e]very State has
5 the duty to promote ... the principle of ... self-determination of peoples ... and
6 to render assistance to the United Nations in carrying out the responsibility
7 entrusted to it by the Charter regarding the implementation of the principle.⁷⁶
8

9 Mr President, “all States” includes the Maldives. By making these preliminary
10 objections, the Maldives is manifestly failing in its duty to promote the self-
11 determination of the people of Mauritius. It is wilfully failing to respect the territorial
12 integrity of Mauritius. This is deeply regrettable. Professor Klein will have more to
13 say on the consequences for this Special Chamber of what Maldives is trying to do.
14 Again, across more than four hours of statements on Tuesday, you heard not a word
15 about any of this material.
16

17 With the authoritative, definitive and unambiguous Advisory Opinion handed down by
18 the Court, the legal status of the Chagos Archipelago admits of no ambiguity
19 whatsoever. It is a part of the territory of Mauritius. Period. And as a part of the
20 territory of Mauritius, to Mauritius and Mauritius alone, falls the responsibility of, and
21 the right to, administration, which includes the delimitation of the maritime
22 boundaries pertaining to the entirety of its territory, including the Chagos
23 Archipelago. As they say, the land dominates the sea. Mauritius is the coastal State
24 in respect of the Chagos Archipelago, for the purposes of articles 74 and 83 of the
25 Convention. It is the only coastal State. As noted, the United Kingdom has no more
26 right to delimit the maritime boundary between Mauritius and the Maldives than
27 would South Africa, back after 1971, to seek to delimit the maritime boundary
28 between Namibia and Angola.⁷⁷
29

30 The Court’s Advisory Opinion is, of course, not the end of the story. Three months
31 later, in May, the General Assembly adopted resolution 73/295.⁷⁸ It did so by an
32 overwhelming majority, with 116 in favour, just six against. A copy of that resolution
33 is at tab 7 of your folders. Somehow, the United Kingdom was joined by the
34 Maldives, in circumstances that evidently raise questions beyond any of our
35 mandates; but it may be that you, like us, noted Professor Akhavan’s closing words
36 on Tuesday, his expression of fear of being “used as a pawn in someone else’s
37 chess game”.⁷⁹
38

39 After the vote, the Permanent Representative of the Maldives told the General
40 Assembly: “We fully respect the ICJ Advisory Opinion.”⁸⁰ Really? So what on earth

⁷⁶ *Ibid.*, para. 180.

⁷⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, ICJ Reports 1971*, p. 16.

⁷⁸ UNGA Res. 73/295, (22 May 2019).

⁷⁹ ITLOS/PV.20/C28/2 (unchecked), p. 33, line 20 (Professor Akhavan).

⁸⁰ See:

http://maldivesmission.com/statements/statement_by_the_maldives_at_the_general_assembly_plenary_meeting_on_advisory_opinion_of_the_international_court_of_justice_on_the_legal_consequences_of_the_separation_of_the_chagos_archipelago_from (last accessed 30 August 2020). See also: <https://www.un.org/press/en/2019/ga12146.doc.htm> (last accessed 20 September 2020).

1 are they doing here? Perhaps the respect is not so full – partial respect. The
2 representative continued that it prejudged 2010 submission by the Maldives to the
3 Commission on the Limits of the Continental Shelf, and “does not provide clarity”.
4 Really? No clarity? Let’s take a quick look at resolution 73/295, yet another thing the
5 Maldives simply failed to take you to. You can see it on your screen. This is figure 19
6 of tab 12.

7
8 The General Assembly welcomed and affirmed the findings of the Court. It confirmed
9 that “[t]he Chagos Archipelago forms an integral part of the territory of Mauritius.”⁸¹
10 Again you will note the use of the word “forms”, in the present tense, not “formed”, in
11 the past tense, or “will form”, in the future tense. The words are crystal clear. The
12 Assembly demanded that the UK

13
14 withdraw its colonial administration from the Chagos Archipelago
15 unconditionally within a period of no more than six months ... thereby enabling
16 Mauritius to complete the decolonization of its territory as rapidly as possible.

17
18 In other words, the administration must end by November 2019 - and to “pose no
19 impediment” to “the resettlement of Mauritian nationals ... in the Chagos
20 Archipelago.”⁸² We ask the question: where is the lack of clarity there? There is no
21 requirement, again, to see its title, transfer sovereignty, because all this is totally
22 unnecessary: sovereignty inevitably pertains to the State of which the territory is an
23 integral part. The Assembly called on all Member States to “cooperate with the
24 United Nations to ensure the completion of the decolonization of Mauritius as rapidly
25 as possible”. That looks pretty clear to us. As a matter of international law, the
26 Maldives is under an obligation to cooperate.

