

**PCA PRESS RELEASE****CHAGOS MARINE PROTECTED AREA ARBITRATION
(MAURITIUS V. UNITED KINGDOM)****The Arbitral Tribunal Renders its Award****THE HAGUE, 19 March 2015**

The Tribunal constituted under Annex VII of the United Nations Convention on the Law of the Sea (the “**Convention**”) in the matter of the *Chagos Marine Protected Area Arbitration*, between the Republic of Mauritius and the United Kingdom of Great Britain and Northern Ireland, has issued its Award. This arbitration concerned the establishment by the United Kingdom on 1 April 2010 of a Marine Protected Area (“**MPA**”) around the Chagos Archipelago. The Chagos Archipelago is presently administered by the United Kingdom as the British Indian Ocean Territory.

In its Award dated 18 March 2015, the Tribunal found by a majority of three votes to two that it lacked jurisdiction to consider Mauritius’ claim that the United Kingdom was not the “coastal State” in respect of the Chagos Archipelago for the purposes of the Convention. By the same vote, the Tribunal found that it also lacked jurisdiction to consider Mauritius’ alternative claim that certain undertakings by the United Kingdom had endowed Mauritius with rights as a “coastal State” in respect of the Archipelago. The Tribunal held that the dispute between the Parties expressed through these claims in fact concerned the question of sovereignty over the Chagos Archipelago; that this was not a matter concerning the interpretation or application of the Convention; and that the Tribunal did not therefore have jurisdiction to decide the matter.

The Tribunal unanimously found, however, that it did have jurisdiction to consider Mauritius’ claim that the United Kingdom’s declaration of the MPA was not compatible with the United Kingdom’s obligations under the Convention. The Tribunal went on to find unanimously that, as a result of undertakings given by the United Kingdom in 1965 and repeated thereafter, Mauritius holds legally binding rights to fish in the waters surrounding the Chagos Archipelago, to the eventual return of the Chagos Archipelago to Mauritius when no longer needed for defence purposes, and to the preservation of the benefit of any minerals or oil discovered in or near the Chagos Archipelago pending its eventual return. The Tribunal held that in declaring the MPA, the United Kingdom failed to give due regard to these rights and declared that the United Kingdom had breached its obligations under the Convention. The Tribunal also unanimously held that there was not a dispute between the Parties concerning submissions to the Commission on the Limits of the Continental Shelf and that it was therefore unnecessary for the Tribunal to exercise jurisdiction in respect of Mauritius’ claim on this issue.

Two members of the Tribunal issued a joint Dissenting and Concurring Opinion, setting out their view that the Tribunal should have found that it had jurisdiction to consider Mauritius’ claims concerning the identity of the “coastal State”. The Dissenting and Concurring Opinion also expressed the view that the Tribunal should have exercised that jurisdiction to hold that the United Kingdom’s detachment of the Chagos Archipelago from the colony of Mauritius in 1965 was contrary to the principles of decolonization and self-determination.

An expanded summary of the Tribunal’s reasoning is set out below.

SUMMARY OF THE AWARD

1. Factual Background

This arbitration concerned the declaration by the United Kingdom on 1 April 2010 of a Marine Protected Area in the waters surrounding the Chagos Archipelago. Located in the central portion of the Indian Ocean, the Chagos Archipelago is composed of a number of coral atolls and has been administered by the United Kingdom since 1965 as the British Indian Ocean Territory.

Prior to 1965, the Chagos Archipelago was administered as a dependency of the then-colony of Mauritius. The Archipelago was detached from the colony of Mauritius on 8 November 1965, following a series of meetings with certain Mauritian political leaders, leading ultimately to the agreement of the Mauritius Council of Ministers to detachment. In exchange for Mauritian agreement, the United Kingdom made certain undertakings, including that it would provide compensation to Mauritius; that fishing rights would remain available to Mauritius as far as practicable; that the Archipelago would be returned to Mauritius when no longer needed for defence purposes; and that the benefit of any oil or minerals discovered would be preserved for Mauritius. The meetings between Mauritian leaders and the United Kingdom on the issue of detachment coincided with the 1965 Constitutional Conference that led to the decision that Mauritius would become independent. In the course of this arbitration, the Parties disagreed as to whether the issue of detachment was linked to independence and whether Mauritian consent to detachment was given voluntarily.

Mauritius became independent on 12 March 1968. Following the detachment of the Archipelago, the resident population of the Archipelago, known as Chagossians, was removed and the Archipelago became the site of a U.S. military installation on the island of Diego Garcia. Since at least 1980, Mauritius has asserted in a variety of fora that detachment was improper and that it has sovereignty over the Chagos Archipelago. The United Kingdom has rejected these claims. Additionally, since 1975, the Chagossian population and their descendants have pursued a series of legal claims in the courts of England and Wales and before the European Court of Human Rights, seeking compensation for their removal from the Archipelago and a right to return.

