



INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
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Press Release

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

**SPECIAL CHAMBER FINDS THAT IT HAS JURISDICTION TO ADJUDICATE
UPON THE DISPUTE CONCERNING THE DELIMITATION OF THE MARITIME
BOUNDARY AND THAT MAURITIUS' CLAIM IN THIS REGARD IS ADMISSIBLE**

The Special Chamber formed to deal with the *Dispute concerning the delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)* today delivered its Judgment on the Preliminary Objections raised by the Maldives on 18 December 2019. Judge Jin-Hyun Paik, President of the Special Chamber, read the Judgment at a public sitting of the Special Chamber, which took place in hybrid format in light of the COVID-19 pandemic.

Proceedings in the case were instituted by a Special Agreement concluded between the Parties on 24 September 2019, whereby the Parties agreed to transfer the arbitral proceedings instituted by Mauritius pursuant to Annex VII of the United Nations Convention on the Law of the Sea (the "Convention") to a special chamber of the Tribunal.

The public hearing on the Preliminary Objections was held from 13 to 19 October 2020 in hybrid format. In its final submissions, the Maldives requested the Special Chamber to adjudge and declare that:

it is without jurisdiction in respect of the claims submitted to the Special Chamber by the Republic of Mauritius. Additionally or alternatively, for the reasons set out during the written and oral phases of the pleadings, the Republic of Maldives requests the Special Chamber to adjudge and declare that the claims submitted to the Special Chamber by the Republic of Mauritius are inadmissible.

In its final submissions, Mauritius requested the Special Chamber to adjudge and declare that:

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

Judgment of the Special Chamber

Factual background

The Special Chamber notes that Mauritius and the Maldives are States situated in the Indian Ocean and that both States consist of several islands. According to Mauritius, “[t]he territory of Mauritius includes, in addition to the main Island, *inter alia*, the Chagos Archipelago” (paragraph 56). The Maldives states that, since 1814 and following the establishment of the British Indian Ocean Territory in 1965, “the United Kingdom has consistently claimed sovereignty over the Chagos Archipelago”, and that “since at least 1980, Mauritius has claimed that it is sovereign over the Chagos Archipelago” (paragraph 61). In this context, the Special Chamber provides an account of relevant historical developments.

Furthermore, the Special Chamber presents an overview of correspondence and meetings between the Parties on maritime delimitation. It also refers to decisions of other international courts or tribunals, namely, the award of 18 March 2015 in the *Arbitration regarding the Chagos Marine Protected Area between Mauritius and the United Kingdom* (the “Chagos arbitral award”) and the advisory opinion of the International Court of Justice (the “ICJ”) of 25 February 2019 on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965* (the “Chagos advisory opinion”). It also refers to resolution 73/295 of the United Nations General Assembly (the “UNGA”) of 22 May 2019 entitled “Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965”.

Preliminary objections

The Maldives raises five preliminary objections to the jurisdiction of the Special Chamber and the admissibility of Mauritius’ claims, which the Special Chamber examines in the order presented by the Maldives.

First preliminary objection: Indispensable third party

According to the Maldives’ first preliminary objection, the United Kingdom is an indispensable third party to the present proceedings, and, as the United Kingdom is not a party to these proceedings, the Special Chamber does not have jurisdiction over the alleged dispute. Mauritius contends, however, that the United Kingdom is not an indispensable party in this case.

The Special Chamber notes that, “if a sovereignty dispute over the Chagos Archipelago exists, the United Kingdom may be regarded as an indispensable party and the Monetary Gold principle would prevent the Special Chamber from exercising its jurisdiction” (paragraph 99). It also notes that, “[o]n the other hand, if such sovereignty dispute has been resolved in favour of Mauritius, the United Kingdom may not be regarded as an indispensable party and the Monetary Gold principle would not apply” (paragraph 99).

The Special Chamber observes that the Parties acknowledge that their entire cases for the first and the second preliminary objection “rest on the ‘core premise’,

namely that for the Maldives, the sovereignty dispute between Mauritius and the United Kingdom remains unresolved and that for Mauritius, the sovereignty issue has been resolved in its favour” (paragraph 100). The Special Chamber thus “considers it appropriate to examine the two objections together insofar as the legal status of the Chagos Archipelago is concerned” (paragraph 100).

Second preliminary objection: Disputed issue of sovereignty

In its second preliminary objection, the Maldives submits that the Special Chamber has no jurisdiction to determine the disputed issue of sovereignty over the Chagos Archipelago, which it would necessarily have to do if it were to determine Mauritius’ claims in these proceedings. Mauritius, however, argues that, “in light of the ICJ advisory opinion, there is no issue of sovereignty over the Chagos Archipelago and that the Maldives’ claim should accordingly be rejected” (paragraph 118).

