INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

2020

Public sitting

held on Tuesday, 13 October 2020, at 4 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

Present:	President	Jin-Hyun Paik
	Judges	José Luís Jesus
		Stanislaw Pawlak
		Shunji Yanai
		Boualem Bouguetaia
		Tomas Heidar
		Neeru Chadha
	Judges *ad hoc*	Bernard H. Oxman
		Nicolaas Schrijver
	Registrar	Ximena Hinrichs Oyarce

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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

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

THE PRESIDENT OF THE SPECIAL CHAMBER: I understand that Mr Boyle is ready to start his oral pleading. May I invite Mr Boyle, please.

MR BOYLE: Mr President, distinguished Members of the Special Chamber, I am especially honoured to appear before you today as Counsel for the Republic of Maldives.

It goes without saying that this is an important case because it raises difficult questions concerning the relationship between compulsory jurisdiction under Part XV of UNCLOS and disputes over territorial sovereignty. As Professor Akhavan has explained, it is the Maldives' contention that this case necessarily involves a sovereignty dispute between the United Kingdom and Mauritius.

It is also our contention that this sovereignty dispute has not been resolved either by the Advisory Opinion of the ICJ or by the UN General Assembly resolution adopted in 2019, and for that reason we argue that the Special Chamber has no jurisdiction to determine the merits of Mauritius's maritime boundary case because in order to do so it would, inter alia, necessarily have to give a ruling on territorial sovereignty over the Chagos Archipelago.

My speech today will address two advisory opinions of the ICJ which Mauritius has relied on in its written pleadings. These are the Namibia and the Western Sahara Advisory Opinions. According to Mauritius, both of these Opinions support its position that, in the case of the Chagos Archipelago, the ICJ's Advisory Opinion on decolonization had the result of resolving the bilateral sovereignty dispute between the United Kingdom and Mauritius. The Maldives disagrees. In its view, neither of these Advisory Opinions supports any attempt to read an incidental finding on sovereignty into the ICJ's Advisory Opinion.

Mr President, Members of the Chamber, let me turn first to the Namibia Advisory Opinion. Mauritius claims that, according to the ICJ, the United Kingdom is in a position no different to South Africa, in that its continued presence in the Chagos Archipelago is illegal and, as a result, Mauritius must therefore possess sovereignty over the Chagos Archipelago, so drawing a direct comparison between the UK's current position and South Africa's position in Namibia in the 1970s.

This is not the first time that Mauritius has invited an international court to liken the United Kingdom's administration to South Africa's illegal occupation of Namibia. But just as its previous attempts to draw this comparison failed, so should this one.

In the ICJ advisory proceedings, Mauritius, at numerous points, asked the Court to draw a comparison between South West Africa and the Chagos Archipelago.[1] It specifically relied on passages from the Namibia Advisory Opinion that referred to South Africa as an illegal occupier of South West Africa, inviting the Court to find, for

[1] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion,* Written Statement of Mauritius, 1 March 2018, paras 6.5, 7.6, 7.11-7.12, 7.65 (Judges' Folder, Tab 24); *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, paras 4.106, 4.142 (Judges' Folder, Tab 25).

example, that all States had an obligation to recognize the United Kingdom's continuing administration of the Chagos Archipelago as illegal and invalid.[2]

But Mauritius wholly failed to persuade the Court that the two situations were analogous. The Court made no comparison between the situation in the Chagos Archipelago and the former situation in South West Africa. It did not refer to the United Kingdom as an illegal occupier. It made no mention at all of the Namibia Advisory Opinion when expressing its own opinion on the legal consequences of the United Kingdom's continued occupation of the Chagos Archipelago.

Mr President, for reasons which I will explain shortly, it would be very surprising if the Court had considered the two situations to be as indistinguishable as Mauritius would have the Chamber believe. The only explanation is that the Court did not accept that there was any likeness at all.

Its failure before the ICJ has not stopped Mauritius repeating the same argument in these proceedings. In its written observations Mauritius claims 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",[3] and it goes on to claim 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."[4] Mr President, this is total nonsense.

It is yet another example of Mauritius reading into the Chagos Advisory Opinion more than is there – perhaps reading in what it would have liked to see. The Namibia Advisory Opinion is in no sense dipositive on sovereignty over South West Africa, and it has no relevance to the current status of the Chagos Archipelago either factually or legally. Allow me to identify the most obvious distinguishing features of these two cases to show that they are in no way comparable.

(a) Chagos Archipelago was ceded to the United Kingdom along with Mauritius in 1814.[5] In contrast, South West Africa was never a colony of South Africa but was instead a League of Nations mandated territory administered by South Africa under a mandate agreement of the League of Nations.

(b) South West Africa's status was defined by that agreement and by the Covenant of the League of Nations. In particular, the fundamental principle of non-annexation meant that South Africa administered the mandated territory as a "sacred trust".

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[2] See, e.g., *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 at p. 54, para. 119 (Judges' Folder, Tab 7), cited at *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. 4.142, p. 58, para. 132 (Judges' Folder, Tab 25). Also cited at *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, Written Statement of Mauritius, 1 March 2018, para. 7.11 (Judges' Folder, Tab 24).
[3] Written Observations of Mauritius, para. 1.8.
[4] Ibid., para. 3.27.
[5] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 at p. 107, para. 27 (Judges' Folder, Tab 19).

Under that relationship, South Africa never held sovereignty over the territory nor did the mandate system envisage a transfer of sovereignty.[6] It follows that, contrary to Mauritius' contention, the Namibia Advisory Opinion was concerned with sovereignty. It follows that that is an untenable position. South Africa had never claimed sovereignty over South West Africa and the case was not about sovereignty but about the obligations of a mandatory power.

(c) It was on that basis that one of the core findings of the Namibia Advisory Opinion was that, once the mandate had been lawfully terminated by the UN Security Council, South Africa had no further right to continue administering Namibia.[7] The right to administer was thereafter exercised by the United Nations Council for South West Africa.[8] That situation is very different from the British administration of the Chagos Archipelago.

(d) Moreover, unlike the Security Council resolution on South West Africa and the Advisory Opinion pertaining to Namibia, neither the International Court nor the General Assembly in the present case has referred to the United Kingdom as an illegal occupier of the Chagos Archipelago.

There is thus no legal basis for characterizing the United Kingdom as an illegal occupier and comparing it to the position of South Africa in South West Africa. It is a comparison which the International Court simply failed to make. For all of these reasons, Mauritius' attempts to assimilate the Namibia Advisory Opinion and the Chagos Advisory Opinion in order to strengthen its sovereignty claim must be dismissed as simply fallacious.

Mr President, Members of the Chamber, that brings me to the second part of my speech, to discuss the Western Sahara Advisory Opinion, which Mauritius also relies on in its written observations. But, Mr President, if the Advisory Opinion was irrelevant to the present case, the Western Sahara Opinion is positively damaging to Mauritius' claim because in this Opinion the Court once again affirmed that an opinion on decolonization is not an opinion on sovereignty.

Mauritius claims that in Western Sahara the International Court determined that it should give the opinion because the request, Mauritius says, "fundamentally raised a question of decolonization, and the matter of sovereignty was subsumed within and incidental to that question."[9] Simply put, that is also nonsense. In fact, it is exactly the opposite of what the Court actually said.

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[6] 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, I.C.J. Reports 1950*, p. 128 at p. 132; *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 at p. 28, para. 45 (Judges' Folder, Tab 7).

[7] *Legal Consequences for States of the Continued Presence of South Africa in Namibia notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16 at pp. 50 and 54, paras 105 and 118 (Judges' Folder, Tab 7).

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

[9] Written Observations of Mauritius, para. 3.5.

Both Spain and Morocco had both claimed that parts of Western Sahara formed part of their territory, so there was a territorial and sovereignty dispute between them.[10] Morocco had previously invited Spain to engage in contentious proceedings to resolve that dispute, and Spain had not consented.[11] Spain thus argued before the ICJ that Morocco's previous request for a bilateral resolution of the sovereignty dispute was substantially identical to the terms of the General Assembly's request for an advisory opinion, although the latter was explicitly directed towards questions of self-determination and decolonization.[12] Spain objected to the Court exercising advisory jurisdiction because it was concerned that an Advisory Opinion would raise issues concerning sovereignty over the Western Sahara, issues which it had not consented to have adjudicated by the Court.[13]

The Court rejected Spain's objection because it felt that rendering the opinion actually requested by the General Assembly would not resolve the bilateral dispute between Spain and Morocco or otherwise affect Spain's rights as the administering power in the Western Sahara. The Court said what you now see on screen:

> The object of the General Assembly has not been to bring before the Court, by way of a request for [an] advisory opinion, a dispute or legal controversy, in order that it may later, on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute or controversy.

The key sentence is the following:

> The object of the request is … to obtain from the Court an opinion which the General Assembly deems of assistance to it for the proper exercise of its functions concerning the decolonization of the territory.[14]

That language is crucial. It is quite clear here that the Request for an advisory opinion concerned decolonization. The Court expressly made clear that that advisory opinion on decolonization could not later be used as a basis for trying to resolve the sovereignty dispute. In the light of the Court's statement, there can be no doubt that an opinion on decolonization is not the same as, is not shorthand for, is not a roundabout way of getting, is not incidental to, an opinion on sovereignty. The two are not the same at all.

The Court confirmed that position at other points in its Opinion. It said explicitly that "the request for an opinion does not call for adjudication upon existing territorial rights or sovereignty over territory."[15] It also confirmed that the proceedings "will not affect the rights of Spain today as the administering power in the Western Sahara"[16] or "convey any implication that the present case relates to a claim of a territorial nature."[17] Mr President, Members of the Special Chamber, so much for Mauritius'

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[10] *Western Sahara, Advisory Opinion, I.C.J. Reports 1975*, p. 12 at pp. 22, 25, paras 26, 35 (Judges' Folder, Tab 8).
[11] Ibid., pp. 22-23, paras 26-27.
[12] Ibid., p. 26, para. 38.
[13] Ibid., p. 22, para. 25.
[14] Ibid., pp. 26-27, para. 39.
[15] Ibid., pp. 27-28, para. 43.
[16] Ibid., p. 27, para. 42.
[17] Ibid., pp. 27-28, para. 43.

idea that the legal question of sovereignty was, in the Western Sahara case, "subsumed within" or "incidental to" the questions posed by the General Assembly. The Court rejected that and found the exact opposite.

It took precisely the same view in the Chagos Advisory Opinion. In the Chagos proceedings, Mauritius again invited the Court to find that

> sovereignty over the Chagos Archipelago is entirely … subsumed within and determined by the question whether decolonization has or has not been lawfully completed.[18]

The Court rejected that invitation in no uncertain terms, stating that "[t]he General Assembly ha[d] not sought the Court's opinion to resolve a territorial dispute between two States",[19] and that the General Assembly's request "did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius."[20] The Court quoted and affirmed its own previous finding in the Western Sahara Opinion – the passages that I have already quoted to the Chamber, and repeat again – that the General Assembly's object in seeking an opinion on decolonization was not to submit a bilateral sovereignty dispute "in order that it may later, on the basis of the Court's opinion, exercise its powers and functions for the peaceful settlement of that dispute".[21] Therefore, the Court was entirely explicit: a request for an opinion on decolonization is not a request for an opinion on sovereignty. The two are not the same, and one does not implicate or subsume, incidentally or otherwise, the other. Once again, Mauritius is asking this Chamber to interpret the Court's Advisory Opinion in a way that was expressly disavowed by the Court itself.

