

PERMANENT COURT OF ARBITRATION

ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS  
CONVENTION ON THE LAW OF THE SEA

In the Matter of Arbitration Between:

THE REPUBLIC OF MAURITIUS,

and

THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND

PCA Reference MU-UK

Volume 1

HEARING ON JURISDICTION AND THE MERITS

Tuesday, April 22, 2014

Pera Palace Hotel  
Mesrutiyet Cad. No: 52 Tepebasi, Beyoglu  
Conference Room Galata II & III  
34430, Istanbul-Turkey

The hearing in the above-entitled matter convened at 2:30 p.m. before:

PROFESSOR IVAN SHEARER, Presiding Arbitrator

SIR CHRISTOPHER GREENWOOD, CMG, QC, Arbitrator

JUDGE ALBERT J. HOFFMANN, Arbitrator

JUDGE JAMES KATEKA, Arbitrator

JUDGE RÜDIGER WOLFRUM, Arbitrator

Permanent Court of Arbitration:

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PCA Legal Counsel  
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1 PROCEEDINGS

2 PRESIDENT SHEARER: Well, good afternoon, ladies and gentlemen. I declare  
3 open the continuation of the proceedings between the Republic of Mauritius and the United  
4 Kingdom, convened under Annex VII of the United Nations Convention on the Law of the Sea.  
5 The present hearing will be concerned with both jurisdiction and merits.

6 I will now call upon the Parties to announce formally their appearances, after which  
7 I propose to raise several procedural matters before inviting each side to present its Opening  
8 Statements.

9 Mr. Dabee.

10 MR. DABEE: Good afternoon, Mr. President and distinguished Members of the  
11 Tribunal.

12 It's my pleasure to introduce to you the members of our delegation. Immediately  
13 to my right in the first row is Professor –

14 PRESIDENT SHEARER: Mr. Dabee, have you got your microphone switched  
15 on?

16 MR. DABEE: Yes.

17 Immediately, Mr. President, to my right in the first row are Professor Sands QC,  
18 Professor James Crawford, S.C., and Mr. Paul Reichler.

19 In the second row, Mr. Suresh Seeballuck, who is the Secretary to Cabinet and  
20 Head of the Civil Service. Next to him is Ambassador Meetarbhan, who is our Permanent  
21 Representative to the United Nations in New York. Next to him is Miss Alison Macdonald. And  
22 then Mr. Andrew Loewenstein.

23 In the third row behind, again to my right, we have our Deputy Agent, Mrs. Aruna  
24 Narain; next to her Miss Martine Young Kim Fat, together with Ms. Elizabeth Wilmshurst and  
25 Dr. Douglas Guilfoyle.

1 In the fourth row, we have Mr. Remi Reichhold as well as Mr. Yuri Parkhomenko,  
2 and we are also assisted by, and seated next to them, Mr. Rodrigo Tranamil and Miss Nancy  
3 Lopez.

4 That makes up our delegation.

5 PRESIDENT SHEARER: Thank you very much, Mr. Dabee.

6 Yes, Mr. Whomersley.

7 MR. WHOMERSLEY: Good afternoon, Mr. President, Members of the Tribunal.  
8 I am also very honored to be here to address you this afternoon. I will just very briefly introduce  
9 the United Kingdom team for today.

10 We probably will move around, but I will introduce them in their present positions.  
11 So, in the first front there, I have the great honor to introduce Mr. Dominic Grieve, who is the  
12 Attorney General for the United Kingdom. Next to him is Mr. Douglas Wilson, who is from the  
13 Attorney General's Office, and at the far end is my colleague Margaret Purdasy, who is the Deputy  
14 Agent for the United Kingdom.

15 The back benches, if I can call them that, behind there, you will see Michael Wood,  
16 Sam Wordsworth and Alan Boyle, all of counsel, and at the far end, one of my colleagues from the  
17 Foreign Office, Ms. Jo Bowyer.

18 Then, behind there, we have on the far end Penelope Nevill of counsel; Rebecca  
19 Raynsford, who is also from the Attorney General's Office; Amy Sander of counsel; and Eran  
20 Sthoeger, who is a legal researcher who is assisting us.

21 I thank you for this opportunity to introduce the team, and obviously if we could be  
22 of further assistance, we would be very happy to do so.

23 Thank you.

24 PRESIDENT SHEARER: Thank you very much, Mr. Whomersley.

25 Well now, before turning to the procedural matters that I mentioned earlier, may I

1 first welcome you all to this beautiful city, so rich in historical, architectural, and cultural interest.  
2 Istanbul is, thus, an appropriate place in which to realize one of the main purposes of the United  
3 Nations Charter, which is the peaceful settlement of international disputes.

4 In this connection, I would like to record the Tribunal's thanks to the Parties for  
5 their spirit of cooperation and courtesy in dealing with each other and with the Tribunal.

6 I also record with gratitude the excellent professional service given to us all by the  
7 Registrar and his colleagues at the Permanent Court of Arbitration, both here and in The Hague.

8 I now turn to certain procedural matters before calling upon the Parties to present  
9 their Opening Statements, and I have just been reminded of a banal point: Would you please  
10 ensure that your mobiles are turned to silent, if they are not already, if you have not already done  
11 that.

12 Now, first of all, there are five matters to raise very briefly. First of all, regarding  
13 the publication of pleadings and the annexes, as you know, there has been an exchange of views  
14 between the Parties on that by email messages, and the Tribunal notes the Parties' positions  
15 regarding the publication of pleadings and the annexes taken in this recent correspondence.

16 The Tribunal, after discussing this matter, has decided that the pleadings be made  
17 public immediately and that the Parties seek to agree, by 5:00 p.m. on Tuesday the 29th of April,  
18 on which of the annexes to the pleadings should be made public. And by that same time, 29th of  
19 April, 5:00 p.m., the Parties shall inform the Tribunal of any disagreement regarding the  
20 publication of annexes, in which case such matters will be reserved for the determination of the  
21 Tribunal.

22 The second matter is regarding additional documents. The Tribunal notes that the  
23 Parties have agreed to the addition of certain documents to the record, including one Note Verbale,  
24 one report, and three press articles submitted by Mauritius, and two letters submitted by the United  
25 Kingdom. These and any other new documents agreed by the Parties for admission to the record

1 should be assigned annex numbers and included in an updated version of the Parties' respective  
2 consolidated lists of annexes.

3           The third matter is with regard to the redaction of documents and the question of  
4 whether the documents could be opened more fully. I have to report that I attended the British  
5 Consulate General yesterday afternoon to consider the grounds for the redactions made to the  
6 documents contained in Annex 185 of the Reply of Mauritius. Now, by letter of today – and I  
7 think that has been circulated already – my Report has been given to you.

8           In summary, I have found that each redaction is justified, and I have discussed my  
9 findings in detail with the other Members of the Tribunal, and the Tribunal has accepted my  
10 findings and has decided that the redacted passages should not be subject to disclosure in these  
11 proceedings. Now, the details of those findings will be contained in the document that has been  
12 sent to you.

13           Next is the question of Annex 185 to the Reply of Mauritius. The Tribunal notes  
14 that following the Parties' exchange of correspondence on the issue of redaction, the documents  
15 comprising Annex 185 have been updated, and Mauritius is requested to submit an updated  
16 Annex 185 and to inform the Tribunal of any other updates to the annexes to the Reply of  
17 Mauritius that may be necessary as a result.