The Special Chamber notes that “Mauritius’ claims are based on the premise that it has sovereignty over the Chagos Archipelago and thus is the State with an opposite or adjacent coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention and the State concerned within the meaning of paragraph 3 of the same articles” (paragraph 113). The Special Chamber also notes, however, that “the Parties disagree on the validity of the premise that Mauritius has sovereignty over the Chagos Archipelago” (paragraph 114). Therefore, “the legal status of the Chagos Archipelago is at the core of the disagreement between the Parties with respect to the second preliminary objection” (paragraph 115) and, as noted above, the Special Chamber’s examination of this question is pertinent to both the first and the second preliminary objection.

Legal status of the Chagos Archipelago

The Special Chamber then examines the legal status of the Chagos Archipelago and considers in particular whether the *Chagos* arbitral award, the *Chagos* advisory opinion of the ICJ and UNGA resolution 73/295 have any relevance or implication in this regard.

Regarding the *Chagos* arbitral award, the Special Chamber comes to the conclusion that “[w]hile the Arbitral Tribunal ... recognized the existence of a sovereignty dispute between the United Kingdom and Mauritius over the Chagos Archipelago, it found that it lacked jurisdiction to address said dispute” (paragraph 246). On the other hand, the Special Chamber finds that the Arbitral Tribunal recognized, “without prejudice to the question of sovereignty, that Mauritius had certain rights in respect of the Chagos Archipelago, including fishing rights, the right to its return when no longer needed for defence purposes and the right to the benefit of minerals or oil discovered” (paragraph 246). In the view of the Special Chamber, “[t]his demonstrates that, aside from the question of sovereignty, the Chagos Archipelago has been subject to a special regime, according to which Mauritius is entitled to certain maritime rights” (paragraph 246).

As to the *Chagos* advisory opinion, the Special Chamber finds that “[t]he determinations made by the ICJ with respect to the issues of the decolonization of Mauritius in the *Chagos* advisory opinion have legal effect and clear implications for

the legal status of the Chagos Archipelago” and that “[t]he United Kingdom’s continued claim to sovereignty over the Chagos Archipelago is contrary to those determinations” (paragraph 246). The Special Chamber also finds that, “[w]hile the process of decolonization has yet to be completed, Mauritius’ sovereignty over the Chagos Archipelago can be inferred from the ICJ’s determinations” (paragraph 246).

With respect to UNGA resolution 73/295, the Special Chamber notes that this resolution demanded that the United Kingdom withdraw its administration over the Chagos Archipelago within six months from its adoption. In the view of the Special Chamber, “[t]he fact that the time-limit set by the General Assembly has passed without the United Kingdom complying with this demand further strengthens the Special Chamber’s finding that its claim to sovereignty over the Chagos Archipelago is contrary to the authoritative determinations made in the advisory opinion” (paragraph 246).

Conclusions on the first and the second preliminary objection

With respect to the first objection, the Special Chamber considers that, “whatever interests the United Kingdom may still have with respect to the Chagos Archipelago, they would not render the United Kingdom a State with sufficient legal interests, let alone an indispensable third party, that would be affected by the delimitation of the maritime boundary around the Chagos Archipelago” (paragraph 247). The Special Chamber concludes that “the United Kingdom is not an indispensable party to the present proceedings” (paragraph 248). Accordingly, the first preliminary objection of the Maldives is rejected.

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

In the circumstances of the case before it, “the Special Chamber is satisfied that Mauritius can be regarded as the State with an opposite or adjacent coast to the Maldives within the meaning of article 74, paragraph 1, and article 83, paragraph 1, of the Convention and the concerned State within the meaning of paragraph 3 of the same articles” (paragraph 251). Accordingly, the second preliminary objection of the Maldives is rejected.

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

In its third preliminary objection, the Maldives contends that, as Mauritius and the Maldives have not engaged, and cannot meaningfully engage, in the negotiations required by articles 74 and 83 of the Convention, the Special Chamber lacks jurisdiction. According to Mauritius, however, articles 74 and 83 impose no obligation to negotiate as a jurisdictional precondition to invoking the procedures provided for in

Part XV of the Convention and the Parties did engage in negotiations in regard to the disputed maritime boundary.

The Special Chamber considers that article 74, paragraph 1, and article 83, paragraph 1, of the Convention “entail an obligation to negotiate in good faith with a view to reaching an agreement on delimitation. However, this obligation does not require the States concerned to reach such agreement” (paragraph 273). The Special Chamber notes that, “on the basis of the records before it, Mauritius, on several occasions, attempted to engage the Maldives in negotiations concerning the delimitation of their claimed overlapping exclusive economic zones and continental shelves” (paragraph 288), while the Maldives, “for most of the time, refused to negotiate with Mauritius” (paragraph 289).

The Special Chamber is of the view that, “in situations in which ‘no agreement can be reached’, to resort to the procedures of Part XV of the Convention, as set out in paragraph 2 of each of articles 74 and 83, is not only justified but also an obligation of the States concerned” (paragraph 292). The Special Chamber thus concludes that “the obligation under article 74, paragraph 1, and article 83, paragraph 1, of the Convention has been fulfilled” (paragraph 293). Accordingly, the third preliminary objection of the Maldives is rejected.