Mr President, Members of the Chamber, the logic of Western Sahara and the Chagos Advisory Opinion is clear, and it does not help Mauritius. The key point is that the failure of a colonial State, whether Spain or the United Kingdom, to complete decolonization does not result in a transfer of sovereignty from the administering colonial power to the territorial sovereignty claimant, as Mauritius appears to claim. Decolonization may in the end require a transfer of sovereignty, but we are not there yet and the Chagos Advisory Opinion does not take us there.

Mr President, that happily brings me to my conclusions. Mauritius would have liked the International Court to have said various things in its Advisory Opinions. It wants the Court to have said that the United Kingdom is an illegal occupier in the same way as South Africa was in South West Africa, but the Court did not say that or anything like it.

Mauritius also wants the Court to have said that, by issuing an opinion on decolonization and self-determination, it was implicitly and incidentally giving an

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[18] *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 (Judges' Folder, Tab 25).
[19] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 at pp. 117-118, para. 86 (Judges' Folder, Tab 19).
[20] Ibid., p. 129, para. 136.
[21] Ibid., pp. 117-118, para. 86.

opinion on a sovereignty dispute, but the Court did not do that either. It refused to do so quite explicitly in the Western Sahara Advisory Opinion, making clear that it could answer questions on decolonization without implicating current-day sovereignty claims, and went further in stating that the General Assembly could not use the Court's opinion on decolonization to suggest that the sovereignty dispute had been resolved, or how it might be resolved. Again, in the Chagos Opinion the Court made clear that nothing in the General Assembly's request for an opinion required it, or even enabled it, to resolve the sovereignty dispute between Mauritius and the United Kingdom. Mr President, Members of the Chamber, for this Chamber to find otherwise would be to repudiate the ICJ's express language and intention. Once again, the Chagos Advisory Opinion does not say or do what Mauritius claims it says and does.

Professor Akhavan has already explained that the bilateral sovereignty dispute continues to exist as a matter of fact, not having been resolved by the Court's Advisory Opinion or by the General Assembly; but neither the Namibia nor the Western Sahara Advisory Opinions assist Mauritius in escaping that reality.

Professor Thouvenin will shortly explain that the survival of the United Kingdom and Mauritius sovereignty dispute is a complete answer to Mauritius' assertion that the Special Chamber can exercise jurisdiction over this maritime boundary claim. The Maldives is not required to take a position on that sovereignty dispute save to recognize that it exists.

Mr President, I would now ask that you give the floor to Professor Thouvenin, who will address the Chamber on the first and second preliminary objections of the Maldives. I thank you for listening patiently to my speech this afternoon and for making it possible for me to appear remotely.

Mr President, that concludes my speech.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Boyle. I now give the floor to Mr Jean-Marc Thouvenin to make his statement. You have the floor.

MR THOUVENIN *(Interpretation from French)***:** Thank you. Mr President, Members of the Special Chamber, it is a privilege to appear before your Special Chamber, with such prestigious composition, here in person in this wonderful room for the next 45 minutes – perhaps fewer – to present some of the arguments of the Republic of Maldives. I will speak at a pace that will allow the interpreters to work in the best possible conditions but if that is not the case, I would ask them to indicate this in some way. My presentation will focus on the first two preliminary objections of the Maldives, as was mentioned by Mr Boyle.

Mr President, if there is one fundamental principle of international law with respect to judicial settlement of disputes, it is the consent of the State to jurisdiction.[1] It follows from this inescapable requirement of consent[2] that in the absence of consent to a

[1] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, *First Phase*, *Advisory Opinion*, *I.C.J. Reports 1950*, p. 65 at p. 71.
[2] *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates* v. *Qatar)*, *Judgment of 14 July 2020*, para. 55.

tribunal settling the dispute referred to it, that tribunal has no other choice than to decline jurisdiction.

This basic principle applies, of course, if the consent of the respondent State is lacking, which is the case where the dispute that is alleged by the applicant falls outside the scope of the matters for which the tribunal has jurisdiction *ratione materiae*. However, it also applies where the proceedings brought before the tribunal involve rights and obligations of a third State which has not consented to the adjudication of its case.

It is from these very straightforward considerations that flow, quite logically, the first two preliminary objections raised by the Maldives. They are both based on something that is self-evident: in order to proceed to the maritime delimitation sought by Mauritius, it is first necessary to resolve the territorial dispute between Mauritius and the United Kingdom as to which State, the United Kingdom or Mauritius, exercises the rights of a coastal State over the Chagos Archipelago.

The Special Chamber will probably note that the Parties do not disagree on this proposition in principle. Mauritius appears to acknowledge that if it were established that the Special Chamber's decision requires it to rule on the rights and obligations of the United Kingdom, it would have to decline jurisdiction. However, according to Mauritius, its dispute with the United Kingdom has been resolved; or at any event it has no significance for the present case. Conversely, the Maldives notes that this dispute has not been resolved, as has just been explained to you, and infers from its existence that the Special Chamber should declare that it lacks jurisdiction in the present case on at least two grounds.

This lack of jurisdiction is straigthforward, first, because the Special Chamber is not empowered to exercise jurisdiction over a dispute involving the rights and obligations of a third State which does not consent to its jurisdiction. Yet, Mr President, Members of the Chamber, this is what you would be doing if you agreed to proceed with the proceedings on the merits, as you would necessarily have to rule, as a preliminary issue, on the claims of the United Kingdom.

But that is not all. The Special Chamber also lacks jurisdiction because, irrespective of the United Kingdom's absence, the Chamber cannot adjudicate on a territorial dispute that is manifestly outside its scope of jurisdiction *ratione materiae*.

This summarizes the first two preliminary objections to jurisdiction raised by the Maldives, to which I will come back in turn in greater detail.

First of all, I will address the objection relating to the fact that the United Kingdom is an indispensable third party which is not present in these proceedings.

Mr President, Members of the Special Chamber, it is well known that the relevance of the "indispensable third party" objection was enshrined by the International Court of Justice in its famous judgment of 15 June 1954 in the case of *Monetary Gold Removed from Rome in 1943*.

That case was between Italy and three respondents, France, the United Kingdom and the United States, and the issue was whether a quantity of gold belonging to Albania, which was then in the hands of the respondent governments, should be delivered by them to the United Kingdom pursuant to the judgment delivered by the International Court of Justice against Albania in the *Corfu Channel* case or instead to Italy, in reparation for damage that Italy alleged it suffered because of Albania.

The Court reformulated the question and observed that it was not

> merely called upon to say whether the gold should be delivered to Italy or to the United Kingdom. It [was] requested to determine first certain legal questions upon the solution of which depend[ed] the delivery of gold.[3]

Indeed, since Italy's request rested on the claim that Albania owed it the sums that it was asking the respondents to deliver, this request, in the words of the Court, "centr[ed] around a claim by Italy and Albania".[4]

The Court considered that in respect 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.[5]

Then referring – and I am quoting the Court once again – to the "well-established principle of international law embodied in the Court's Statute, namely, that the Court can only exercise jurisdiction over a State with its consent", the Court found that "Albania's legal interests would not only be affected by a decision, but would form the very subject-matter of the decision."[6]

The Court concluded unanimously that it could not, "without the consent of that third State, give a decision on that issue."[7]

This became the "*Monetary Gold* principle", sometimes known as the "indispensable third party" rule. Subsequently, the principle was consistently reaffirmed, specified and applied,[8] notably in the *East Timor* case, to which I shall return in detail shortly,

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[3] *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom of Great Britain and Northern Ireland and United States of America) (Preliminary Question)*, *Judgment of 15 June 1954*, *I.C.J. Reports 1954*, p. 19 at p. 31 (Judges' Folder, Tab 4).
[4] Ibid., p. 32.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] *Continental Shelf (Libyan Arab Jamahiriya/Malta), Application to Intervene*, *Judgment*, *I.C.J. Reports 1984,* p. 3 at p. 25, para. 40; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 1984*, p. 392 at p. 431, para. 88; *Frontier Dispute (Burkina Faso/Republic of Mali)*, *Judgment*, *I.C.J. Reports 1986*, p. 554 at p. 579, para. 49; *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras), Application to Intervene*, *Judgment*, *I.C.J. Reports 1990*, p. 92 at p. 114-116, paras 54-56; p. 122, para. 73; *Certain Phosphate Lands in Nauru (Nauru* v. *Australia), Preliminary Objections, Judgment, I.C.J. Reports 1992*, p. 240 at p. 259-262, paras 50-55.

as it presents striking similarities with the instant case. At this stage I will simply state that the "*Monetary Gold* principle" was unreservedly enshrined by ITLOS in its recent judgment on preliminary objections in *The M/V "Norstar" Case (Panama* v. *Italy)*. The Tribunal affirms that

> the notion of indispensable party is a well-established procedural rule in international judicial proceedings developed mainly through the decisions of the ICJ. Pursuant to this notion, where "the vital issue to be settled concerns the international responsibility of a third State" or where the legal interests of a third State would form "the very subject-matter" of the dispute, a court or tribunal cannot, without the consent of that third State, exercise jurisdiction over the dispute.[9]

This is what was said, and it was said well and clearly. There is no need to add anything on this principle because the written pleadings of the Parties reveal their congruence of views on its existence and its relevance; and yet, unlike the Maldives, which claims that this principle deprives the Special Chamber of jurisdiction in this case, Mauritius claims that it is without significance.

Of course, Mr President, the Republic of Mauritius is not asking you directly to rule on its territorial dispute with the United Kingdom relating to the Chagos Archipelago because its application relates, on the face of it, to the delimitation of the maritime areas which separate the coasts of the Maldives from those that Mauritius claims as its own.

However, Mauritius contends that it has sovereignty over the coasts of the Chagos Archipelago, sovereignty over which is also claimed – and exercised up to now – by the United Kingdom; and this contention clearly lies at the heart of its application. Indeed, it is only if Mauritius, rather than the United Kingdom, has sovereignty over the Chagos Archipelago that Mauritius can claim to be party to the delimitation of the maritime areas attached to that territory. Behind the facade, there is therefore no doubt that the case before you centres – I say "centres", as that is the word used by the Court in the *Monetary Gold* case – around the territorial dispute between Mauritius and the United Kingdom. The written observations of Mauritius on the preliminary objections nevertheless demonstrate in their own way the centrality of this dispute between Mauritius and the United Kingdom because they contain no less than 12 pages that seek to show that – I will cite the heading for those 12 pages – *(Continued in English)* "[t]he United Kingdom has no right to claim sovereignty or sovereign rights over the Chagos Archipelago".[10]

(Interpretation from French) Of course, Mr President, there is debate between the Parties as to whether or not this dispute between the United Kingdom and Mauritius currently exists, but any such debate must be settled, according to consistent case law, through "objective determination … which must turn on an examination of the facts".[11] We know very well what the facts are which constitute an objective

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[9] *M/V "Norstar" (Panama* v. *Italy), Preliminary Objections, Judgment, ITLOS Reports 2016*, p. 44 at p. 45, para. 172 (Judges' Folder, Tab 17).