18           And, finally, regarding the place of this Hearing, the Tribunal notes that Article  
19 9(2) of the Rules of Procedure provides that the place of hearings in this matter shall be Dubai,  
20 which is where the Hearing on Bifurcation was held. But in view of our prior correspondence and  
21 the fact that the Parties and the Tribunal are assembled here, I haven't heard of anybody who has  
22 mistakenly gone to Dubai and is anxiously awaiting events – I think it is safe to record our  
23 agreement to the amendment of Article 9(2) to reflect that Istanbul is the place for the Hearing on  
24 the Merits and Jurisdiction.

25           So, with that, I think that covers the procedural matters. If you have anything on

1 that, those matters could be raised later, but I think it is now appropriate to call upon the Agent of  
2 the Republic of Mauritius to present the Opening Statement.

3 Thank you.

4 Yes, Mr. Dabee.

5 MR. DABEE: Thank you, Mr. President. And thank you also for clarifying  
6 those procedural matters.

7 **REPUBLIC OF MAURITIUS v. UNITED KINGDOM - HEARING**  
8 **INTRODUCTORY REMARKS BY MR D.K. DABEE G.O.S.K., S.C.,**  
9 **SOLICITOR-GENERAL AND AGENT OF THE REPUBLIC OF MAURITIUS, 22**  
10 **APRIL 2014, ISTANBUL**

11 **Mr. President,**

12 **Distinguished members of the Tribunal,**

13 On behalf of the delegation of the Republic of Mauritius, it is my privilege and honour to  
14 appear before you this afternoon.

15 We are thankful to you, Mr. President, and distinguished members of the Tribunal, for the  
16 attention that you are able to give to these proceedings on the legality under the 1982 United  
17 Nations Convention on the Law of the Sea of the “Marine Protected Area” which the United  
18 Kingdom purported to create around the Chagos Archipelago, as announced by Foreign  
19 Secretary David Miliband, in April 2010. This case addresses matters of the greatest significance  
20 to Mauritius and its citizens, including those who were forcibly removed by the United Kingdom  
21 from the Chagos Archipelago. We are also grateful to the PCA and, in particular to the Registrar,  
22 for the exemplary way in which they have been carrying out their mandate, not the least in  
23 arranging these hearings in Istanbul.

24 We welcome today’s hearing, and the opportunity that it offers to engage with our  
25 colleagues from the United Kingdom delegation, and we very much look forward to hearing the

1 UK delegation seek to justify in law the acts of the United Kingdom. It is unfortunate, however,  
2 that we have to be here at all.

3 The dispute before you arises against a background of specific events that occurred some  
4 five decades ago, a stain on a generally excellent relationship with the United Kingdom. It is our  
5 hope that this Tribunal will be able to act to resolve this dispute, to assist the Parties in reaching  
6 an outcome that is just, and fully respectful of the law that is reflected in the 1982 Convention.

7 The dispute between the Parties raises a number of issues, on the facts, on the law, and  
8 even on the extent of the jurisdiction of this Tribunal. This dispute, Mr. President, cannot simply  
9 be pushed under a carpet. From an African perspective – and here let me say that Mauritius is an  
10 African State that obtained its independence from its former colonial power in 1968 – so, from  
11 an African perspective, there should be no dispute about this. From that perspective, the UK had  
12 no right to act as it did four years ago, in purporting to create the “Marine Protected Area”: we  
13 seek your confirmation that it has no entitlement to create the “MPA”, and that the “MPA” it has  
14 purported to establish is inconsistent with the requirements of a significant number of provisions  
15 of the 1982 Convention. Indeed, you will be aware that there is not a single African State that  
16 recognises the lawfulness of what the United Kingdom has done. The African position has  
17 been endorsed by the broader international community, namely the Non-Aligned Movement, the  
18 Group of 77 and China, and the Africa-South America Summit. On the other hand, the United  
19 Kingdom is asking you to maintain a colonial *status quo*, a use of the Convention that its  
20 negotiators surely never intended.

21 **Mr. President,**  
22 **and Members of the Tribunal,**

23 You have before you the voluminous pleadings of very fully pleaded cases. Our team is  
24 available to provide any such assistance as you might need. We will be pleased to offer our

1 fullest cooperation to the delegation of the United Kingdom in making these proceedings as  
2 helpful as possible to the Tribunal in resolving this dispute.

3 Our next three days, Mr. President, will be devoted as follows:

4 Tomorrow, we'll be dealing with the facts. On Thursday, we will address the merits and the  
5 violations by the United Kingdom of the law. And on Friday, we will respond to the issues of  
6 jurisdiction raised by the United Kingdom.

7 At the start of each day we will be providing you, the Tribunal, with a breakdown of the  
8 running order for each day, together with time estimates. We welcome questions, of course, from  
9 the Tribunal at any time during the course of the proceedings, and we will do our utmost to  
10 respond to those questions in a timely and complete way.

11 Finally, to assist the Tribunal, we have made available a folder for each Arbitrator, to  
12 which your attention will be directed during our different presentations. Copies have also been  
13 made available to the United Kingdom, and we will strive to ensure that the folders are complete,  
14 but I do hope that you will bear with us if, on occasion, you are taken to a document that is not  
15 located in the folder. In that regard, we do express our appreciation for the idea raised by the  
16 Tribunal of hyperlinking the documents referred to in the pleadings, and this we have found to be  
17 most useful!

18 Mr. President, I shall now ask you to invite Professor Sands to make the introductory  
19 comments of Mauritius on the various matters before you.

20 Thank you, Mr. President.

21 PRESIDENT SHEARER: Thank you very much, Mr. Dabee.

22 Yes, Mr. Sands.  
23



1 Copies of the Folder available to our friends from the United Kingdom and also to the PCA  
2 Registry.

3 3. So, against that introduction matter, I turn to our case. Mauritius’s case is that the supposed  
4 “MPA” as we shall call it is unlawful under the 1982 Convention. It is a regime imposed by  
5 unilateral act by a State that had no authority to act as it purported to do. The claim is in two parts,  
6 as you will have seen from the written pleadings, which are connected: the *first* part is that the  
7 United Kingdom is not “the coastal State” (within the meaning of the 1982 Convention) and so is  
8 not entitled to declare an “MPA” (or indeed any other maritime zone) around the Chagos  
9 Archipelago. The so-called “British Indian Ocean Territory” is a colonial vestige we say, albeit  
10 one in respect of which the United Kingdom has nevertheless proceeded on the basis that  
11 Mauritius has at least some rights and interests that reflect the attributes of “a coastal State.” The  
12 *second* part of our claim is that – independently of who is “the coastal State” – the purported  
13 “MPA” has been adopted in a manner that is inconsistent with the requirements of the 1982  
14 Convention, including Parts II, V, VI, XII, and XVI.<sup>1</sup>

15 4. This introduction will last for about 50 minutes. But I hope you might bear with us if we’re  
16 slightly beyond. We would, of course, expect any additional time which we need, to be deducted  
17 from our time, we don’t seek more time overall. I will not, of course, touch on all of the issues that  
18 divide the Parties. What I want to do is alight briefly on some of the key areas of difference. And I  
19 want to do it by taking you to the raw materials, the documents, to show you how it is that the  
20 United Kingdom is seeking to avoid engaging with some of the most damaging material. Over the  
21 course of the next three days, you will see that a number of common themes emerge in the United  
22 Kingdom’s approach to the case: unhelpful documents (or parts of documents) are studiously  
23 avoided; facts tend to be asserted without evidence; legal arguments are made without authority;  
24 the views of Ministers, senior civil servants and even distinguished legal advisors are

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<sup>1</sup> Mauritius Memorial (“MM”), para. 1.3.