Beginning in early 2009, the United Kingdom began to consider declaring an MPA in the waters surrounding the Chagos Archipelago in which all fishing would be prohibited. The proposed MPA was the subject of limited discussion during bilateral talks between Mauritius and the United Kingdom in July 2009 and in diplomatic exchanges between the two governments in which Mauritius indicated its opposition to the proposal. Between November 2009 and March 2010, the United Kingdom conducted a public consultation on the proposed MPA. Shortly after receiving the results of the public consultation, the United Kingdom declared the MPA on 1 April 2010. On 20 December 2010, Mauritius commenced this arbitration.

2. The Parties' Claims

Mauritius made four submissions in these proceedings, requesting the Tribunal to find that:

- (1) the United Kingdom is not entitled to declare an MPA or other maritime zones because it is not the "coastal State" for the purposes of the Convention;
- (2) given the commitments that it made to Mauritius, the United Kingdom is not entitled unilaterally to declare an MPA or other maritime zones because Mauritius has rights as a "coastal State" for the purposes of the Convention;
- (3) the United Kingdom may not prevent the Commission on the Limits of the Continental Shelf from acting on any submission that Mauritius may make regarding the Chagos Archipelago; and
- (4) the MPA is incompatible with the United Kingdom's substantive and procedural obligations under the Convention and the UN Fish Stocks Agreement.

The United Kingdom submitted that the Tribunal lacked jurisdiction to consider any of Mauritius' four submissions and also opposed each of Mauritius' submissions on the merits.

3. The Tribunal's Jurisdiction

a. Mauritius' First Submission

With respect to Mauritius' First Submission, the United Kingdom objected to jurisdiction on the grounds that the real issue in dispute between the Parties was Mauritius' claim to sovereignty over the Chagos Archipelago and that sovereignty is not an issue relating to the interpretation or application of the Convention. In response, Mauritius argued that it was seeking an interpretation of the term "coastal State" as it is used in the Convention. Mauritius also argued that the Convention permits a tribunal to apply rules of international law other than the law of the sea when they arise in connection with a dispute relating to the Convention.

The Tribunal found, by a majority of three to two, that it lacked jurisdiction to consider Mauritius' First Submission. The Tribunal accepted that it had the jurisdiction to make ancillary findings of fact or determinations of law where necessary to resolve a dispute concerning the Convention. It nevertheless held that where the real issue in the case and the object of the claim do not relate to the Convention, an incidental connection between the dispute and some matter regulated by the Convention is insufficient to give the Tribunal jurisdiction over the dispute as a whole. On the facts of the case, the Tribunal recognized that a dispute exists between the Parties concerning sovereignty over the Chagos Archipelago and that a dispute also exists over the manner in which the United Kingdom declared the MPA. The Tribunal found, however, that the Parties' disagreement over the meaning of the term "coastal State" was simply one aspect of their larger dispute over sovereignty and that this did not concern the interpretation or application of the Convention.

b. The Tribunal's Jurisdiction on Mauritius' Second Submission

With respect to Mauritius' Second Submission, the United Kingdom objected to jurisdiction on the grounds that Mauritius was again asking the Tribunal to engage in issues of sovereignty. In response, Mauritius argued that it was not asking the Tribunal to address sovereignty, but rather to presume that the United Kingdom was sovereign and to consider whether through the undertakings given in 1965 the United Kingdom had accorded Mauritius attributes of a "coastal State".

The Tribunal found, again by a majority of three to two, that it lacked jurisdiction to consider Mauritius' Second Submission. The Tribunal held that the Parties' underlying dispute regarding sovereignty over the Archipelago was predominant and that the determination sought by Mauritius would effectively constitute a finding that the United Kingdom is less than fully sovereign over the Chagos Archipelago. Accordingly, the Tribunal found that Mauritius' Second Submission was properly characterized as relating to the same dispute in respect of land sovereignty over the Chagos Archipelago as Mauritius' First Submission and did not therefore concern the interpretation or application of the Convention.

c. The Tribunal's Jurisdiction on Mauritius' Third Submission

With respect to Mauritius' Third Submission, the United Kingdom objected to jurisdiction on the grounds that Mauritius' claimed right to make submissions to the Commission on the Limits of the Continental Shelf is a further manifestation of its claim to sovereignty over the Archipelago. The United Kingdom also objected to jurisdiction on the grounds that any dispute arose only during the course of the arbitration. In response, Mauritius argued that a dispute over whether Mauritius can make submissions to the Commission is a dispute concerning the provisions of the Convention relating to the Continental Shelf.