[10] Written Observations of Mauritius, Chapter 2.

[11] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear*

determination of the existence of a dispute. Since the famous dictum in the *Mavrommatis Palestine Concessions* case, a dispute has been defined as "a disagreement on a point of law or fact, a conflict of legal views or of interests".[12]

It follows that for a dispute to exist – and now I'm quoting the *South West Africa* case – "it must be shown that the claim of one party is positively opposed by the other."[13]

To put it another way, in the words of the judgment on the preliminary objections in the *Alleged Violations of Sovereign Rights* case which Nicaragua brought against Colombia, a pending case, "the two sides hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations."[14]

Furthermore – and this is taken from the recent *Marshall Islands* v. *India* case – "[c]onduct subsequent to the application (or the application itself) may be relevant for various purposes, in particular to confirm the existence of a dispute."[15]

In this instance, as has already been amply demonstrated by Mr Akhavan, the statements, positions, claims and conduct of the United Kingdom and Mauritius, both before and since the filing of the Mauritian application in this case, confirm unambiguously that the two States bitterly dispute sovereignty over the Chagos Archipelago, which demonstrates the objective existence of a dispute between those two States.

These are the raw facts, which are not disputed by our opponents. How could they do so? Even so, Mauritius seeks to circumvent the "*Monetary Gold* principle" on the basis of two arguments.

Firstly, Mauritius contends that the Special Chamber should simply disregard the territorial dispute between Mauritius and the United Kingdom on the ground that, in essence, this dispute has already been resolved by the Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*.

Disarmament (Marshall Islands v. *United Kingdom)*, *Jurisdiction and Admissibility*, *Judgment*, *I.C.J. Reports 2016*, p. 270, para. 36 (Judges' Folder, Tab 14), citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, *Preliminary Objections*, *Judgment*, *I.C.J. Reports 2016*, p.3 at p. 26, para. 50 (Judges' Folder, Tab 16).

[12] *Mavrommatis Palestine Concessions*, *Judgment No. 2*, *P.C.I.J.*, *1924*, *Series A No. 2*, p. 11 (Judges' Folder, Tab 3).

[13] *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa)*, *Preliminary Objections*, *Judgment*, *I.C.J. Reports 1962*, p. 319 at p. 328 (Judges' Folder, Tab 5).

[14] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*, *Preliminary Objections*, *Judgment*, *I.C.J. Reports 2016*, p. 3 at p. 26, para. 50, citing *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, *First Phase*, *Advisory Opinion*, *I.C.J. Reports 1950*, p. 65 at p. 74.

[15] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *India), Jurisdiction and Admissibility, Judgment, I.C.J. Reports 2016*, p. 272, para. 40 (Judges' Folder, Tab 14), citing *East Timor (Portugal* v. *Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 90 at p. 100, para. 22, p. 104, para. 32 (Judges' Folder, Tab 11).

However, that is not the case. Mr Akhavan has already pointed out what this Advisory Opinion says and what it does not say. In any case, it neither seeks nor is able to settle a bilateral territorial dispute, as a judgment would do, by contrast. I would just add here that, contrary to the Mauritian argument that that Advisory Opinion makes these proceedings unprecedented, they are actually very comparable to the *East Timor* case.

In the *East Timor* case the applicant requested that the Court hold that it was not required to rule on the territorial claim of a third State to the proceedings on the ground that the issue had already been resolved by the principal organs of the United Nations. It is the same argument as that put forward here by Mauritius. The International Court of Justice dismissed this claim for reasons which, put into context, are very enlightening.

The Special Chamber will no doubt remember that, although East Timor had been a Portuguese colony since the 16th century, its status as a non-self-governing territory within the meaning of Chapter XI of the Charter of the United Nations was recognized by resolution 1542(XV) adopted on 15 December 1960 by the General Assembly of the United Nations.[16] Portugal accepted the consequence of this 14 years later, following its "Carnation Revolution". However, when Portuguese power was withdrawn from East Timor, neighbouring Indonesia occupied it militarily and annexed it.

The United Nations strongly opposed this *fait accompli* through its principal organs, the Security Council and the General Assembly.

In resolution 384 (1975), the Security Council, referring in particular to resolution 1514(XV) on the granting of independence to colonial countries and peoples, called upon the Indonesian Government to withdraw without delay all its forces from the territory[17] and urged all States and other parties concerned to cooperate with the United Nations to facilitate its decolonization.[18] It repeated this appeal in its resolution 389 (1976).[19]

The General Assembly also adopted a series of resolutions along the same lines.

In resolution 3485(XXX) of 12 December 1975, it requested

> the Government of Indonesia to desist from further violation of the territorial integrity of Portuguese Timor and to withdraw without delay its armed forces from the Territory in order to enable the people of the Territory freely to exercise their right to self-determination and independence.[20]

[16] *East Timor (Portugal* v. *Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 90 at p. 95-96, paras 11-12 (Judges' Folder, Tab 11).
[17] Security Council resolution 384 (1975) of 22 December 1975, S/RES/384, para. 2.
[18] Ibid., para. 4.
[19] Security Council resolution 389 (1976) of 22 April 1976, S/RES/389, paras 2, 5.
[20] General Assembly resolution 3485 (XXX) of 12 December 1975, A/RES/3485(XXX), paras 5, 7.

It also called upon all States "to respect the unity and territorial integrity of Portuguese Timor".

In resolution 31/53 of 1 December 1976 it rejected "the claim that East Timor has been integrated into Indonesia inasmuch as the people of the territory have not been able to exercise freely their right to self-determination and independence" and called upon "the Government of Indonesia to withdraw all its forces from the Territory".[21]

For its part, the Australian Government, or rather Australia, recognized the incorporation of East Timor into Indonesia in 1978 and then concluded a treaty with Indonesia on the maritime areas attached to the territory of East Timor. It is this conduct of Australia which was the subject of the complaint raised by Portugal before the International Court of Justice, arguing that by negotiating, concluding and applying that treaty, Australia had violated the rights of the people of East Timor to self-determination and to permanent sovereignty over its natural resources.[22]

Australia invoked the *Monetary Gold* objection, arguing that the decision sought from the Court by Portugal would inevitably require the Court to rule on the lawfulness of the conduct of a third State, namely Indonesia, in the absence of that State's consent.[23]

The Court took the view that

> the very subject-matter of the Court's decision would necessarily be a determination whether, having regard to the circumstances in which Indonesia entered and remained in East Timor, it 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.[24]

In other words, according to the Court, the Portuguese claims raised:

> a common question: whether the power to make treaties concerning the continental shelf resources of East Timor belongs to Portugal or Indonesia, and, therefore, whether Indonesia's entry into and continued presence in the Territory are lawful.[25].

In the absence of Indonesia's consent, the Court had to find that it lacked jurisdiction to entertain the Portuguese application.

The parallels that can be drawn with the main aspects of the instant case are striking, even though, of course, the conduct of the Maldives is in no way comparable to the conduct of Australia at the time; but what I would stress is that, in the same way as Mauritius is making claims before this Special Chamber with respect to the UK sovereignty claims, Portugal asserted before the International Court of Justice that it was not required to rule on the Indonesian claims to

[21] General Assembly resolution 31/53 of 1 December 1976, paras 5, 6.
[22] *East Timor (Portugal* v. *Australia)*, *Judgment*, *I.C.J. Reports 1995*, p. 90 at p. 98, para. 19 (Judges' Folder, Tab 11).
[23] Ibid., p. 100, para. 24.
[24] Ibid., p. 102, para. 28.
[25] Ibid., p. 105, para. 35.

sovereignty because, according to Portugal, these had already been rejected by the principal organs of the United Nations, the Security Council and the General Assembly. Portugal argued that their resolutions should be considered as a legal *acquis*, a legal *acquis* rejecting the Indonesian claims to East Timor as unfounded, and that it was therefore not necessary for the Court to rule on them itself. It was enough, according to the applicant, to consider that it was already established that the Indonesian claims were legally unfounded. Portugal admitted that "the Court might well need to interpret those decisions". However, it asserted that it "would not have to decide *de novo* on the content and … accordingly, [had to] take them as 'givens'".[26]

In dismissing this argument the Court was confronted with a slightly more complex question than in the instant case because not only were non-binding texts invoked, such as General Assembly recommendations, but also resolutions of the Security Council, which, as we know, may be binding when they are adopted under Chapter VII of the UN Charter. It was far from clear whether or not the resolutions concerning East Timor had been taken on that basis. However, the Court did not engage in this debate, merely noting that these resolutions did not seek to impose on States an obligation "not to recognize any authority on the part of to Indonesia over the territory of East Timor".[27] The Court concluded:

> Without prejudice to the question whether the resolutions under discussion could be binding in nature, the Court considers as a result that they cannot be regarded as "givens" which constitute a sufficient basis for determining the dispute between the Parties.[28]

Mr President, we should draw the same conclusion here, since without prejudice to the question whether it is binding in nature – which is obviously not the case – Mauritius is wrong, as we have already demonstrated, to read the Advisory Opinion of the International Court of Justice as settling the territorial dispute over the Chagos Archipelago.

The second argument advanced by Mauritius is in the same vein. Mauritius argues that the Advisory Opinion purportedly removes any plausibility from the British claims over the Chagos Archipelago,[29] which should lead the Special Chamber to dismiss them.

Yet such an approach is no more persuasive. As I have already pointed out, the existence of a dispute between two States is a purely factual question, which in no way turns on the plausibility of the opposing claims.

Moreover, the argument is all the more untenable given that it was dismissed just a few months ago by the tribunal established under Annex VII of the United Nations Convention for the Law of the Sea in the *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait*.

[26] Ibid., p. 103, para. 30.
[27] Ibid., p. 103, para. 31.
[28] Ibid., p. 104, para. 32.
[29] Written Observations of Mauritius, para. 3.31.

In that case, which is well known, Ukraine had come before the tribunal as a coastal State in relation to Crimean coasts, and had complained of Russian actions in the waters attached to that territory. Russia objected that the questions raised by Ukraine presupposed that the tribunal would first resolve the dispute between Russia and Ukraine concerning sovereignty over Crimea. Ukraine replied inter alia that the Russian claim to sovereignty over Crimea, which had already been clearly rejected by the General Assembly of the United Nations and the international community, should be considered implausible.