1 pooh-pooed. There are common themes that draw a direct link from 1965 to 2010, and you get a  
2 sense of a continuum in the *modus operandi* of the United Kingdom; the lack of transparency, and  
3 it might be said candour; the use of that well-known technique of presenting Mauritius with a *fait*  
4 *accompli* or the United Nations; the offering of sweeteners. And there's a running theme that goes  
5 all the way through the documents: the use of fear, frightening Mauritius back in 1965 that it might  
6 not get independence, frightening the Tribunal today that it might open the floodgates. Against that  
7 background, I'm going to make eight points.

8 **5. My first point, Point 1: the United Kingdom is inviting the Tribunal to ratify a legacy of**  
9 **British colonialism**, a remnant of Empire. Now, in these proceedings, the UK for the first time  
10 ever, before any international court or Tribunal, has to justify in law the actions that it took in and  
11 after 1965, a most unhappy episode. That history infects the tone of the UK pleadings, not least the  
12 Rejoinder, you'll have picked up the whiff of the slightly patronizing air, the sense of irritation  
13 (that they have been hauled before this Tribunal at all), the use of unfortunate pejoratives to  
14 describe our arguments ("spurious" or "idiosyncratic"),<sup>2</sup> or the thrust of our arguments generally,  
15 (the "mantra" of Mauritius).<sup>3</sup> But how striking it is that nowhere in the pleadings is there any hint  
16 of regret for the events that took place in 1965, nothing, no expression of remorse for the  
17 deportation of an entire population, a once thriving and active community of approximately 2000  
18 Chagossians. We invite you to keep this context and this legacy, sad legacy, at the forefront of your  
19 minds.

20 **6.** This brings me to my second point: the Chagos Archipelago is and has always been an  
21 integral part of the territory of Mauritius. The United Kingdom makes the implausible and  
22 somewhat convoluted argument that the "detachment" from Mauritius did not contravene  
23 international law, including the principle of self-determination, because the islands of the Chagos

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<sup>2</sup> United Kingdom Rejoinder ("UKR"), para. 8.56.

<sup>3</sup> See UKR, paras. 2.21 and 5.22.

1 Archipelago “were never part of the territory of Mauritius”.<sup>4</sup> Miss Macdonald will address this  
2 issue in some detail tomorrow morning. It is an approach that we say is both extraordinary and  
3 counter-intuitive, it’s been resuscitated and developed for the purposes of this case. Yet the record  
4 shows that the United Kingdom spoke about and treated the separation, the excision of the Chagos  
5 Archipelago as a “detachment.” That is its word. So, let’s deal with the reality: one does not  
6 detach one object from another unless it is a part of that other. Why bother to seek to obtain the  
7 purported agreement of the Mauritian Premier back in 1965? Why pay compensation? Why  
8 present the United Nations General Assembly with a *fait accompli* if the territory being detached  
9 wasn’t even a part of the territory of Mauritius?

10 7. The documents speak very clearly on this point. I can illustrate it – as well as the United  
11 Kingdom’s rather curious, semi-detached approach to its own records – by taking you to a Minute,  
12 that sent by Colonial Secretary Anthony Greenwood, no relation I say for the record, which was  
13 sent to Prime Minister Harold Wilson, on the 5<sup>th</sup> of November 1965. You’ll see it at Tab 2.1 in  
14 your folder. And if you could go straight to page 2. And what you’ll see with these folders as we  
15 go, in the bottom right-hand corner of each page, which is copied just to save a few forests double  
16 sided, a number in red, we’ve stamped on it Mauritius folder page 2 just for ease of reference, and  
17 we’ll have a continuing numbering going all the way through. If you can go to the bottom of page  
18 2, right at the bottom, Tab 2.1, Page 2, at the bottom, you’ll see paragraph 5, and you’ll see the last  
19 part of paragraph 5. It says: it is “essential that the arrangements for detachment of these islands  
20 should be completed as soon as possible.” And then if you go on over to the next page to  
21 paragraph 6, you’ll see the following: “From the United Nations’ point of view, the timing is  
22 particularly awkward. We are already under attack over Aden and Rhodesia, and whilst it’s  
23 possible that the arrangements for detachment will be ignored when they become public, it seems  
24 more likely that they will be added to the list of imperialist measures for which we are attacked.

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<sup>4</sup> UKR, Chapter IIB, p. 11.

1 We shall be accused of creating a new colony in a period of de-colonization and of establishing  
2 new military bases when we should be getting out of the old ones.” And if I could just take you  
3 down to the bottom of paragraph 7 at the last line, “it is therefore important,” the Colonial  
4 Secretary writes, “that we should be able to present the UN with a fait accompli.” Now, if the  
5 Chagos Archipelago wasn’t a part of Mauritius, why was there such a need for these shenanigans?

6 8. The UK approach to the evidence is, we say, rather semi-detached. In the Rejoinder it  
7 argues the importance of agreement to “detachment,” and it invokes “a note from the Colonial  
8 Office,” which it quotes, that “our view is that the willing acceptance in the two Colonies is  
9 essential to our object.”<sup>5</sup> Now, to that note, the UK annexes the note of the 10<sup>th</sup> of May 1965, and  
10 you will find that at Tab 2.2. And we are only putting in documents here that are going to be  
11 central documents in the case, so we’re likely to keep coming back to these documents, which we  
12 hope you will become familiar with them. And if you look at that document and note of the 10<sup>th</sup>  
13 of May 1965, you will see in the first paragraph that the second sentence begins, “You are aware  
14 also,”—first paragraph of that document, second sentence in the first paragraph, “you are aware  
15 also that it is,” and in these words which I emphasize, “our view that the willing acceptance in the  
16 two colonies is essential to our object.” That’s the only bit the United Kingdom quoted in its  
17 pleadings. There’s a comma, and let’s read what follows: “and that in order to secure this, it will  
18 be necessary to compensate the two governments for their loss of territory.” Now, those words of  
19 the loss of territory were left out. And I emphasize the word “their.” Whose territory is the  
20 Colonial Office referring to? Well, it’s obvious. It’s the territory of Mauritius. That was the  
21 legal situation in May 1965, and it remains the legal situation today.

22 9. Until 1980 the United Kingdom talked about the islands being “returned” or that they  
23 would “revert” to Mauritius once they were no longer needed for defense purposes: and this was  
24 made explicit in the famous Lancaster House undertaking which was given on the 23rd of

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<sup>5</sup> UKR, p. 27, footnote 119.