27
28 The General Assembly also addressed the obligations of other entities, the UN and
29 its Specialized Agencies, and, in the resolution, all other international, regional and
30 intergovernmental organizations, including those established by treaty. We would
31 submit that the International Tribunal for the Law of the Sea is one such
32 organization. It too is asked to do that which is laid out at paragraphs 6 and 7 of the
33 resolution, namely:

34
35 to recognize that the Chagos Archipelago forms an integral part of the territory
36 of Mauritius, to support the decolonization of Mauritius as rapidly as possible,
37 and to refrain from impeding that process by recognizing, or giving effect to
38 any measure taken by or on behalf of, the ‘British Indian Ocean Territory’.⁸³

39
40 On Tuesday we heard nothing from the Maldives to explain its view as regards the
41 ambiguity of those words. They didn’t tell us why they believe that the Special
42 Chamber and ITLOS should not be required to – or should not – “recognize that the
43 Chagos Archipelago forms an integral part of the territory of Mauritius”. Perhaps they
44 will tell us on Saturday. Nor did the Agent or Counsel explain how their submissions
45 could be said to be supportive of the completion of the decolonization of Mauritius.
46 Again, we look forward to hearing that on Saturday.

47

⁸¹ United Nations General Assembly, resolution 73/295, para. 2(b).

⁸² *Ibid.*, paras. 3 & 4.

⁸³ *Ibid.*, paras. 6 & 7.

1 If we go back to 1971 and the Court's Advisory Opinion on Namibia, was there any
2 doubt, any lack of clarity, as to the rights of South Africa in respect of the territory of
3 Namibia? There was none. Could South Africa, which continued to occupy the
4 territory, negotiate Namibia's boundaries with its neighbours? Of course it could not.
5 Could South Africa negotiate the Law of the Sea Convention on behalf of Namibia?
6 Of course it could not, and it did not. Those negotiations were conducted by the UN
7 Council for Namibia, on behalf of Namibia. Was the Law of the Sea Convention
8 signed by South Africa? It was, on 5 December 1984. Was it signed in respect of the
9 territory of Namibia that it continued to occupy unlawfully? No, it was not because
10 two years earlier, on 10 December 1982, the Convention was signed for Namibia by
11 the UN Council for Namibia.⁸⁴

12
13 Following the adoption of resolution 73/295, and in application of the ICJ Advisory
14 Opinion, the practice of the United Nations has conformed to its requirements. In his
15 report to the General Assembly on the implementation of resolution 73/295, the UN
16 Secretary-General noted a change in the "designation of the Chagos Archipelago ...
17 on the maps produced by the Secretariat".⁸⁵ Earlier UN maps (this is from figure 22
18 of tab 12) depicting the Chagos Archipelago contained an accompanying footnote,
19 which stated - as you will see on the screen - that "this appears without prejudice to
20 the question of sovereignty." Here is the map from June 2018, a year before the
21 International Court's determination and the General Assembly resolution – you can
22 see the footnote next to the Chagos Archipelago – the two stars, Chagos
23 Archipelago, Diego Garcia – and it states, as appears on the map "without prejudice
24 to the question of sovereignty".⁸⁶ Now let us look at the new UN map issued in
25 February 2020, where the Chagos Archipelago is depicted, as it must be, as part of
26 the territory of Mauritius.⁸⁷ The two stars are gone; the accompanying words have
27 gone, they have been removed; and instead, the words have been replaced with the
28 following designation: "Chagos Archipelago (Mauri.)", Mauritius.

29
30 In the coming months and years all the Specialized Agencies and other bodies are
31 expected to continue to take steps, as they are doing, to implement the conclusions
32 of the ICJ and the decisions of the General Assembly.

33
34 Mr President, the findings of the Court have been affirmed by the subsequent
35 practice of the UN General Assembly, the Secretariat, the vast majority of its
36 Member States and several Specialized Agencies. The response is reflective of the
37 crystal clarity of the matter; further confirmation, although none is needed, of the
38 *erga omnes* obligation to respect the territorial integrity of Mauritius. In proceeding to
39 delimit the overlapping maritime zones of Mauritius and the Maldives, the
40 International Tribunal for the Law of the Sea is asked to do no more than respect the
41 territorial integrity of Mauritius, as confirmed by the Court. The Court has stated what
42 the law is, and it has applied the law to the facts. A Special Chamber of ITLOS too is

⁸⁴ See UNCLOS, article 305 (1)(b).