The arbitral tribunal, however, refused to apply any plausibility test. According to its award – and here are its key points, which you can see in English, as I do not have an official translation – I will give in English:

(Continued in English)

> The Arbitral Tribunal needs to assess the Russian Federation's claim of sovereignty to the extent necessary to determine the existence *vel non* of a dispute over land sovereignty in Crimea, as the claims submitted by Ukraine in its Notification and Statement of Claim rest on the premise that the territorial status of Crimea is settled.[30]
>
> The exercise of the Arbitral Tribunal's jurisdictional power in this regard should be limited to assessing the Russian Federation's claim of sovereignty for the sole purpose of verifying whether there exists a dispute as to which State has sovereignty over Crimea.[31]
>
> The Arbitral Tribunal is not convinced by the plausibility test as advanced by Ukraine.[32]
>
> In the view of the Arbitral Tribunal, the key question upon which it should focus is whether a dispute as to which State has sovereignty over Crimea exists.[33]

(Interpretation from French) To respond to this "key question", the Tribunal restricted itself to verifying the factual existence of the dispute, without taking the least account of the plausibility of the Russian claims, on which it refused to rule, whilst at the same time spelling out that it was neither saying nor suggesting anything about whether *(Continued in English)* "the Russian Federation's claim of sovereignty is right or wrong."[34]

(Interpretation from French) It is the same key question that is raised before the Special Chamber in the instant case, and the same reply which should be given; and that question is not whether the British claims are plausible, but solely whether they exist in fact and are in opposition to Mauritius' claims of sovereignty over the Chagos Archipelago. That is indubitably the case.

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[30] *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. 185 (Judges' Folder, Tab 21).
[31] Ibid., para. 186.
[32] Ibid., para. 187.
[33] Ibid., para. 188.
[34] Ibid., para. 178.

Mr President, these are the reasons why the Maldives maintains that the Special Chamber in this case is "requested to determine first certain legal questions upon the solution of which depends" the case brought by Mauritius[35] – that is to say, to determine the territorial dispute between the Republic of Mauritius and the United Kingdom. Were the Special Chamber to proceed thus, the United Kingdom's "legal interests would not only be affected by a decision, but would form the very subject-matter of the decision".[36] The Maldives argues that the Special Chamber cannot exercise this jurisdiction in the absence of the United Kingdom's consent and thus should decline jurisdiction to entertain Mauritius' application.

Mr President, this brings me now to the second preliminary objection of the Maldives. Here, I will be more succinct, as we are edging towards the break, because it has the same basis as the first, namely the existence of a territorial dispute between the United Kingdom and Mauritius, which would necessarily need to be resolved before the maritime delimitation sought by Mauritius could be undertaken. The Maldives argues that irrespective of the absence of the United Kingdom in this case, the Special Chamber should decline jurisdiction because it does not extend to territorial disputes.

In this respect there is no doubt that the Special Chamber has jurisdiction to entertain "any dispute" concerning the interpretation or application of the Convention. However, it is equally undeniable that it is only over such disputes that it has jurisdiction.

This does not include territorial disputes like that between Mauritius and the United Kingdom.[37] This has already been determined by the 2015 arbitral award in the *Chagos Marine Protected Area* case, where the arbitral tribunal ruled – I will cite this in English, as the French version is unavailable:

(Continued in English)

> The Parties' dispute regarding sovereignty over the Chagos Archipelago does not concern the interpretation or application of the Convention. Accordingly, the Tribunal finds itself without jurisdiction to address Mauritius' First Submission.[38]

(Interpretation from French) This finding is in no way contradicted by the Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. Not only could that

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[35] *Monetary Gold Removed from Rome in 1943 (Italy* v. *France, United Kingdom of Great Britain and Northern Ireland and United States of America) (Preliminary Question)*, *Judgment of 15 June 1954*, *I.C.J. Reports 1954*, p. 19 at p. 31 (Judges' Folder, Tab 4).
[36] Ibid., p. 32.
[37] Written Preliminary Objections of the Maldives, paras 60-61; *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, paras 193-195 (Judges' Folder, Tab 21).
[38] *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom)*, Award, 18 March 2015, p. 90, para. 221 (Judges' Folder, Tab 12).

Advisory Opinion not have resolved, or even claim to have resolved, the territorial dispute between Mauritius and the United Kingdom, but, moreover, the Court expressly underscored that its Opinion in no way impacted the *res judicata* effect of the 2015 award. The International Court of Justice expressly stated, regarding the 2015 arbitral award, that:

> the issues that were determined by the Arbitral Tribunal in the Arbitration regarding the Chagos Marine Protected Area … are not the same as those that are before the Court in these proceedings.[39]

Thus, the 2015 arbitral award, according to which the territorial dispute between Mauritius and the United Kingdom does not concern the interpretation or application of the United Nations Convention on the Law of the Sea, remains fully relevant. It possesses the "finality" of decisions with *res judicata* effect.[40] Mauritius is therefore ill-advised to request the Special Chamber to rule once again on its claim.

Mauritius cannot get around this obstacle by inviting the Special Chamber to interpret the Advisory Opinion in line with its own viewpoint, in other words as somehow resolving the territorial dispute, as that would lead the Chamber to exercise its jurisdiction over a dispute that falls outside its jurisdictional scope.

Furthermore, the arbitral tribunal set up in the *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait* has already dismissed a similar claim. That tribunal acknowledged that although, in principle, it had the power to interpret texts adopted by bodies of international organizations – these were resolutions of the General Assembly – it could not accept Ukraine's interpretation of those texts regarding the question of sovereignty over Crimea since, if it did so – I quote the tribunal – *(Continued in English)* "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."[41]

(Interpretation from French) In the same fashion, the Special Chamber today cannot interpret the Advisory Opinion of the International Court of Justice as Mauritius would wish because, if it did so, it would be ruling on a territorial dispute falling outside its jurisdiction and on the question whether Mauritius or the United Kingdom has sovereignty over the Chagos Archipelago, a question which also falls outside its jurisdiction.

Mr President, distinguished Members of the Special Chamber, this leads me to the conclusion of my oral statement. The situation brought before you is totally without precedent. The applicant State expects you to do nothing less than ride roughshod over the best established rules of international dispute settlement, reflected in consistent jurisprudence, including the jurisprudence of this Tribunal. Not only does it

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[39] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, *Advisory Opinion*, *I.C.J. Reports 2019*, p. 95 at p. 116, para. 81 (Judges' Folder, Tab 20).
[40] *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*, *I.C.J. Reports 2016*, p. 100 at p. 125, para. 58.
[41] *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. 176 (Judges' Folder, Tab 21).

ask you to rule on the rights and obligations of a third State that is not present in the proceedings but, on top of that, it calls upon you to rule on a dispute which, by its very nature, falls outside your jurisdiction *ratione materiae*. Such a deeply flawed approach cannot possibly prosper.

I would like to thank you, Mr President, distinguished Members of the Chamber, for your patient attention. Before calling Ms Salwa Habeeb to the floor, perhaps, Mr President, you might think this is the right moment for the second break of the day. In that way we could catch up with the predetermined schedule.

THE PRESIDENT OF THE SPECIAL CHAMBER: As we are now approaching 5 p.m. the Special Chamber will withdraw for a break of thirty minutes. We will continue the hearing at 5.25.

(*Break*)

THE PRESIDENT OF THE SPECIAL CHAMBER: Please be seated. I now give the floor to Ms Salwa Habeeb to make her statement. You have the floor.

MS HABEEB: Mr President, distinguished Members of the Special Chamber. I am honoured to appear before you today as a representative of the Republic of Maldives.

I will address you on the the Maldives' third preliminary objection. This concerns Mauritius' failure to satisfy the jurisdictional precondition of negotiations. The essential fact is that there have not been negotiations on delimitation of the maritime boundary between the Maldives and the Chagos Archipelago and that such negotiations cannot occur until the bilateral sovereignty dispute between the United Kingdom and Mauritius is resolved.

I will make submissions on three matters.

First, I will explain that articles 74 and 83 of UNCLOS establish 22a requirement to negotiate as a precondition to the exercise of jurisdiction by this Special Chamber. I will show why Mauritius' argument that these provisions contain no jurisdictional requirement of negotiations is not correct.

Secondly, I set out international jurisprudence on exactly what is required by way of negotiations before an international court or tribunal can exercise jurisdiction. Mauritius made no submissions on this point in its written pleadings, so the Maldives can only assume that its position is agreed. That is to be expected because the case law is clear and consistent.

Thirdly, I will explain why the precondition of negotiations has not been satisfied in this case. I explain that Mauritius' unilateral attempts to force the Maldives to agree a maritime delimitation in circumstances where the identity of the coastal State is in dispute do not satisfy the negotiation precondition.

Mauritius' claim is brought pursuant to articles 74 and 83 of UNCLOS. The text of these two provisions is nearly identical.

Article 74 states:

> The delimitation of the exclusive economic zone between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.
>
> If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV.

Article 83 differs only in that the words "exclusive economic zone" are instead the words "continental shelf".

The meaning of these provisions could not be clearer. States must attempt to "effect by agreement" their maritime boundary. They are entitled to resort to the Part XV dispute settlement procedures only "[i]f no agreement can be reached within a reasonable period of time", that is, after negotiations have been attempted, and the attempt to reach an agreement has failed.

Mauritius argues that articles 74 and 83 do not impose an obligation to negotiate prior to invoking the jurisdiction of a court or tribunal under Part XV. It says that these provisions impose a substantive obligation to negotiate. But its reasoning is wholly unpersuasive.

Mauritius claims, for example, that articles 74 and 83 must not impose any preconditions to jurisdiction because they are not located in Part XV of UNCLOS.[1] That argument is unconvincing. Mauritius has not pointed to any rule of treaty interpretation – and there is none – that says that all jurisdictional requirements must be contained in the same part of a treaty that sets out the dispute resolution procedures. In this case, the text of articles 74 and 83 is clear: States shall resort to dispute resolution under Part XV only "[i]f no agreement can be reached". These provisions spell out in plain and ordinary language the circumstances in which Part XV procedures may be invoked.

The provisions on the exclusive economic zone and continental shelf are in Parts V and VI of UNCLOS, respectively. The fact that the precondition of negotiation appears outside of but before Part XV does not help Mauritius' argument. If anything, it strengthens the Maldives' argument that the subsequent Part XV procedures are only relevant where negotiations under Parts V and VI have been first exhausted. That was the clear intention of the drafters. States Parties should not rush to adversarial litigation. They are entitled to invoke Part XV, and, in particular, compulsory procedures entailing binding decisions under Section 2, only where negotiations have failed.

Mauritius then refers to a number of cases which deal with the obligation in article 283 of UNCLOS, which is within Part XV. It claims that article 283 imposes "the procedural precondition for the submission of a dispute to a Part XV court or

[1] Written Observations of Mauritius, para. 3.53.

tribunal"[2] but it does not substantiate why there can be only a single procedural precondition to jurisdiction set out in a single term of the treaty. As it happens, article 283 is directed towards a different matter. It states in the relevant part:

> When a dispute arises between States Parties concerning the interpretation or application of this Convention, the parties … shall proceed expeditiously to an exchange of views regarding its settlement by negotiation or other peaceful means.