1 September 1965, and you'll find that over the page. I'm going through consecutively, so you may  
2 as well, if you wish, if it's convenient, keep them open, and there you will find the Minute that is at  
3 Annex 19 of the Mauritius Memorial. And if you turn to page 11, the bottom of that document,  
4 we're now on Tab 3, page 11 of the bundle, you will see at the top there's a little subparagraph 7,  
5 and the undertaking is given that, ("if the need for the facilities on the islands disappeared, the  
6 islands should be returned to Mauritius"). Returned to Mauritius. Now, you don't have a return of  
7 something unless there's a pre-existing right. And you have noted that mysteriously the word  
8 "return" was dropped, in fact, it was dropped after 1980, and if you're in why it was dropped,  
9 you'll find the answer in the Rejoinder at Annex 25. And there, it's not in these documents, you  
10 will see a telegram from the Foreign Office in October 1980 which provides advice on responses to  
11 press enquiries. And it says, and I quote: "for legal reasons cede should be adhered to; revert or  
12 return should be avoided".<sup>6</sup> In any event, whatever word the United Kingdom may wish to use, the  
13 evidence makes crystal clear the United Kingdom considered the Chagos Archipelago to be part of  
14 the territory of Mauritius in 1965, and Ms. Macdonald will return to this point.

15 10. The contrary argument we say is hopeless, and it's not only historically hopeless back in  
16 the Sixties. Recent internal memoranda from the UK confirm that reality and that view persisted  
17 right up until recent times. Still before this litigation began it has to be said, and this is reflected in  
18 the fishing and mineral rights recognized by the United Kingdom, to which Mr. Reichler will take  
19 you. Let's look briefly at a note prepared on the 22<sup>nd</sup> of April 2008 to record an early, secret  
20 meeting between the Pew Foundation and "BIOT" officials. It's over the page, the next tab, Tab  
21 No. 4 at page 13. And you will see there in the second, bottom half of the page, and e-mail from  
22 Joanne Yeadon, whose name you will be familiar with, dated the 22<sup>nd</sup> of April 2008. And I want  
23 to take you to paragraph 3 and the third sentence of paragraph 3, which responds to the ideas of  
24 Pew, and I quote, "But there were obstacles, the first being: Mauritius." Mauritius had nationalistic

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<sup>6</sup> UKR, Annex 25.

1 and economic reasons for potentially not liking Pew’s ideas. “They wanted the islands back and  
2 would probably want to exploit them for tourism. HMG was, if you like, a temporary freeholder, as  
3 we have said, we will return the islands to Mauritius once they are no longer needed for defence  
4 purposes. You see, once they were in the private domain, the use of the word returns. So, any  
5 agreement between the UK Government and Pew Trust may falter when Mauritius regains  
6 sovereignty.”<sup>7</sup> “Temporary freeholder”? “Regains sovereignty”? 2008. The UK argument that  
7 these were never part of the territory of Mauritius is imaginary. It is a concoction made up for the  
8 purposes of this case.

9 11. That brings me to **Point 3: the UK is simply unwilling to confront the reality and the**  
10 **evidence before the Tribunal.** Let’s return to the events of September the 23<sup>rd</sup>, 1965, when the  
11 United Kingdom Prime Minister, Harold Wilson, met Premier Ramgoolam at 10 Downing Street.  
12 This was the crucial meeting. A minute submitted to the UK Prime Minister in advance  
13 highlighted, by his Private Secretary, the objective of the meeting, and you’ll find that at the next  
14 tab, which is Tab 5, page 15. And it’s a short note accompanying at attachment. It’s to the Prime  
15 Minister, as you see on the top of that fanned corner, and then it says, Mauritius, and then it says  
16 the following: “Sir Seewoosagur Ramgoolam is coming to see you at 10.00 tomorrow morning.  
17 The object is to frighten him with hope: hope that he might get independence; Fright lest he might  
18 not unless he is sensible about the detachment of the Chagos Archipelago.”<sup>8</sup> I attach a brief  
19 prepared by the Colonial Office with which the Minister of Defence and the Foreign Office are on  
20 the whole content. The key sentence in the brief is the last sentence of it on page 3. Let’s go to  
21 that last sentence on page 3, which you will find at the bottom of page 19 of the document. And  
22 that says at the bottom, bottom of page 19. Throughout consideration of this problem, all  
23 departments have accepted the importance of securing consent of the Mauritius Government to  
24 detachment. The premier knows the importance we attach to this. In the last resort, however,

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<sup>7</sup> United Kingdom Counter-Memorial (“UKCM”), Annex 87.

<sup>8</sup> MM, Annex 17.

1 detachment could be carried without Mauritius' consent. And this possibility has been left open  
2 in recent discussions in Defence and Overseas Policy Committee. The Prime Minister may,  
3 therefore, wish to make some oblique reference to the fact that HMG have the legal right to detach  
4 Chagos by Order in Council without Mauritius' consent, but this would be a grave step. Coming  
5 back to those other words, "frightening with hope," you won't find them referred to anywhere in  
6 the British written pleadings. They just would rather those words were not used. Let's go then  
7 to the record of the meeting itself between Prime Minister Wilson and Premier Ramgoolam. You'll  
8 see that over the next page at Tab 6. And this time I'd like to take you down the page down to  
9 page 22 at the bottom. And here we have a summary of what Harold Wilson says. The Prime  
10 Minister went on to say that in theory, there were a number of possibilities. The Premier and his  
11 colleagues could return to Mauritius either with independence or without it. On the defence  
12 point, Diego Garcia could either be detached by order in council or with the agreement of the  
13 Premier and his colleagues. The best solution of all might be independence and detachment by  
14 agreement, although it could not, of course, commit the Colonial Secretary to this point."<sup>9</sup>

15 Now, In the face of this material, we say it is wholly implausible to claim, as the United Kingdom  
16 does, that there was no connection at all between the grant of independence and the detachment of  
17 Chagos. It's a hopeless argument. There is here an unwillingness of the United Kingdom to  
18 confront the reality of the documents. That's why we say they hope you will never get to this  
19 reality for reasons of jurisdiction.

20 12. Against this background, let's move forward nearly five decades to April 2010, and we will  
21 deal in the coming days with the history in between. My **Point 4: the "MPA" we say is the**  
22 **product of policy-making "on the hoof" and it's a policy that the United Kingdom undertook at the**  
23 **highest levels of government to put on hold.** The years have passed between 1965 and 2010, but  
24 the approach of the United Kingdom appears not to have changed a great deal in those years. These

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<sup>9</sup> MM, Annex 18.

1 proceedings were triggered by the unexpected announcement by Foreign Secretary David  
2 Miliband that he had decided to create a ‘Marine Protected Area’. And to great fanfare, his office  
3 issued a press release. You’ll find that over the page at Tab 7. You will see at the top, it is titled,  
4 “New Protection for Marine Life”, and it indicates that the Foreign Secretary David Miliband  
5 instructed the “BIOT” Commissioner to declare a marine protected area. And then as you go  
6 down, you will see that Mr. Miliband says that the marine protected area will “double the global  
7 coverage of the world’s oceans under protection.” Its creation is a “major step forward.” And yet  
8 curiously, the announcement was accompanied by no regulations, no budget, and no scientific plan  
9 of action. One might have expected the United Kingdom to offer some expert evidence on the  
10 pressing scientific or ecological need for an “MPA”, or even a witness of fact to explain the careful  
11 and organized way in which this policy was cobbled together. There is nothing, not a single  
12 statement.