Fourth preliminary objection: Existence of a dispute

According to the Maldives’ fourth preliminary objection, there is no, and cannot be, a dispute between Mauritius and the Maldives concerning their maritime boundary and, without such dispute, the Special Chamber has no jurisdiction. Mauritius, however, submits that such dispute has existed between the Parties since at least 2010.

The Special Chamber notes that “it is clear from the national legislation adopted by the Parties that their respective claims to an exclusive economic zone in the relevant area overlap” (paragraph 327). The Special Chamber also observes that, on 26 July 2010, the Maldives submitted information to the Commission on the Limits of the Continental Shelf (the “CLCS”). The Special Chamber finds that “there is an overlap between the claim of the Maldives to a continental shelf beyond 200 nautical miles and the claim of Mauritius to an exclusive economic zone in the relevant area” (paragraph 332).

The Special Chamber further notes that Mauritius, in a diplomatic note of 24 March 2011 to the Secretary-General of the United Nations, formally protested against the Maldives’ submission to the CLCS. In light of this protest, the Special Chamber finds that “the Parties clearly hold opposite views and the claim of the Maldives is positively opposed by Mauritius” (paragraph 332). The Special Chamber also states that “maritime delimitation disputes are not limited to disagreement concerning the location of the actual maritime boundary and may arise in various other forms and situations” (paragraph 333).

The Special Chamber concludes that “a dispute existed between the Parties concerning the delimitation of their maritime boundary” at the time of the filing of the

Notification (paragraph 335). Accordingly, the fourth preliminary objection of the Maldives is rejected.

Fifth preliminary objection: Abuse of process

In its fifth preliminary objection, the Maldives submits that Mauritius' claims constitute an abuse of process and should therefore be rejected as inadmissible. In the Maldives' view, Mauritius is using the compulsory dispute settlement procedures of the Convention to obtain a ruling on a territorial dispute with a third State. Mauritius submits that the Maldives' objection is unfounded and that it does not seek a ruling on sovereignty over the Chagos Archipelago.

The Special Chamber refers to its previous finding that "the obligation under article 74, paragraph 1, and article 83, paragraph 1, of the Convention has been fulfilled" and that "a dispute existed between the Parties concerning the delimitation of their maritime boundary at the time of the filing of the Notification" (paragraph 345). The Special Chamber notes that "Mauritius resorted to the dispute settlement procedures provided for in Part XV of the Convention, in accordance with article 74, paragraph 2, and article 83, paragraph 2, of the Convention" (paragraph 347) and that Mauritius' claims "are confined to articles 74 and 83 of the Convention" (paragraph 348). Therefore, the Special Chamber "does not consider that Mauritius' claims constitute an abuse of process" (paragraph 349). Accordingly, the fifth preliminary objection of the Maldives is rejected.

Conclusions on jurisdiction and admissibility

The Special Chamber concludes that "it has jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between the Parties in the Indian Ocean and that the claim submitted by Mauritius in this regard is admissible" (paragraph 351). The Special Chamber finds it appropriate to defer to the proceedings on the merits "questions concerning the extent to which it may exercise its jurisdiction over the above dispute, including questions arising under article 76 of the Convention" (paragraph 352). Regarding the Parties' views in relation to Mauritius' claim stated in paragraph 28 of its Notification concerning the obligations under article 74, paragraph 3, and article 84, paragraph 3, of the Convention, the Special Chamber "finds it appropriate to reserve this matter for consideration and decision in the proceedings on the merits, as this point has not yet been fully argued by the Parties" (paragraph 353).

Operative provisions

The operative paragraph of the Judgment reads as follows (paragraph 354):

"For the above reasons, the Special Chamber

(1) Unanimously,

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

(2) By 8 votes to 1,

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

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

AGAINST: *Judge ad hoc* OXMAN.

(3) By 8 votes to 1,

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

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

AGAINST: *Judge ad hoc* OXMAN.

(4) Unanimously,

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

(5) Unanimously,

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

(6) By 8 votes to 1,

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

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

AGAINST: *Judge ad hoc* OXMAN.

(7) Unanimously,

Reserves for consideration and decision in the proceedings on the merits the question of jurisdiction and admissibility with respect to Mauritius' claim stated in paragraph 28

of its Notification concerning the obligations under article 74, paragraph 3, and article 83, paragraph 3, of the Convention.”

Judges ad hoc OXMAN and SCHRIJVER append a joint declaration to the Judgment of the Special Chamber.

Judge ad hoc OXMAN appends a separate and dissenting opinion to the Judgment of the Special Chamber.

The text of the Judgment, the joint declaration and the separate and dissenting opinion as well as a recorded webcast of the reading are available on the website of the Tribunal.

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