Clearly, article 283 concerns a different obligation. It requires States to exchange views once a dispute has arisen. It does not contain an obligation to negotiate. If it was concerned with an obligation to negotiate, as Mauritius claims, that would require that States negotiate regarding the settlement of the dispute by negotiation. That would be absurd. It is almost always the case that a dispute emerges only after the parties have first negotiated; only after one side has made a specific claim that the other side has opposed or rejected. This has not occurred in this case, as Dr Hart will set out in relation to the Maldives' fourth preliminary objection, following my presentation.

It is not surprising that other provisions of UNCLOS, unlike article 283, do impose an obligation to negotiate. In respect of delimitation of the exclusive economic zone and continental shelf, those provisions are articles 74 and 83. The sequence of these provisions and Part XV makes perfect sense.

The Maldives' view is supported by the jurisprudence of the International Court of Justice. In *Somalia* v. *Kenya*, the Court clarified that article 83 of UNCLOS,

> in providing that delimitation shall be effected by way of agreement, requires that there be negotiations conducted in good faith, but not that they should be successful.[3]

The Court specifically clarified that article 83 did not "preclude recourse to dispute settlement procedures in case agreement could not be reached."[4] In that case, Judge Bennouna confirmed that articles 74(2) and 83(2) of UNCLOS

> are indeed in the realm of negotiation as a dispute settlement procedure that must be conducted in good faith and within a reasonable time before resorting to more complex procedures and which involve third parties.[5]

This is the Maldives' view exactly: recourse to the Part XV dispute settlement procedures is permissible, provided that there have been prior negotiations conducted in good faith and that agreement could not be reached.

The second matter I address is precisely what the jurisdictional precondition of negotiations entails. The Maldives sets out the relevant jurisprudence in its first

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[2] Ibid., para. 3.52.
[3] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 3 at p. 37, para. 90 (Judges' Folder, Tab 18).
[4] Ibid., p. 38, para. 91.
[5] Ibid., p. 60 (Dissenting Opinion of Judge Bennouna).

written pleading on preliminary objections. Mauritius made no response. These can therefore be taken as agreed, and I will recite the relevant principles only briefly.

The overarching requirement under international law is that negotiations must be conducted in good faith. This was affirmed by the Special Chamber in the *Ghana/Côte d'Ivoire* case, which dealt specifically with the obligation to negotiate under article 83.[6] It has been affirmed on numerous occasions by the International Court of Justice.[7]

Conducting negotiations "in good faith" requires that the negotiations be "meaningful", according to the International Court in the *North Sea Continental Shelf* cases.[8] From the same judgment, we see that this requires States "to enter into negotiations with a view to arriving at an agreement".[9] The International Court made the same point in the *Gulf of Maine* case, referring to the "duty to negotiate with a view to reaching agreement, and to do so in good faith, with a genuine intention to achieve a positive result".[10]

Of course, none of this is to say that negotiations must be successful or that an agreement must be reached.[11] The obligation relates to the conduct of negotiations – the spirit in which they are entered into and carried out. It is not an obligation of result.

The third and final question I address is this: has the mandatory procedural requirement of meaningful negotiations, carried out in good faith and with a view to reaching agreement, been satisfied in this case? The answer, in the Maldives' submission, is that it clearly has not.

As a matter of fact, no negotiations have ever taken place concerning the delimitation of the maritime zones that are now the subject of Mauritius' claim. There is a very simple reason for this. Articles 74 and 83 of UNCLOS require delimitation over these zones to be effected by agreement "between States with opposite or adjacent coasts". Mauritius is entitled to effect this agreement by negotiating with the Maldives only if it is the relevant coastal State in respect of the Chagos Archipelago.

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[6] *Delimitation of the maritime boundary in the Atlantic Ocean (Ghana/Côte d'Ivoire), Judgment, ITLOS Reports 2017*, p. 4, para. 604.

[7] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303 at p. 424, para. 244; *Obligation to Negotiate Access to the Pacific Ocean (Bolivia* v. *Chile), Judgment, I.C.J. Reports 2018*, p. 507 at p. 538, para. 86; *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Preliminary Objections, Judgment, I.C.J. Reports 2017*, p. 3 at p. 37, para. 90 (Judges' Folder, Tab 18).

[8] *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment, I.C.J. Reports 1969*, p. 3 at pp. 46-47, para. 85 (Judges' Folder, Tab 6).

[9] Ibid.

[10] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *Judgment, I.C.J. Reports 1984*, p. 246 at p. 292, para. 87 (Judges' Folder, Tab 9). See also *Case concerning claims arising out of decisions of the Mixed Graeco-German Arbitral Tribunal set up under Article 304 in Part X of the Treaty of Versailles (Between Greece and the Federal Republic of Germany)*, 26 January 1972, RIAA XIX, p. 27 at p. 57.

[11] *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening), Judgment, I.C.J. Reports 2002*, p. 303 at p. 424, para. 244.

Mauritius' claim to be the relevant coastal State is, by its own admission, predicated on it having sovereignty over the islands. But the United Kingdom claims sovereignty over the same land territory, and the United Kingdom still administers the islands as a matter of fact. It is not a question of whether Mauritius has the better argument, or whether the United Kingdom is wrong. The fact is that there is a bilateral sovereignty dispute – a dispute as to whether Mauritius is the coastal State of the Chagos Archipelago. The Maldives cannot negotiate delimitation under such circumstances. Indeed, when Mauritius expressly invited the International Court in the *Chagos* advisory proceedings to opine that it should be entitled to carry out maritime delimitation with the Maldives,[12] the Court declined to do so. Professor Akhavan has already addressed you on this.

The Maldives has made clear its position that no meaningful negotiations can take place as long as the bilateral sovereignty dispute remains alive. As you can see from the projected text, as long ago as July 2001, the Maldives stated in a note verbale to Mauritius:

> As jurisdiction over the Chagos Archipelago is not exercised by the Government of Mauritius, the Government of Maldives feels that it would be inappropriate to initiate any discussions between the Government of Maldives and the Government of Mauritius regarding the delimitation of the boundary between the Maldives and the Chagos Archipelago.[13]

Mauritius' stance is that, if there is a precondition of negotiations, it has been fulfilled. It bases its submission on its own attempts to commence negotiations. These attempts reach as far back as 2001[14] and continued until as late as 2019, shortly after the International Court issued its Advisory Opinion and just two months before Mauritius commenced the present proceedings.[15]

But no amount of unilateral attempts by Mauritius to commence maritime delimitation negotiations can change the fact that those negotiations, as things stand today, would not be meaningful and could not achieve an agreement. In the Chagos Advisory Proceedings, even Mauritius itself asked the Court to opine only that Mauritius should be allowed to delimit a maritime boundary with the Maldives in consultation with the United Kingdom. In other words, even Mauritius recognized that it could not hold purely bilateral negotiations with the Maldives, without the participation of the United Kingdom. That is exactly the position of the Maldives before the Special Chamber.

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[12] *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 (Judges' Folder, Tab 25).

[13] 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; Judge's Folder, Tab 28).

[14] Letter No. 19057/3 from A.K. Gayan, Minister of Foreign Affairs and Regional Cooperation, Republic of Mauritius, to H.E. Mr Fathulla Jameel, Minister of Foreign Affairs, Republic of Maldives, 19 June 2001 (Written Preliminary Objections of the Maldives, Annex 24; Judges' Folder, Tab 27).

[15] 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; Judges' Folder, Tab 33).

In circumstances where Mauritius has not been determined to be the relevant coastal State and as a matter of fact does not control the Archipelago today, it would be impossible to conduct meaningful negotiations or to say that negotiations have been approached "with a view to reaching agreement" or "with a genuine intention to achieve a positive result".[16]

Mr President, distinguished Members of the Special Chamber, there are two main conclusions arising from my speech.

First, contrary to Mauritius' submissions, articles 74 and 83 do impose an obligation to negotiate. It is only if negotiation does not lead to agreement that States are entitled to have recourse to dispute settlement under Part XV, including in particular the Section 2 compulsory procedures entailing binding decisions.

Secondly, in this case, there not have been any meaningful negotiations. Indeed, there cannot be any meaningful bilateral negotiations between the Maldives and Mauritius for as long as there is a bilateral dispute between Mauritius and the United Kingdom over which of them is the proper coastal State.

On those grounds, the Maldives' third preliminary objection therefore stands and prevents the Special Chamber from exercising jurisdiction over Mauritius' claim.

I would now ask that you give the floor to Dr Hart, who will address the Chamber on the Maldives' fourth preliminary objection.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Habeeb. I now give the floor to Ms Naomi Hart, who is connected by video link, to make her statement. You have the floor, madam.

MS HART (remote)**:** Mr President, distinguished Members of the Special Chamber, it is an honour to appear before you today as Counsel for the Republic of Maldives to present the Maldives' fourth preliminary objection.

This fourth objection is that there is no "dispute" between Mauritius and the Maldives falling within this Chamber's jurisdiction. Article 288 of UNCLOS is unequivocal: it confers on the Chamber "jurisdiction over any dispute concerning the interpretation or application of this Convention". In light of this text, there must exist a dispute, and this dispute must concern "the interpretation or application" of UNCLOS.

The requirement of a dispute as an essential precondition to jurisdiction is a cornerstone of international dispute settlement, and there are compelling reasons for this. In exercising their contentious jurisdiction, international courts and tribunals must ensure that there is, in fact, a difference of views between the parties to a claim. States should not be subject to the jurisdiction of an international court or tribunal before they have had the case against them explained to them and have had

[16] *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Canada/United States of America)*, *Judgment, I.C.J. Reports 1984*, p. 246 at p. 292, para. 87 (Judges' Folder, Tab 9).

the opportunity to respond. In the words of the International Court in the *Marshall Islands* cases, a State must not be "deprived of the opportunity to react before the institution of proceedings to the claim made against its own conduct."[1] It is not enough to suppose that any difference of views may emerge over the course of proceedings; they must have crystallized prior to a claim being commenced.

Mauritius, quite rightly, doesn't dispute that as a matter of principle. Where the Parties differ is on whether it is possible for there to be a dispute between Mauritius and the Maldives on maritime delimitation, when Mauritius' own claim to be the relevant coastal State remains in dispute with a third State. Even aside from that question, they also differ on whether Mauritius has established that the Parties had positively opposed claims relating to the interpretation or application of UNCLOS prior to the institution of these proceedings.

My speech contains three parts. First, I will briefly recall the requirements for a dispute within the meaning of article 288, which are largely a matter of common ground. Secondly, I will set out the Maldives' argument that there is and can be no dispute between the Parties as to maritime delimitation for as long as Mauritius has not been conclusively established as the relevant coastal State, which has not happened to date. Thirdly, I will explain that, quite apart from Mauritius' bilateral territorial dispute with the United Kingdom, Mauritius has not established that a maritime delimitation dispute had crystallized between itself and the Maldives prior to its notification of claim. There were no positively opposed claims, advanced by one Party and affirmatively rejected by the other, before that point.