13 13. Mr. Miliband’s announcement was, as I said, a complete surprise to Mauritius. Much  
14 information comes to Mauritius from the media. The UK seems to tell Mauritius very little. But  
15 Mr. Miliband did call Prime Minister Ramgoolam just a few hours before his announcement.  
16 Another year, another *fait accompli it might be said*. “You’ll remember that note about dealing  
17 with the United Nations.”<sup>10</sup>

18 14. *Plus ça change, plus c’est la même chose*. We now know – thanks to the documents that  
19 came to public light in proceedings in English judicial review matters but not disclosed to this  
20 Tribunal – that the 2010 decision lacked the support of Mr. Miliband’s closest advisers, that it was  
21 taken in the face of a clear warning that litigation of this kind would follow and that it violated  
22 Mauritius’s rights. Policy making “on the hoof”, one of his advisers called it.<sup>11</sup>

23 15. Suffice it to say, the decision came as a great surprise to Mauritius. Why? Because just a  
24 few months earlier, in November 2009, at a meeting of the Commonwealth Heads of Government,

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<sup>10</sup> MM, Annex 26 (emphasis in the original).

<sup>11</sup> Mauritius Reply (“MR”) Annex 157.

1 no less, Prime Minister Ramgoolam was given a clear undertaking by British Prime Minister,  
2 Gordon Brown, that the entire project would be put on hold. Dr. Ramgoolam has offered this  
3 Tribunal a witness statement on what has transpired, and you will see it at Tab 8. The key  
4 paragraphs are paragraphs 12 to 15, and you will find those at the end of the document at page 27.  
5 Just paraphrase for the first bit, the context is CHOGM, a particular issue and difficulty has arisen.  
6 Mr. Brown asks for help from Mr. Ramgoolam. Mr. Ramgoolam offers help. Mr. Brown says,  
7 “What would you like me to do?” And at Paragraph 14 you have the following: “I replied: “You  
8 must put a stop to it”. There could have been no doubt that “I was referring to the proposed  
9 ‘marine protected area.’” Then at paragraph 15, “Mr. Brown then said: “I will put it on hold.””  
10 Go over the page and look at paragraph 21. Mr. Ramgoolam explains that he met Mr. Brown on  
11 the 17<sup>th</sup> of April 2013. I think it may have been the funeral of Baroness Thatcher. “On that  
12 occasion I mentioned my understanding that the subject of his commitment to me had been raised  
13 in court proceedings in London and reiterated the deep concern and disappointment of Mauritius”  
14 in relation to the “MPA”. And then paragraph 22. “Mr. Brown plainly understood the  
15 commitment to which I was referring. He did not deny that he had ever made such a commitment,  
16 and he didn’t indicate any surprise or lack of understanding of what I had raised. Mr. Brown  
17 simply said”, and I quote, “The truth always comes out.” What does the UK say in its pleadings  
18 about this? Well, they rewrite what Mr. Ramgoolam has said because they refer only to the putting  
19 of the consultation on hold, which is not what the document refers to. So, let’s look at what the  
20 United Kingdom actually says in its pleadings. It’s very instructive as to how they go about this  
21 matter. At Tab 9 you will see an extract from the UK Rejoinder, page 44. We’re on page 29 at  
22 the tab now, if I can take you to paragraph 3.14. At the bottom of 3.14 it says: “As stated in the  
23 Counter-Memorial, enquiries were made at the time, in December 2009, and Prime Minister  
24 Brown made clear that he had given no undertaking to withdraw the public consultation. Now,  
25 there’s a footnote reference, Footnote 207. Let’s go down to the bottom of the page and see what

1 Footnote 207 says. It says, UKCM, UK Counter-Memorial, para 3.63. And then turn over the  
2 page. We're now on page 30 on the back of the previous page, and here you've got paragraph  
3 3.63 of the UK Counter-Memorial at page 86. We're still in the same tab. It's page 30, Mauritius  
4 folder. And at the bottom of paragraph 3.63 of the Counter-Memorial, it says: "when the  
5 allegation first arose in late December 2009 that the United Kingdom Prime Minister had given  
6 any such undertaking to withdraw the public consultation, the Prime Minister was asked whether  
7 he had: he said he had not."<sup>12</sup> Where's the footnote? Where's the evidence? There is none.  
8 There is no evidence to support the assertion the Prime Minister denied what he had said. They  
9 could have called him. They could have put in a witness statement. They could have called  
10 Prime Minister Ramgoolam to cross-examine him. None of the above. The statement stands  
11 entirely unchallenged, and we say that is significant.

12 16. That brings me to **Point 5**: the "MPA" was stated to be a measure to conserve  
13 biodiversity on land and sea, not a fisheries or resource management measure." That is how it was  
14 announced by Mr. Miliband, and that is how it proceeded until these proceedings were underway,  
15 and then the UK changed tack. And what the United Kingdom now says in its Counter-Memorial  
16 is that the "MPA" is nothing more than a repackaging of earlier legislation plus an administrative  
17 ban on commercial fishing.<sup>13</sup> The reason for the change is self-evident. It's to help the UK in its  
18 jurisdictional arguments. Our invitation to you is to assess the "MPA" for what it purports to be  
19 and what it really is.

20 17. Now, relatedly, the UK asserts that Mauritius "invites the Tribunal to overlook the fact that  
21 the "MPA" is a matter of great benefit ... to all states in the region and ... more widely", a  
22 "conservation measure of global importance".<sup>14</sup> So, what is it? Repackaging measure or a  
23 conservation measure of global importance. They can't make up their minds. But what they do

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<sup>12</sup> UKCM, para. 3.63.

<sup>13</sup> UKCM, paras. 3.69 and 6.32.

<sup>14</sup> UKR, para. 1.7.

1 is they say that Mauritius has no commitment to conservation or environmental protection, that the  
2 challenge to the legality of the “MPA” is a challenge to a measure that we should all be supportive  
3 of. The suggestion is both audacious and misconceived. And I’ll make just two brief points on it.  
4 Mauritius has a long-standing and strong commitment to environmental protection. Anyone  
5 who’s been to the country knows why. It is recognized as a global leader.<sup>15</sup> But second, let’s  
6 look at the actions of Mauritius internationally. They speak for themselves. In our Written  
7 Observations on the Question of Bifurcation, you’ll recall we gave an example. We attached at  
8 Annex 3 to those written observations the 2010 Agreement between France and Mauritius on  
9 Economic, Scientific and Environmental Co-management in relation to Tromelin Island and its  
10 Surrounding Maritime Areas. And that agreement had three implementing agreements, all signed  
11 on the 7th of June 2010. So, exactly as this MPA business is underway. And you’ll find that at  
12 Tab 10. You’ll find it in French, Page 31. You can see the accord cadre. And then at page 44,  
13 you will find the courtesy English translations, for which I thank my colleagues. I just will take  
14 you briefly to page 58. At Page 58 is the implementing agreement on environmental  
15 co-management. On 58 of the Mauritius folder, you can see there the implementing agreement.  
16 Just over the page just very briefly, can I just take you to Article VII of the implementing  
17 agreement, which is on environmental co-management. And you’ll see the objectives of this  
18 agreement shall be implemented in the following stages. And it sets out three stages. One, the  
19 first stage shall consist of an environmental audit. Two, the second stage shall consist in  
20 elaborating a master plan for the environment. Three, the last stage shall consist in assessing the  
21 relevance of creating if necessary marine protected areas. So, we’re a country that has no interest  
22 in the environment, but we entered into these agreements for the creation under appropriate  
23 conditions of marine protected areas. That, we say, is how you create a marine protected area in  
24 these circumstances, not the on-the-hoof unilateral decision making of the kind characterized by

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<sup>15</sup> See for example *ibid.*, pp. 16-17 and <http://environment.gov.mu/English/Pages/default.aspx>.