⁸⁵ United Nations General Assembly, Seventy Fourth Session, Item 86 of the Agenda, Advisory Opinion of the International Court of Justice on the separation of the Chagos Archipelago from Mauritius in 1965, Report of the Secretary General, UN doc. A/74/834 (18 May 2020), para. 6.

⁸⁶ United Nations, *The World* (June 2018), available at:
<https://digitallibrary.un.org/record/3810838?ln=en> (last accessed 20 September 2020).

⁸⁷ United Nations, *The World* (February 2020), available at:
<https://www.un.org/Depts/Cartographic/map/profile/world.pdf> (last accessed 20 September 2020).

1 required to apply that same law, under article 293 of the 1982 Convention. For it to
2 apply that law and then reach a different conclusion from the International Court, or
3 no conclusion, as the Maldives wishes, would sow the seeds of discontent. It would
4 mean turning a blind eye to the continued colonization of Mauritius. It would mean
5 perpetuating an administration that should have ended last November. It would
6 mean failure to allow Mauritius to enjoy its territorial integrity. It would mean
7 divergence from the International Court of Justice. There is no way around that.
8 Legal harmony would be replaced by legal discord.

9
10 That raises some obvious questions. Is ITLOS, an institution created in the aftermath
11 of the Court's disastrous 1966 judgment, and itself existing as an expression of the
12 world's commitment to decolonization, really going to accede to the arguments of the
13 Maldives? Is it really imaginable that a special chamber of ITLOS, applying the law
14 which the drafters of UNCLOS directed it to apply, could, as Judge Jessup put it,
15 stop at the threshold?

16
17 The legal status of Chagos has been definitively settled by the principal judicial
18 organ of the United Nations. Thirteen of the Court's judges supported the conclusion
19 explicitly. A fourteenth dissented only on the matter of jurisdiction, not on the merits.
20 A fifteenth, the author of *The Creation of States Under International Law*, could not
21 sit on the case because he was conflicted. Mr President, 19 international judges and
22 arbitrators have now had an opportunity to consider the question of decolonization,
23 territorial integrity and Mauritius. Fifteen of them – including a majority of the ITLOS
24 judges who have expressed a view on the matter – have concluded that the Chagos
25 Archipelago was, is and has always been a part of the territory of Mauritius. Not a
26 single judge or arbitrator out of the 19 – not at the ICJ, not at ITLOS, not anywhere
27 else – has reached a different conclusion – not one judge.

28
29 In its written and oral pleadings, the Maldives has offered a selective and partial
30 account of history, of the facts, of the ICJ Advisory Opinion and of the UN General
31 Assembly resolutions. To reach the conclusion it seeks – that ITLOS does not have
32 jurisdiction to delimit the maritime boundaries of Mauritius and Maldives – would
33 undermine and frustrate the decolonization of Mauritius. It would amount to a
34 decision that the Court got the law of self-determination wrong, or that its findings
35 can be ignored. It would open the door to an unlawful administering power continuing
36 to claim that the Chagos Archipelago is not a part of the territory of Mauritius, or that
37 Mauritius is not entitled to delimit its maritime boundaries in respect of a part of its
38 territory, namely the Chagos Archipelago. The Court's judgment in 1966 in South
39 West Africa offers a salutary reminder of the consequences of what happens when
40 an international court embraces the perpetuation of unlawful colonial
41 administration.⁸⁸

42
43 Mr President, Members of the Special Chamber, that concludes my presentation.
44 I thank you for your kind attention. It may be that this is a good moment for a well-
45 deserved coffee break, after which you may wish to invite Mr Reichler to beam in
46 from Washington DC to address the first two of the Maldives' preliminary objections.

47
48 I thank you very much for your kind attention.

⁸⁸ *South West Africa, Second Phase, Judgment, ICJ Reports 1966*, p. 6.

1 **THE PRESIDENT OF THE SPECIAL CHAMBER:** Thank you, Mr Sands. At this
2 stage the Special Chamber will withdraw for a break of thirty minutes. We will
3 continue the hearing at 4.05 – five past four.

4
5

(Break)