Mr President, I wish to emphasize that the argument raised in the third part of my speech is entirely free-standing from the other submissions raised on behalf of the Maldives. It is not dependent on there being an extant dispute between Mauritius and the United Kingdom. Even if Mauritius had already resolved its bilateral dispute with the United Kingdom over the Chagos Archipelago, which the Maldives does not accept, it would still need to prove that another dispute, concerning the interpretation or application of UNCLOS, had crystallized between itself and the Maldives before it instituted these proceedings. A careful examination of the evidence shows that Mauritius has not discharged this burden.

I address, first, the legal principles concerning the existence of a dispute as a prerequisite to jurisdiction. As the Annex VII tribunal held in the *South China Sea* arbitration, this is a requirement that is "well-established in international law" as a "threshold requirement for the exercise of … jurisdiction".[2] According to ITLOS in *Saint Vincent and the Grenadines* v. *Spain*, the absence of a dispute is a bar to the exercise of jurisdiction *ratione materiae*.[3]

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[1] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at p. 851, para. 43 (Judges' Folders, Tab 15).

[2] *South China Sea Arbitration (Philippines* v. *China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 148 (Judges' Folder, Tab 13).

[3] See *M/V "Louisa" (Saint Vincent and the Grenadines* v. *Kingdom of Spain)*, *Judgment, ITLOS Reports 2013*, p. 4, para. 151.

The international jurisprudence is clear that the requirement of a dispute is not satisfied simply because one party asserts that there is a dispute.[4] Rather, according to the International Court, the existence of a dispute "is a matter for objective determination"[5]. That objective determination requires the party asserting that a dispute exists to prove three matters.

First, it must show that the parties have so-called "positively opposed" claims.[6] The International Court articulated this requirement in the *South West Africa* cases, in which it stated that a dispute does not exist simply because "the interests of two parties to such a case are in conflict" in an abstract sense.[7]

The Annex VII tribunal in the *South China Sea* arbitration confirmed that "'positive opposition' between the parties" meant that "the claims of one party are affirmatively opposed and rejected by the other".[8] It stated that such positive opposition will "normally be apparent from the diplomatic correspondence of the Parties, as views are exchanged and claims are made and rejected."[9] This echoes the finding of the International Court in *Georgia* v. *Russia* that "negotiations may help demonstrate the existence of the dispute and delineate its subject matter."[10]

Secondly, there must be sufficient clarity as to the dispute and precisely what is positively opposed between the parties. The Annex VII tribunal in the *Chagos Marine Protected Area* arbitration found that "a dispute [must] have arisen with sufficient clarity that the Parties were aware of the issues in respect of which they disagreed".[11] The requirement of sufficient clarity was more thoroughly enunciated by the International Court in the *Marshall Islands* cases. As you can see, there, the Court affirmed that it must be

> demonstrated, on the basis of the evidence, that the respondent was aware, or could not have been unaware, that its views were "positively opposed" by the applicant.[12]

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[4] *Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 253 at pp. 270-271, para. 55; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996*, p. 803 at p. 810, para. 16; *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65 at p. 74.
[5] *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania, First Phase, Advisory Opinion, I.C.J. Reports 1950*, p. 65 at p. 74.
[6] *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 319 at p. 328.
[7] Ibid.
[8] *South China Sea Arbitration (Philippines* v. *China)*, Award on Jurisdiction and Admissibility, 29 October 2015, para. 159 (Judges' Folder, Tab 13).
[9] Ibid.
[10] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at pp. 84-85, para. 30.
[11] See *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom)*, Award, 18 March 2015, para. 382 (Judges' Folder, Tab 12).
[12] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at pp. 850-851, para. 41 (Judges' Folder, Tab 15).

There must have been, by one party, a statement or conduct which "specif[ied] the conduct" that was the subject of the dispute.[13] It is not enough for one State to make statements that lack "any particulars regarding [the other party's] conduct".[14]

Thirdly, it is essential that the dispute existed at the critical date of the filing of an application.[15] The mere act of filing the application cannot in itself be taken as evidence of a dispute or as an act that crystallized an incipient dispute. Neither can a difference of legal views which emerges only during the course of proceedings.[16]

Those are the principles which will determine whether, in this case, a relevant dispute existed at the time Mauritius instituted these proceedings.

I now turn, secondly, to the Maldives' argument that no dispute concerning the interpretation or application of UNCLOS can exist for as long as Mauritius' status as the relevant coastal State is unresolved.

Mauritius' position is that there is a dispute over the interpretation or application of articles 74(1) and/or 83(1) of UNCLOS. But that presupposes that Mauritius has a coast opposite or adjacent to the coast of the Maldives. My colleagues have already established, and I need not repeat, that this Chamber cannot either determine or assume that Mauritius is the coastal State over the disputed Chagos territory. It follows that the Chamber cannot either determine or assume that Mauritius is a State with an opposite or adjacent coast to the Maldives, which would be a necessary predicate to any finding that there is a maritime delimitation dispute between these two parties.

This explains why, as Ms Habeeb has addressed, there have not been and cannot be meaningful negotiations on maritime delimitation. It also explains why there is not, and cannot be, a crystallized maritime boundary dispute. In fact, Mauritius has never made a claim in respect of maritime delimitation that is "affirmatively opposed and rejected" by the Maldives. Instead, its only claim to date is that it has sovereignty over the Chagos Archipelago, and that is not a claim on which the Maldives has taken any position and not one that is within the jurisdiction of this Special Chamber.

In those circumstances, there is and can be no dispute between the Maldives and Mauritius concerning the interpretation or application of articles 74 and 83 of UNCLOS, as is mandatory for the Chamber to exercise jurisdiction under article 288.

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[13] Ibid., pp. 853-854, para. 50.
[14] Ibid., pp. 855-856, para. 57.
[15] See *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom)*, Award, 18 March 2015, para. 382 (Judges' Folder, Tab 12); *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at pp. 84-85, para. 30; *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at pp. 847, 851, 855, paras 29, 43, 54 (Judges' Folder, Tab 15).
[16] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011*, p. 70 at pp. 84-85, para. 30.

I now turn, thirdly, to the Maldives' additional and alternative argument that Mauritius has not established that the Parties held positively opposed views before it instituted these proceedings.

I say "additional and alternative" because this argument is not predicated on the previous one. Even if, contrary to the Maldives' position, this Chamber could accept uncritically that Mauritius is the relevant coastal State, that would not relieve Mauritius of the burden of proving that the parties held positively opposed claims by the critical date. As the international jurisprudence makes clear, a dispute did not exist at the critical date simply because Mauritius asserts that it did. It is a matter that this Chamber must determine objectively. Mauritius must be able to convince the Chamber that it had made a specific claim to a maritime boundary that the Maldives had affirmatively opposed and rejected. It is insufficient merely to show that there could be a potential dispute because of notional overlap between the Parties' maximum possible entitlements. There must have been an actual dispute in the form of a claim by one Party affirmatively opposed and rejected by the other.

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

Mauritius relies on three categories of evidence which it claims establish a dispute. But, examined carefully, none of the evidence, taken either separately or cumulatively, reaches the relevant thresholds.

First, Mauritius relies on what it describes in its written pleading as "official depictions of overlapping boundary claims".[17] But it presents only one map that is either "official" or that predates these proceedings. That is the map which accompanied the Maldives' submission to the Commission on the Limits of the Continental Shelf (CLCS) in 2010.[18] But, of course, this was almost a decade before the Advisory Opinion that, according to Mauritius, determined its status as the coastal State. On top of that, this map does not show overlapping boundary claims. In fact, in a subsequent diplomatic exchange, which I will address in a few minutes, the Maldives made clear that, in formulating its submission to the CLCS, it had "not taken into consideration" the exclusive economic zone (EEZ) claimed by Mauritius.[19] Further, all the map shows is the Maldives' maximum entitlement when it comes to its EEZ. It is clearly not the case that whenever a State presents a maximum entitlement that may potentially overlap with the maximum entitlement of another State that this is sufficient to create a "dispute" triggering the jurisdiction of a Part XV tribunal. Where there are overlapping maximum maritime boundary zones, the parties must articulate

[17] Written Observations of Mauritius, para. 3.39.
[18] Ibid., p. 32, Figure 3.
[19] 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; Judges' Folder, Tab 30).

a positive claim as to where they consider the maritime boundary should lie between those maximum entitlements. Mauritius has never done so.

The second category of evidence on which Mauritius relies is legislation passed by each of itself and the Maldives.[20] But again, this legislation does not establish the existence of a dispute, let alone one that predated these proceedings.

For one thing, the legislation did not create a dispute of sufficient clarity to ground the Special Chamber's jurisdiction. This much is evident from the Parties' subsequent diplomatic exchanges, which again I will address shortly. In those exchanges the Parties spoke of a potential dispute which they may attempt to pre-empt through negotiations. There were no claims affirmatively opposed and rejected. If the legislation had created a sufficiently clear dispute of the sort required for compulsory dispute settlement under Part XV of UNCLOS, the Parties would simply have referred to that dispute, not to an unspecified potential dispute.

But, Mr President, there is another point. The legislation of the Maldives does not purport to set down an immutable maritime boundary claim either in respect of its EEZ or its continental shelf. It merely sets out as a point of departure the maximum extent of the Maldives' entitlement to an EEZ under UNCLOS, subject to agreement with relevant opposing or adjacent coastal States. As you can see, section 6 of the Maldives' Act sets out the default position that the Maldives' EEZ shall extend 200 nautical miles beyond its archipelagic baselines. However, section 7 expressly states as follows:

> In the event that the exclusive economic zone of Maldives as determined under section 6 of this Act overlaps with the exclusive economic zone of another State, this Act does not prohibit the Government of Maldives from entering into an agreement with that State as regards the area of overlapping and delimiting the exclusive economic zone of Maldives for the said area of overlapping.[21]

In other words, the Maldives' maximum entitlement to an EEZ extending 200 nautical miles from its baselines is expressly subject to its ability to delimit a different maritime boundary taking into account an overlapping entitlement by another State. In these circumstances, Mauritius cannot claim that the Maldives has a definite positive claim that it, Mauritius, has affirmatively opposed and rejected. All the Maldives has asserted is a maximum entitlement, expressly subject to a potential delimitation agreement.

Thirdly and finally, Mauritius relies on a number of diplomatic exchanges between the Parties which it says reveal a crystallized dispute predating these proceedings. To recap, Mauritius can succeed in this assertion only if it can show that, on the basis of these exchanges, the Maldives was aware, or could not have been unaware, of an affirmative claim by Mauritius that was positively opposed to its own

[20] Written Observations of Mauritius, paras 3.40-3.42.
[21] Maritime Zones of Maldives Act No. 6/96, section 6 (Written Observations of Mauritius, Annex 16; Judges' Folder, Tab 26).

claim.[22] The exchanges must have (in the words of the International Court) "specif[ied]" exactly what the dispute consisted of, and could not be mere statements lacking "particulars" of the alleged dispute.[23]

Do any of the diplomatic exchanges in question meet these requirements? In the Maldives' submission: no.