1 the “MPA”. We say this tale illustrates the undermining of environmental objectives is on that  
2 side of room, not on this side of the room.

3 18. The true purpose of the “MPA,” its political purpose, is reflected in the UK’s actions over  
4 the past four years. Adopted in April 2010, four years have passed with no real substantive action.  
5 The UK’s Counter-Memorial cryptically refers to “public-private partnerships, no funds available,  
6 no budget, no regulations. What does the United Kingdom say in response? Existing legislation  
7 is sufficient. Further implementing legislation is being prepared. What about enforcement?  
8 The Rejoinder offers the assertion that the “BIOT” Administration has commenced a significant  
9 piece of work on planning for next generation of enforcement. Well, there hasn’t been a first  
10 generation of enforcement. In the meantime, what we have if you want to talk about enforcement  
11 right at the heart of the “MPA” is a giant exclusion zone in which fishing activity proceeds  
12 unabated and at a significant level, some 30 tonnes of tuna and like species in 2010, and major  
13 projects are carried out without any environmental assessment at all. Total lack of transparency.  
14 How do we find out what’s going on in Chagos? We read about it in The Independent newspaper.  
15 That’s how we find out what’s going on. And at Tab 11, you will find the newspaper article,  
16 which I won’t take you to now, an article in The Independent which alerted us to a major pollution  
17 pocket. And then we tracked down and obtained the report to the “BIOT” Commissioner on  
18 environmental conditions in the Chagos Archipelago. Now, this is a document you would have  
19 thought the United Kingdom would make available to this Tribunal. No, they don’t want it to be  
20 made even publicly available, and some poor soul had to go and make an application under  
21 environmental information laws to get hold of this document, and finally it came out. I invite you  
22 to read it for yourselves. It identifies three pressing issues. At page 72 you get a description of  
23 major environmental degradation being taken without any environmental assessment at all. At  
24 page 74, we learn that one of the principal sources of pollution in the Chagos Archipelago is, oh,  
25 the Pacific Marlin. The enforcement vessel is the main culprit, a regular culprit it says in the text.

1 And then you see on the next page at page 75 they're allowing what they call hydroblasting of  
2 ships. Professor Sheppard, who's obviously an independent spirit, writes at the bottom of page  
3 75, "it is not appropriate for hazardous waste to be dumped into lagoon waters of Diego Garcia."  
4 That's what's going on in Diego Garcia.<sup>16</sup> So, you can see why there is scepticism about what the  
5 "MPA" is really about. And two documents really suffice which allow us to know what was  
6 really going on here when they purported to create a Marine Protected Area.

7 19. Likewise, in its written pleadings Mauritius pointed to the absence of regulations adopted  
8 for the "MPA."<sup>17</sup> What does the UK say in response? Existing legislation is "sufficient",<sup>18</sup> and  
9 "further implementing legislation is being prepared".<sup>19</sup> That is it, nothing else. Pure assertion, no  
10 evidence. No doubt you will hear about the new consultation to explore the possible return of a few  
11 Chagossians, but that too is open-ended and a result of the terrible publicity that has come to the  
12 UK with the events of the past few years.

13 20. The first is the Wikileaks document, which relates to events on the 12th of May 2009, and  
14 the views of the good Colin Roberts, which you will find at Tab 13. I don't need to take you to it  
15 now in any great detail. It is a most unfortunate document. You will note that they have not  
16 tendered Mr. Roberts as a witness in this case. If they had, we would happily have  
17 cross-examined him, but they have not felt it appropriate, one assumes, to take the risk. At Page 78  
18 of the Mauritius folder, you will see at Paragraph 7 of the Note prepared, no doubt, by a diligent  
19 American diplomat, the unfortunate phrase used by Mr. Roberts, that there would be "no human  
20 footprints" or "Man Fridays" on uninhabited islands, hearkening back to earlier era, and  
21 establishing a marine park would in effect put paid to resettlement claims of the Chagos  
22 Archipelago's former residents. Over the page, if that weren't enough, you would find an extract  
23 from the cross-examination of –

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<sup>16</sup> *Ibid.*, para. 3.59.

<sup>17</sup> See e.g. MM, para. 4.82; MR, p. 11 footnote 34, paras. 3.72 and 6.124.

<sup>18</sup> UKR, para.8.76(e).

<sup>19</sup> *Ibid.*

1                   ARBITRATOR GREENWOOD: Mr. Sands, could you just tell me, whose is the  
2 emphasis? Whose underlining is this?

3                   PROFESSOR SANDS: This may be emphasis. If you go back to Page 76, we  
4 got this from a newspaper in Mauritius, from the Web site of a newspaper in Mauritius. We could  
5 get you, I think, a clean copy, if you would like one, and my sense of it is that the underlining  
6 comes from the editors of the Mauritian newspaper. And I suspect it was not in the original, but  
7 we can try to get the original, if that would be helpful.

8                   ARBITRATOR GREENWOOD: I would be interested to know, but thank you  
9 very much just the same.

10                  PROFESSOR SANDS: If you go over the page to Tab 16, you will see the  
11 cross-examination in part, and I just want to take you to the right-hand column at the bottom of  
12 Page 147, you get the rather candid statement by Mr. Roberts as to what was really going on here,  
13 and I quote:

14                   "I go back to one of the origins of our proposals in relation to strengthening  
15 environmental protection in the British Indian Ocean Territory." And then the key words: "We  
16 recognized that the Government was in a very difficult public position." He's referring to the  
17 period 2008-2009. "Not only was there a great deal of political pressure relating to the  
18 Chagossian movement, but we also were dealing with a series of allegations relating to rendition,  
19 and we were looking to see what we could do to try and improve the reputation of the Government  
20 in relation to the British Indian Ocean Territory." So, there you've got a rather candid assessment  
21 of what was going on. That is the reality of what motivated those actions that related to what  
22 Mr. Miliband's advisor called "policy-making on the hoof."

23                   Coming to Point 6, which I could put very briefly, we will deal with this in more detail,  
24 obviously, we say the "MPA" manifestly violates the requirements of the Convention because the  
25 United Kingdom is not entitled to declare an MPA, and because even if it is entitled to declare an

1 MPA, it violates numerous provisions of the Convention. It's been fully pleaded; and, in the  
2 interest of time, I'm going to give but a couple of the most glaring examples. The U.K. gave  
3 undertakings in relation to Mauritius's fishing up to 200 miles around the Chagos Archipelago.  
4 The "MPA" totally extinguishes the right to fish. It takes them away in their entirety without  
5 consultation, without prior notice. Gone. The violation of Articles 2(3), 56, and 194 is, on that  
6 basis, manifest, and I will explain why in the coming days. And then, as we will continue later,  
7 the U.K. also allowed Mauritius to file Preliminary Information to the Commission on the Limits  
8 of the Continental Shelf. Indeed, it encouraged Mauritius to do that in 2010, in May. It then  
9 didn't object for five years, and then out of the blue, in the second round of pleadings in this case, it  
10 announces for first time that Mauritius has no entitlement to make such a filing. That is plainly  
11 inconsistent with the requirements of Article 76 of the Convention and Article 300 of the  
12 Convention.