The Tribunal found unanimously that there was no dispute between the Parties on this issue. The Tribunal noted that the United Kingdom had previously agreed, in the context of the governments'

joint talks, to a joint submission to the Commission under a sovereignty umbrella (an agreement that the submission was without prejudice to questions of sovereignty). Mauritius had previously accepted this approach. While the Parties had made arguments in the course of the arbitration, no objection had been made to the Commission itself and the proceedings made clear that the United Kingdom's offer of cooperation under a sovereignty umbrella remained open. The Tribunal concluded that there was no risk of Mauritius losing potential rights before the Commission and that it was not required to rule on its jurisdiction or the merits of Mauritius' Third Submission.

d. The Tribunal's Jurisdiction on Mauritius' Fourth Submission

With respect to Mauritius' Fourth Submission, the United Kingdom objected to jurisdiction on the grounds that the MPA was a fisheries measure and that the Convention excludes disputes over fisheries from compulsory dispute settlement. In response, Mauritius argued that the MPA was an environmental measure and that the Convention expressly provides for the Tribunal's jurisdiction over disputes relating to the protection of the marine environment.

The Tribunal found unanimously that it had jurisdiction to consider Mauritius' Fourth Submission. The Tribunal held that the United Kingdom had repeatedly justified the MPA on broad environmental grounds, in particular in relation to the protection of coral, and that it was not open to the United Kingdom to limit the Tribunal's jurisdiction with the argument that the MPA was merely a fisheries measure. The Tribunal also held that Mauritius' rights in the waters of the Chagos Archipelago were not limited to fishing, noting in particular that the United Kingdom's undertaking to eventually return the Archipelago gives Mauritius a significant interest in whether or not the Archipelago will be covered by an MPA. In reaching this decision the Tribunal analysed the scope of the various provisions of the Convention providing for the settlement of disputes.

e. The Parties' Exchange of Views in advance of the Arbitration

In addition to the objections set out above, the United Kingdom objected to jurisdiction with respect to each of Mauritius' submissions on the grounds that Mauritius had failed to fulfil the Convention's requirement to exchange views regarding the settlement of the dispute before resorting to arbitration. In response, Mauritius argued that it had repeatedly raised the subject matter of all of its claims with the United Kingdom and had accordingly met the requirements of the Convention.

The Tribunal considered the United Kingdom's objection only with respect to Mauritius' Fourth Submission (the only claim with respect to which it had otherwise found jurisdiction). The Tribunal analysed the Convention and concluded that it requires the Parties to exchange views regarding the means for resolving their dispute, but does not require the Parties to in fact engage in negotiations before resorting to arbitration. The Tribunal noted that this requirement was intended to ensure that a State would not be taken entirely by surprise, but considered that it should be applied without undue formalism as to the manner and precision with which views were exchanged and understood. Based on correspondence in the record before it, the Tribunal found that the requirement to exchange views had been met.

4. The Merits of Mauritius' Fourth Submission

With respect to the merits of Mauritius' Fourth Submission, the Parties differed both with respect to whether Mauritius held legally binding rights in the waters of the Chagos Archipelago and as to whether the United Kingdom had fulfilled its obligations under the Convention.

a. The Nature of Mauritius' Rights

On the question of its rights, Mauritius argued that the United Kingdom's undertakings in 1965, which were repeated on numerous occasions after independence, were binding legal obligations. Mauritius considered this to be the case notwithstanding its view that Mauritian consent to the detachment of the Archipelago was obtained by coercion and therefore not valid. In response, the United Kingdom

argued that the understanding it reached with Mauritius in 1965 was never intended to be legally binding and could not have been legally binding as a matter of British constitutional law.

The Tribunal found unanimously that the United Kingdom's undertakings with respect to (a) fishing rights, (b) the eventual return of the Archipelago, and (c) the benefit of mineral and oil resources were legally binding on the United Kingdom. The Tribunal reviewed the circumstances surrounding the detachment of the Archipelago and concluded that the United Kingdom's undertakings were part of the bargain by which Mauritian agreement to detachment was obtained and demonstrated an intent to bind the United Kingdom, whether or not they were legally binding prior to independence. As a legal matter, the Tribunal noted that the United Kingdom had repeated the undertakings on many occasions since the independence of Mauritius and concluded that the United Kingdom was prevented, by the legal principle of estoppel, from now denying that the undertakings were binding upon it.

b. The United Kingdom's Obligations

On the question of the United Kingdom's obligations under the Convention, Mauritius argued that the Convention required the United Kingdom to have due regard for Mauritius' rights and to comply with its undertakings to Mauritius when taking actions with respect to the Chagos Archipelago. Mauritius contended that the United Kingdom breached these obligations by neglecting to provide Mauritius with information regarding the proposed MPA, by declining to consult with Mauritius, and by failing to respect its undertakings to Mauritius. Mauritius also argued that the MPA was not actually declared in pursuit of environmental objectives. In response, the United Kingdom denied that the Convention requires it to comply with any undertakings it may have made and emphasized that paying due regard to Mauritius' rights is not the same as giving effect to those rights. The United Kingdom further argued that its extensive exchanges with Mauritius and the public consultation sufficed to meet any obligation to consult with Mauritius. The United Kingdom also denied that it had any improper purpose in declaring the MPA.