Mauritius has pleaded that it "objected to the maritime claims depicted in the Maldives' submission to the CLCS" in a diplomatic note of 21 September 2010.[24] Of course, even if the document met this description, it would not necessarily crystallize a "dispute", because an objection that is inadequately clear and particularized and which does not contain a positive claim does not suffice for these purposes. As it happens, the diplomatic note in question does not even express an objection. All it states is that Mauritius had "taken note" of the Maldives' submission to the CLCS and, in light of that submission, was

> agreeable to holding formal talks with the Government of the Republic of Maldives for the delimitation of the exclusive economic zones … of Mauritius and Maldives.[25]

No objection, and certainly no affirmative claim which the Maldives could positively oppose. This is aside from the fact that this note was sent some nine years before the Court's Chagos Advisory Opinion, which, even on Mauritius' own case, was when its sovereignty dispute with the United Kingdom was resolved.

Next, Mauritius refers to a meeting between representatives of the Parties on 21 October 2010.[26] This meeting concerned the Maldives' submission to the CLCS a few months earlier. In its written pleading in this proceeding, Mauritius claims that in this meeting the Maldives "confirmed the existence of a dispute over the maritime boundary" and "[r]ecogniz[ed] the existence of overlapping claims".[27] Neither of these assertions is true.

(a) In this meeting, Mauritius stated only that

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[22] *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands* v. *United Kingdom), Preliminary Objections, Judgment, I.C.J. Reports 2016*, p. 833 at p. 850, para. 41 (Judges' Folder, Tab 15).
[23] Ibid., pp. 853-854, para. 50, p. 856, para. 57.
[24] Written Observations of Mauritius, para. 3.45, citing Diplomatic Note from the Ministry of Foreign Affairs, Regional Integration and International Trade, Republic of Mauritius, to the Ministry of Foreign Affairs, Republic of Maldives, 21 September 2010 (Written Observations of Mauritius, Annex 12; Judges' Folder, Tab 29).
[25] Ibid.
[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 (Written Preliminary Objections of the Maldives, Annex 26; Judges' Folder, Tab 30).
[27] Written Observations of Mauritius, para. 3.46.

> 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.[28]

"Potential overlap" – hardly an expression of a positive claim. Mauritius did not confirm an actual overlap, just a possible one.

(b) During the meeting, both sides agreed that they would "exchange coordinates of their respective base points … in order to facilitate the eventual discussions on the maritime boundary".[29] A mere expression of intention to discuss a maritime boundary in the future. No affirmative claim by one side. No rejection by the other; and Mauritius has never suggested that this exchange was ever followed up by, for example, an exchange of coordinates.

(c) The Maldives stated that it had prepared its submission to the CLCS without taking into consideration any EEZ claimed by Mauritius, and that the Maldives would in due course amend its submission "in consultation with the Government of the Republic of Mauritius".[30] Now, these statements run actively against Mauritius' case. They show that the Maldives' submission to the CLCS was not intended to be any sort of rejection of a maritime claim by Mauritius. They also show that the Parties had not yet established any disagreement and simply that they would consult on a future amendment to the Maldives' submission to the CLCS.

Mauritius then refers to a diplomatic note which it sent to the Secretary-General of the United Nations on 24 March 2011.[31] In this note, Mauritius "protest[ed] formally" against the Maldives' submission to the CLCS. But did the note contain an affirmative claim to which the Maldives could be positively opposed? It did not. Instead, it simply made a vague complaint that the Maldives had not taken into account the maximum EEZ that Mauritius asserted around the Chagos Archipelago, without clarifying what it said was the area of any overlapping maximum entitlements.[32] To suggest that in this note Mauritius advanced any sort of positive claim which the Maldives affirmatively opposed and rejected is just wrong.

Aside from the fact that they contain no evidence of a "dispute", those communications all predated the International Court's Chagos Advisory Opinion. Mauritius' case, of course, is that it was that Advisory Opinion which conclusively resolved that it has sovereignty over the islands. That is a position which the

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[28] 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; Judges' Folder, Tab 30) (emphasis added).
[29] Ibid.
[30] Ibid.
[31] Written Observations of Mauritius, para. 3.47, citing 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; Judges' Folder, Tab 31).
[32] 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; Judges' Folder, Tab 31).

Maldives does not accept. However, even if it were right, then one would expect that, after the Advisory Opinion, Mauritius would have ensured that it made a positive maritime boundary claim to which the Maldives could respond. Only then could it be said that a dispute had crystallized between the two relevant coastal States.

But Mauritius has not done so. The only evidence on which Mauritius relies since the Court issued its Advisory Opinion is a diplomatic note of 7 March 2019 transmitted just a few days after the Opinion.[33] All that Mauritius did in that note was indicate that the Parties' previous discussions over maritime delimitation had been "inconclusive".[34] As it pointed out itself in the note, this was not due to the existence of positively opposed maritime claims, but (as you can see) because of

> the position taken by the Maldives to the effect that the United Kingdom and Mauritius should first sort out the issue of sovereignty over the Chagos Archipelago.[35]

This confirmed that there was no maritime boundary dispute as such, but only a dispute concerning the predicate question of territorial sovereignty. In the same note, Mauritius proceeded to "invite the Maldives authorities to a second round of discussions" on maritime delimitation.[36] An invitation to negotiate without more, however, is not evidence of a crystallized dispute. Within just a few weeks, Mauritius had filed its Notification and Statement of Claim under the Part XV procedures, without a specified maritime boundary dispute.

At the end of these exchanges, is the Maldives "aware of the issues in respect of which [the parties] disagree", as the Annex VII tribunal in the Chagos Marine Protected Area arbitration said was necessary for a dispute?[37] It could not be. Prior to commencing proceedings, Mauritius never communicated to the Maldives a positive claim. There was therefore nothing for the Maldives to reject. All that these exchanges show is that there has been occasional contact between the Parties regarding possible negotiations over maritime delimitation that may occur at an unspecified future time in respect of yet to be articulated maritime boundary claims. That does not satisfy the requirement of a crystallized dispute. In its rush to litigate its sovereignty dispute with the United Kingdom before this Chamber, Mauritius has overlooked even this basic jurisdictional precondition.

Mr President, the Maldives' fourth preliminary objection is made out on two alternative grounds.

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[33] Written Observations of Mauritius, para. 3.48, 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; Judges' Folder, Tab 33).

[34] 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; Judges' Folder, Tab 33).

[35] Ibid.

[36] Ibid.

[37] See *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom)*, Award, 18 March 2015, para. 382 (Judges' Folder, Tab 12).

First, there is an unresolved dispute between Mauritius and the United Kingdom over whether Mauritius is entitled to exercise the powers of a coastal State in respect of the Chagos Archipelago. Until that dispute has been resolved, there is and can be no dispute between Mauritius and the Maldives concerning the interpretation and application of provisions of UNCLOS which are predicated on there being States with opposite or adjacent coasts.

Secondly, quite apart from that sovereignty dispute with a third State, Mauritius has not pointed to any evidence establishing that it had made a particularized, sufficiently certain, positive claim which the Maldives had affirmatively opposed and rejected prior to these proceedings. On well settled authority, that means the requirements of a "dispute" have not been satisfied.

Mr President, I would now ask that you give the podium once again to Professor Akhavan, who will address the Chamber on the Maldives' fifth preliminary objection and otherwise conclude the first round of oral submissions on behalf of the Maldives.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Ms Hart. I now give the floor to Mr Akhavan to make his statement. You have the floor, sir.

MR AKHAVAN: Mr President, distinguished Members of the Special Chamber, it is an honour to address you once again. In this final speech, I will first make some brief concluding remarks on each of the Maldives' four preliminary objections that have now been elaborated by my colleagues. Second, I will address you on the Maldives' fifth preliminary objection, namely that Mauritius' initiation of these proceedings, to settle its territorial dispute with the United Kingdom under the guise of a maritime delimitation with the Maldives, constitutes an abuse of process.

I turn first to a summary of the Maldives' first four preliminary objections addressed by my colleagues.

Mauritius agrees with the Maldives that it is impossible for the Special Chamber to delimit the maritime boundary without accepting that Mauritius has sovereignty over the Chagos Archipelago, to the exclusion of the UK. This is an essential and inescapable premise of Mauritius' claim that it has an "opposite or adjacent coast" with the Maldives within the meaning of articles 74 and 83 of UNCLOS. Mauritius leaves no doubt that its delimitation claim is predicated entirely on its sovereignty claim, namely that "the territory of Mauritius includes, in addition to the main island, inter alia, the Chagos Archipelago".[1]

Mauritius does not and cannot deny that the UK continues to claim sovereignty over Chagos. Its only argument is that the Chagos Advisory Opinion definitively established Mauritius' sovereignty to the exclusion of the UK. However, that is a legal argument on a territorial dispute and one which, in my earlier speech today, I showed to be entirely without merit. Mauritius' position is also that it is the undisputed sovereign of Chagos because the British claim is not "arguable" or "plausible";[2] but that is yet another legal argument, not a statement of fact.

[1] Notification and Statement of Claim and Grounds on which it is based of the Republic of Mauritius, 18 June 2019, para. 11 (Written Preliminary Objections of the Maldives, Annex 1).
[2] Written Observations of Mauritius, paras 3.6, 3.16.

Mr President, there can be no doubt that what Mauritius asks this Chamber to do is to settle its territorial dispute with the UK based on these legal arguments. It asks you to find that it is the coastal State; it asks you to reject the British sovereignty claim; all this in a case against the Maldives. My colleagues today have addressed four different reasons why doing so would be manifestly beyond the jurisdiction of the Special Chamber.

The Chagos Advisory Opinion does not help Mauritius escape this jurisdictional conundrum. I have explained why Mauritius' interpretation of that Opinion does not withstand scrutiny. I will only recall the most critical points:

(a) First, the Court stated in no uncertain terms that it was not determining any bilateral dispute that may exist between Mauritius and the UK, and that it had not been requested to do so by the General Assembly.[3]

(b) Second, the Court did not accept Mauritius' invitation to find that sovereignty was "entirely derivative of, subsumed within, and determined by the question of decolonization"[4] – an assertion that Mauritius has recycled, nearly verbatim, before this Chamber.[5]

(c) Third, the Court did not accept Mauritius' invitation to find that it should be allowed to delimit a maritime boundary with the Maldives, even in consultation with the UK.[6]

(d) Fourth, contrary to Mauritius' repeated claim in its written pleading, the Court did not find that Chagos "is, and always has been, a part of the territory of Mauritius."[7] It went no further than finding that the territory was an integral part of the British colony of Mauritius at the time of its detachment in 1965.[8]

Professor Boyle explained why the Namibia and Western Sahara Advisory Opinions do not help Mauritius' case either. To the contrary, they confirm that obligations concerning decolonization are not necessarily one and the same as questions of sovereignty. That is exactly why the Chagos Advisory Opinion carefully avoided any reference whatsoever to sovereignty in opining on the consequences of continuing British administration of the Chagos Archipelago. Even the General Assembly resolution which followed the Opinion failed to mention sovereignty.