13 Let me bring the thread of my first points together as follows: The U.K. arguments as to  
14 the merits – from September 1965 to April 2010 – are so weak that their case rests in its entirety,  
15 we say, on the jurisdictional objections offered with a somewhat desperate and exasperated air.  
16 The sharp tilt of the U.K. arguments in that direction reflects the manifest weakness on the merits.  
17 To be clear, we're not seeking to belittle the U.K. arguments on jurisdiction, although it does  
18 complain, rather entertainingly, that we've relegated them to the end of our pleading. We're not  
19 the first State to have done that. They're relegated to the end of our oral arguments also, I'm  
20 bound to tell you, but only because, in our submission, they can only be addressed once you have a  
21 clear understanding of the facts and the legal arguments on the merits that we are making.

22 21. And so to **Point 7**: the dispute over the "MPA" is a dispute over which this Tribunal has  
23 jurisdiction. The UK says you have jurisdiction over nothing. You are not entitled to interpret the  
24 words "coastal state," you're not entitled to determine whether the creation of an "MPA" that  
25 extends to over half a million square kilometres of ocean violates any provision of the 1982

1 Convention. They say you cannot touch any aspect of the United Kingdom’s sovereignty claim.  
2 From Article 2(3) to Article 300, and to every other provision in between, they say you have no  
3 right to exercise jurisdiction at all. None of this, says the United Kingdom, is a matter for  
4 compulsory dispute settlement under Part XV.

5 22. Now, that argument cannot be said to lack audacity! The argument will be addressed in  
6 detail on Friday by me, by Mr. Loewenstein and Mr. Reichler. I will explain why there is no bar  
7 to this Tribunal being able to address the claim by Mauritius that the UK is not a “coastal State.”

8 The Tribunal has jurisdiction because:

- 9 • One, this is a dispute concerning the interpretation or application of the Convention;
- 10 • Two, it is not excluded from jurisdiction by virtue of one of the exception clauses in the  
11 Convention;
- 12 • And three – this is significant – the Convention contains no unwritten exclusion of disputes  
13 that touch on questions of sovereignty over territory, as the UK argues.

14 23. “Had there been no sovereignty issue”, the UK asserts, “it can safely be inferred there  
15 would now be no case”.<sup>20</sup> Wrong: if there were no sovereignty issue, it would be Mauritius that  
16 was proclaiming or regulating maritime zones, without the need for a case. But there is a  
17 sovereignty issue, and that that as such cannot mean that this Tribunal does not have jurisdiction  
18 or cannot exercise jurisdiction. The dispute obviously concerns the use of the oceans – how can  
19 you purport to regulate more than half a million square kilometers of ocean and stand before this  
20 Tribunal and say with a straight face that no provisions of UNCLOS are engaged, it’s all about  
21 sovereignty. Nor can it be said that the dispute is *only* about sovereignty over land: there is a  
22 dispute about the use of the oceans that concerns both the lawfulness of the measures taken and  
23 the entitlement to take such measures.

24 24. The view that the purported exercise of entitlements is within the jurisdiction of this

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<sup>20</sup> UKR, para. 1.5.

1 Tribunal is widely recognised. We noticed the UK had been notably restrained about the  
2 scholarship of Professor Boyle, but his 1997 article was prescient – precocious even – and the  
3 approach that he has outlined in that 1997 piece has not been shown to be wrong by subsequent  
4 developments, having regard to the practice of other Annex VII tribunals: in light of the *Guyana*  
5 *v Suriname* decision, and the issue of the land boundary terminus, the jurisdiction of the Annex  
6 VII Tribunal in *Bangladesh v India* over the issue of the location of the land boundary terminus –  
7 and the determination of sovereignty all around it – was simply not in issue in that case as many  
8 people in this room know. Things have moved on since the old academic articles on which the  
9 United Kingdom relies – almost all of which predate the adoption of the Convention or its entry  
10 into force, or the case-law to which I have referred and to which we will come back to.

11 25. At Tab 2.15, you have, in full, Professor Boyle’s article.<sup>21</sup> (Tab 2.15, folder page 94) We  
12 aren’t going to take you to it now, but the United Kingdom had invited you to read it in full and  
13 we think that’s a very good idea. You will see at Page 49 of the article, Page 94 of Tab 15, that  
14 there is there a statement of academic authority which is wholly supportive of the case brought  
15 by Mauritius and it has been supported by other academic authorities and by several judges of  
16 the International Tribunal for the Law of the Sea.

17 26. The heart of his thinking in part is in relation to whether a declaration has been made  
18 under Article 298(1)(a). Professor Boyle says that where no declaration has been made under  
19 that provision there are circumstances in which an Annex XII Tribunal can deal with a “land [...]”  
20 dispute”. And he accepts too, and this is at Page 94 of the document, that “in compulsory  
21 jurisdiction cases, the Tribunal may have to decide matters of general international law that are  
22 not part of the Law of the Sea, and Article 293(1) allows for this” (folder page 94). On Professor  
23 Boyle’s scholarly approach, there is no immutable bar to jurisdiction. As I will show on Friday,

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<sup>21</sup> MR, Annex 103, A. Boyle, “Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction”, 46 *ICLQ* 37 (1997).

1 that view is shared by many others. There is nothing in the travaux préparatoires to support the  
2 view that it was the intentions of the drafters to exclude a dispute raising facts that are at issue in  
3 this case from Part XV and over two rounds of pleadings, the United Kingdom has not been able  
4 to show otherwise. To adopt the approach for which the United Kingdom argues would be to  
5 give ITLOS and Annex VII tribunals a second tier status: the International Court of Justice could  
6 deal with this issue, provided it is under the Law of the Sea Convention, says the United  
7 Kingdom, but ITLOS and Annex VII tribunals could not do so. Of course UNCLOS does  
8 provide explicit exceptions from its jurisdiction but why should this Tribunal assume implicit  
9 exceptions beyond those, or write in its own exceptions that the drafters declined to insert in a  
10 very carefully crafted text? Is that really what the drafters of the Convention intended?

11 27. This brings me to **Point 8**, my final point: this dispute truly is *sui generis*. How many  
12 other cases are you, distinguished members of the tribunal, able to think of in which a State  
13 refers to itself as a “temporary freeholder”, or a State which recognizes in another State a  
14 reversionary interest? In how many other cases was a colonial territory detached in violation of  
15 the right of self-determination in the run-up to independence? The reality is, as we will see, as  
16 you know, the United Kingdom recognized the rights of Mauritius in the territory, including  
17 the right to fish and to benefit from oil and mineral exploitation activities.

18 28. Let me take you to one example of the unique facts before you. There is surely no other  
19 case that raises this fact. As detailed in our Memorial, on 6 May 2009 – before this dispute  
20 crystallized – Mauritius filed Preliminary Information to the UN Commission on the Limits of  
21 the Continental Shelf, they did so with the advance knowledge and encouragement of the United  
22 Kingdom.<sup>22</sup> (Tab 2.16, folder page 100) You will find the submission at Tab 2.16. Which State  
23 is entitled to submit such information? By Article 76(8) of the Convention, the “coastal state”  
24 files such information. Why was it done? To ensure that a full submission could be made in

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<sup>22</sup> MM, Annex 144.