The Tribunal found unanimously that the Convention requires the United Kingdom to have due regard for Mauritius' rights and to act in good faith with respect to its undertakings to Mauritius. Reviewing the record of events from February 2009 to April 2010, the Tribunal found that the consultations that took place were characterized by a lack of full information regarding the proposed MPA and the absence of sufficiently reasoned exchanges between the Parties. The Tribunal noted, in particular, that the United Kingdom engaged far less with Mauritius than it did with the United States as another State with interests in the Chagos Archipelago. Ultimately, the Tribunal found that the United Kingdom created reasonable expectations that Mauritius would have further opportunities to respond and exchange views before any final decision was taken and that these expectations had not been met before the United Kingdom announced the MPA. Accordingly, the Tribunal found that the United Kingdom failed to meet its obligations under the Convention. The Tribunal declined, however, to find any improper purpose in the declaration of the MPA.

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Summary of the Dissenting and Concurring Opinion

Two Members of the Tribunal, Judges James Kateka and Rüdiger Wolfrum, concurred in part and dissented in part with the decision reached by the majority of the Tribunal and attached a joint Dissenting and Concurring Opinion to the Award.

Judges Kateka and Wolfrum agreed with the majority that there was no dispute that would require the Tribunal to address Mauritius' Third Submission and that the Tribunal had jurisdiction to address Mauritius' Fourth Submission. Judges Kateka and Wolfrum also agreed with the majority on the merits of Mauritius' Fourth Submission and the finding that the United Kingdom had failed to meet its obligations under the Convention. Judges Kateka and Wolfrum would have gone further, however, and

found that the Convention imposed an obligation on the United Kingdom to comply with the undertakings. Judges Kateka and Wolfrum also considered that there was evidence that the United Kingdom had ulterior motives in declaring the MPA and would have found that the United Kingdom violated the standard of good faith.

Judges Kateka and Wolfrum disagreed with the majority's finding that the Tribunal lacked jurisdiction to consider Mauritius' First and Second Submissions. In Judges Kateka and Wolfrum's view, the Tribunal should have been guided strictly by the wording of Mauritius' First Submission and should have concluded that the dispute before it concerned the identity of the "coastal State", with the Parties' differing views on sovereignty merely forming part of Mauritius' reasoning. Judges Kateka and Wolfrum similarly considered Mauritius' Second Submission to be a dispute not over sovereignty, but over whether the United Kingdom ceded certain rights as a coastal State through its undertakings. On the merits, Judges Kateka and Wolfrum would have found that the Mauritian Ministers were coerced in 1965 into agreeing to detachment and that the United Kingdom's detachment of the Archipelago violated the international law of self-determination.

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The Tribunal in this matter is composed of Professor Ivan Shearer AM, Judge Sir Christopher Greenwood CMG QC, Judge Albert Hoffmann, Judge James Kateka and Judge Rüdiger Wolfrum. Professor Ivan Shearer served as President of the Tribunal. The Permanent Court of Arbitration acted as Registry in this arbitration.

These arbitral proceedings were initiated on 20 December 2010 by the Republic of Mauritius.

On 11 January 2013, the Tribunal conducted a hearing in Dubai, United Arab Emirates on the procedure to be followed in respect of preliminary objections raised by the United Kingdom to the Tribunal's jurisdiction.

Between 22 April and 9 May 2014, the Tribunal conducted a hearing in Istanbul, Turkey on the Tribunal's jurisdiction to consider the claims brought by Mauritius and on the merits of those claims.

Further information about the case, including the Parties' full written submissions, is available on the website of the Permanent Court of Arbitration at http://www.pca-cpa.org/showpage.asp?pag_id=1429

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Background on the Permanent Court of Arbitration: The PCA is an intergovernmental organization established by the 1899 Hague Convention on the Pacific Settlement of International Disputes. Headquartered at the Peace Palace in The Hague, the Netherlands, the PCA facilitates arbitration, conciliation, fact-finding and other dispute resolution proceedings among various combinations of States, State entities, intergovernmental organizations, and private parties.

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