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[3] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 at pp. 117-118, para. 86, p. 129, para. 136 (Judges' Folder, Tab 19).

[4] *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 (Judges' Folder, Tab 25).

[5] Written Observations of Mauritius, para. 3.5.

[6] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion*, Written Statement of the Republic of Mauritius, 1 March 2018, paras 1.42(vi), 7.3(3), 7.61, 7.69 (Judges' Folder, Tab 24).

[7] Written Observations of Mauritius, paras 1.4, 1.6, 3.13, 3.37.

[8] *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019*, p. 95 at pp. 136-137, para. 170 (Judges' Folder, Tab 19).

But at the end of the day, the Maldives does not even need to convince the Special Chamber that Mauritius' interpretation of the Chagos Opinion is wrong. Mauritius agrees that the UK continues to claim sovereignty; there is no doubt that the UK does not accept that the territorial dispute has been resolved. Where such a dispute exists as a matter of fact, there is no plausibility threshold, as the Tribunal affirmed in Coastal State Rights. The Special Chamber has no jurisdiction to resolve a territorial dispute. Mauritius cannot get a better result than it got before the Chagos Annex VII tribunal by litigating the same issue before this Chamber.

Also, there is, of course, the proverbial "elephant in the room"; or perhaps I should say "elephant in the courtroom", which is the non-binding character of Advisory Opinions. Even if the ICJ had expressly opined on territorial sovereignty, it could not circumvent the consent of the UK to jurisdiction. Mauritius' imaginative theory of the Advisory Opinion's non-binding binding effect is simply hopeless.

It is in this light that the Maldives has submitted its preliminary objections, which I shall now summarize.

In respect of the first preliminary objection, resolving Mauritius' legal arguments on territorial sovereignty requires the Special Chamber to rule on the legal rights and obligations of the UK – an indispensable third State which is neither a party nor has consented to these proceedings. As Mr Thouvenin has explained, this would be manifestly contrary to the *Monetary Gold* principle. The ICJ *East Timor* case leaves no doubt that the principle applies with equal force even in the extreme case of aggression and annexation of a non-self-governing territory, in flagrant violation of obligations *erga omnes*. The context of decolonization is simply irrelevant; whether the UK is right or wrong is irrelevant; its consent to jurisdiction cannot be circumvented. The Special Chamber cannot exercise jurisdiction over the British sovereignty claim, with or without an Advisory Opinion; with or without a General Assembly resolution. This is the settled jurisprudence of all international courts and tribunals, including ITLOS and Annex VII tribunals.

Mauritius has no answer to the Maldives' first preliminary objection.

In respect of the second preliminary objection, Mauritius' claim to be the coastal State requires the Special Chamber to rule on a territorial dispute which is clearly not about the interpretation or application of UNCLOS. This would necessarily take the Chamber outside the limit of its jurisdiction under article 288, paragraph 1, of UNCLOS.

This jurisdictional limitation would apply equally even if the UK was a party to these proceedings. That is exactly why, in its 2015 award, the Annex VII tribunal in *Chagos Marine Protected Area* rejected Mauritius' submissions that it was the coastal State. The participation of the UK in that case was irrelevant. The tribunal dismissed Mauritius' "coastal State" arguments as a "pretext" to resolve a territorial dispute that was outside of its jurisdiction.[9]

[9] *Chagos Marine Protected Area Arbitration (Mauritius* v. *United Kingdom)*, Award, 18 March 2015, para. 219 (Judges' Folder, Tab 12).

The same was true in the Coastal State Rights case. Russia was a party to the proceedings, but the Tribunal did not exercise jurisdiction despite Ukraine's argument that Russia's Crimean claim was implausible

Mauritius responds yet again that the 2019 Chagos Opinion has somehow overruled the 2015 Chagos Award; that it has conclusively rejected the British claim. Aside from the fact that the ICJ neither purported to resolve nor could have resolved the bilateral dispute, it made clear that it was not overruling the Chagos Award. To the contrary, it affirmed that the 2015 Award had *res judicata* effect and remained unaffected by the Advisory Opinion.

Mauritius has no answer to the Maldives' second preliminary objection.

In light of the bilateral sovereignty dispute, the Maldives' third preliminary objection is entirely unsurprising. Articles 74 and 83 of UNCLOS enable maritime delimitation claims to be submitted to the Part XV compulsory procedures only where, following attempts among the relevant coastal States, "no agreement can be reached within a reasonable period of time". There is a precondition of negotiation, and it is clear that it cannot be satisfied if delimitation is made impossible by a territorial dispute with a third State.

As Ms Habeeb demonstrated, there have been no meaningful negotiations between Mauritius and the Maldives on maritime delimitation. UNCLOS does not impose an obligation on the Maldives to take sides in the bilateral dispute between Mauritius and the UK in order to carry out such negotiations.

The Maldives' fourth preliminary objection follows because, where a territorial dispute with a third State makes negotiations impossible, there can be no "dispute" over a maritime boundary. Mauritius does not question that the existence of a dispute is an essential precondition to the Special Chamber's jurisdiction. As Dr Hart demonstrated, until the dispute as to whether Mauritius or the UK is the "opposite or adjacent" coastal State is resolved, there can be no maritime delimitation dispute between the Maldives and Mauritius.

Even putting the British sovereignty claim aside, there is a lack of "positively opposed" maritime boundary claims between the Maldives and Mauritius. The jurisprudence is clear: the claims of one party must be "affirmatively opposed and rejected by the other." As Dr Hart has carefully detailed, none of the documents annexed to Mauritius' pleadings provide evidence of such affirmative opposition and rejection. There is at best a vague reference to a potential rather than an actual dispute. The expression of potential maximum entitlements of coastal States do not constitute a "dispute". They merely present, as the parties themselves recognized, an opportunity to negotiate with a view to concluding an agreement.

Mauritius has no answer either to the Maldives' third and fourth preliminary objections.

Having summarized the Maldives' first through fourth preliminary objections, I turn now to its fifth preliminary objection on abuse of process.

There is, Mr President, a thread that binds all of the first four objections together: namely, that the dispute which Mauritius asks the Special Chamber to resolve is neither a dispute with the Maldives nor a dispute regarding maritime boundary delimitation. Rather, it is a dispute with the United Kingdom, and one that concerns land territory.

It is that common thread that gives rise to the Maldives' fifth preliminary objection: namely, that Mauritius' claim is inadmissible because it constitutes an abuse of process.

Mr President, the existence of a bilateral territorial dispute is inescapable. No amount of creative lawyering will make that fact go away. Our learned friends on the opposite side, for whom I have the highest regard, are reputable scholars and skilled practitioners. They are no strangers to the settled jurisprudence on jurisdiction. In fact, they are well aware that the very same arguments they have made in these proceedings were rejected by both the Annex VII tribunal in the Chagos arbitration, and by the ICJ in its Advisory Opinion. They are well aware because the same Counsel made the same arguments in those two prior cases. "Third time lucky", the expression goes; except that this is a court, not a casino! Legal reasoning is not a game of chance; judicial decisions are not made by a roll of the dice. The facts, the law, remain exactly the same as before. Re-litigating Mauritius' sovereignty claim before the Special Chamber cannot obtain a different result from the Chagos Award or the Chagos Opinion.

Mauritius has publicly indicated that it will advance its sovereignty claim in whatever forum it can. Some months after the 2015 Chagos Award, Mauritius stated before the General Assembly that it was committed to making every effort "to enable it to effectively exercise its sovereignty over the Chagos Archipelago, including the possibility of having further recourse to judicial or arbitral bodies"; but in the present proceedings it has demonstrated that it will have such recourse even when its claim is manifestly *ultra vires*. Using UNCLOS compulsory procedures to obtain a ruling on a territorial dispute with a third State is the very definition of an abuse of process. It is exactly the sort of conduct that the doctrine seeks to eliminate.

This is not an objection which the Maldives has raised lightly. We are mindful – in the words of the South China Sea Arbitration – that a finding of abuse of process is "appropriate in only the most blatant cases of abuse or harassment." We are mindful of the ICJ's position that it takes "exceptional circumstances" to ground such a finding.

It is well established that those "exceptional circumstances" arise when the purpose of the legal proceedings is wholly extraneous to the purpose of the procedures that are invoked. As one distinguished scholar has explained, abuse of process occurs when a claimant litigates "for aims alien to the ones for which the procedural rights at stake have been granted". It is blindingly obvious that this is exactly what Mauritius aims to do. It seeks a ruling on its territorial dispute with the UK. This purpose is manifestly inconsistent with the purposes of the UNCLOS compulsory procedures.

Mauritius has already tried this once – in the Chagos arbitration, in which the Tribunal ruled that Mauritius' UNCLOS claim was in truth a sovereignty claim that

"[did] violence to the intent of the drafters of the Convention". It tried once again before the ICJ, attempting to transform the advisory proceedings into a contentious proceeding against the UK. But the Court exercised meticulous restraint. It made clear that its Opinion on decolonization did not resolve the bilateral territorial dispute.

Mauritius now blatantly misrepresents that Advisory Opinion as a conclusive decision on territorial sovereignty. It is effectively asking this Special Chamber to give the Chagos Opinion an effect which the Court rejected, and to do so for purposes that are wholly alien to UNCLOS, and further to ignore the *Monetary Gold* principle. Mauritius is inviting this Chamber to pursue a perilous path that will profoundly harm its credibility and legitimacy among UNCLOS States Parties.

Mauritius' response to the Maldives' fifth preliminary objection is deeply regrettable. It adds insult to injury, with the incredible accusation that it is the Maldives, not Mauritius, which is guilty of an abuse of process, merely because it has dared to raise preliminary objections. Mauritius demands nothing less than blind obedience to its highly questionable case on jurisdiction. It condemns the Maldives, a small island nation, as an accessory to colonialism, as an enemy of self-determination. Mr President, the hostile hyperbole speaks for itself. It is nothing less than harassment and intimidation. It confirms the abusive nature of these proceedings.

Like any other nation, the Maldives does not want to be used as a pawn in someone else's chess game. It is under no obligation to become entangled in the bilateral dispute between Mauritius and the UK. Like other UNCLOS States Parties, the Maldives did not consent to the exploitation of Part XV compulsory procedures for matters wholly extraneous to UNCLOS.

Accordingly, we respectfully submit that, in addition to upholding the first four preliminary objections, this Special Chamber should also uphold the Maldives' fifth preliminary objection and deter such manifest abuse of process. The integrity of these proceedings calls for nothing less.

Mr President, distinguished Members of the Special Chamber, that concludes my speech and the first round of oral submissions by the Republic of Maldives. I thank you for your kind attention.

THE PRESIDENT OF THE SPECIAL CHAMBER: Thank you, Mr Akhavan. This brings us to the end of this evening's sitting. The hearing will resume on Thursday at 2 p.m. to hear Mauritius' first round of pleading. The sitting is now closed.

(*The sitting closed at 6.40 p.m.*)