1 accordance with Article 4 of Annex II to the Convention in a timely way. And we invite you in  
2 this regard to look in due course at the document that we have put in at Tab 2.17, which is the  
3 Decision of UNCLOS States Parties of 20 June 2008, moving back the deadline for filing  
4 preliminary information to May 2009, you know it well.<sup>23</sup> (Tab 2.17, folder page 113) So, what  
5 happened? In January 2009 the UK announced at a bilateral meeting of the two States that it had  
6 no interest in submitting its own claim.<sup>24</sup> And it has not filed preliminary information. The  
7 submission by Mauritius, and the UK has said it doesn't intend to and has no interest in doing so.  
8 The submission by Mauritius is thus the only one on the table. Having encouraged the filing,  
9 having been told that it had happened when the two States met in July 2009, for five years there  
10 was no protest by the United Kingdom. Indeed, the Counter-Memorial continued in that frame, it  
11 offered no objection to the filing, accepting that the submission of preliminary information has  
12 legal consequences, namely "to satisfy the time period referred to in paragraph 4 of annex II to  
13 the Convention and the decision contained in SLOS/72".<sup>25</sup> And then out of the blue came the  
14 Rejoinder, confirming (at paragraph 8.40) that there had been no protest, the United Kingdom  
15 had recognized that it was out of time for making a submission, and then very subtly, very, very  
16 subtly changing its position, and you will see that at Tab 2.18 and I do just want to take you to  
17 that because it is important. It is a change in position by the United Kingdom at the end of the  
18 written case. Tab 2.18, you can read the words at the bottom of Paragraph 8.39: Mauritius "is  
19 not the coastal State in respect of BIOT and as such it has no standing before the CLCS with  
20 respect to BIOT".<sup>26</sup> (Tab 2.18, folder page 116)

21 29. That's a new objection – articulated for the first time – on the preliminary information  
22 issue. So, on the one hand there has been no protest, on the other hand we have this statement.  
23 So, we look forward to clarification: that having tacitly accepted the filing, how can the UK now

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<sup>23</sup> Mauritius Authority 68.

<sup>24</sup> See MM, para. 4.31.

<sup>25</sup> UKCM, para. 7.54

<sup>26</sup> UKR, para. 8.39.

1 object to it consistently with its obligations under the Convention to act in good faith as Article  
2 300 requires? In light of this change of position Mauritius will, in due course, be inviting the  
3 Tribunal to declare that Mauritius was entitled to make that filing in May 2009 and that the  
4 United Kingdom should do nothing now to thwart the filing of a full submission by Mauritius.  
5 That is a dispute which is plainly within the jurisdiction of this tribunal. Is the sovereignty issue  
6 any less incidental to the resolution of a dispute under Article 76 than it is to the resolution of a  
7 dispute, for example, under Article 74? No, it is not we say.

8 30. So, this is but one rather clear example of the unique characteristics of this case, and the  
9 United Kingdom has not been able to identify any case, nor do we think there is one, which  
10 meets these kinds of facts.

11 31. If nothing else, the United Kingdom has been consistent in seeking to play the fear card.  
12 It says that Mauritius is asking the Tribunal “to rule in favour of the existence of a system for the  
13 compulsory settlement of all territorial disputes over islands or mainland territories with a  
14 coastline”.<sup>27</sup> No, that is not what we are doing: we are asking the Tribunal to rule that the United  
15 Kingdom is not entitled to create this “Marine Protected Area” because it is not – on the  
16 cognizance of the United Kingdom itself – “the coastal State” within the meaning of the  
17 Convention. It is not “the coastal State” because it has expressly acknowledged that:

- 18 • One, that Mauritius holds sovereign rights in reversion regarding minerals;
- 19 • Two, Mauritius holds fishing rights all the way up to 200 nautical miles;
- 20 • Three, the UK has made plain the islands will be returned (not given), returned to Mauritius;
- 21 and
- 22 • Four, the UK has acknowledged Mauritius’ special interests over the long term in relation to
- 23 these islands; and

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<sup>27</sup> UKR, para. 1.6.

- 1 • Five, no protest in relation to the filing of preliminary information on an extended  
2 Continental Shelf.

3 These are all acknowledgements by the United Kingdom of the special rights of Mauritius and  
4 they put this case in a category of one. These rights are intimately linked with Convention rights  
5 that appertain to the Convention. The fact that the United Kingdom is in continuing breach of a  
6 fundamental principle of international law, the principle of self-determination, applicable under  
7 Article 293, underlines the vital importance of this case, not only to this Tribunal not only to  
8 these Parties but to the international community as a whole.

9 32. Let me emphasize and be clear: the Tribunal can give a decision which can be  
10 ring-fenced. There is no risk of the floodgates being opened by this case. And whilst I am on that  
11 point, may I remind you that any decision this Tribunal may take will have no consequences for  
12 the United States military base on Diego Garcia: that commitment has long been given in the  
13 National Assembly of Mauritius by the Prime Minister, and it has been articulated more recently  
14 in the Note Verbale communicated directly by Mauritius to the United States with which it has  
15 had engagement on 28 of March last. And you will find that, won't take you to it now, in Tab  
16 2.19 of the folder. (Tab 2.19, folder page 117)

17 Mr. President, members of the Tribunal:

18 33. Over the next three days we are not simply going to repeat what is set out in the written  
19 pleadings. We are going to engage with the arguments raised by the United Kingdom and we  
20 want to do so in a constructive and a cooperative manner as things have gone already so very  
21 nicely in this wonderful city that you have referred to. Tomorrow we will address the facts. On  
22 Thursday we will address the legal merits. On Friday we will deal with the UK arguments on  
23 jurisdiction but the Tribunal jurisdiction to deal with this case. As we address these matters, we  
24 invite this Tribunal to keep in mind the rather startling – and often contradictory – propositions  
25 the United Kingdom has put before the Tribunal. I will not list all of them, but let me give you a

1 flavor:

- 2 - that the Chagos Archipelago was never a part of Mauritius, although this point was somehow
- 3 not made back in 1965;
- 4 - that when, in September 1965, Harold Wilson was told he must “frighten with hope” the
- 5 Premier of Mauritius, there was no suggestion of any linkage between “detachment” and
- 6 independence;
- 7 - that “detachment” actually doesn’t mean “detachment”;
- 8 - that this is not a “mixed dispute” because it doesn’t involve matters of the law of the sea;
- 9 - that despite the self-characterisation by the United Kingdom as a “temporary freeholder”, and
- 10 a recognised right of reversion, somehow Mauritius has no attributes of a “coastal State”;
- 11 - that despite the UK’s encouragement that Mauritius file preliminary information, it somehow
- 12 is not entitled to have filed such information;
- 13 - that despite the mountain of evidence to the contrary, the UK never actually did make any
- 14 real undertakings to Mauritius in relation to fishing, mineral or other rights – but that if it did
- 15 they had no legal consequences;
- 16 - that actually the “MPA” wasn’t really established to protect “the environment, flora and
- 17 fauna of the islands”, as the UK said at Paragraph 3.3 of its Counter-Memorial, and it isn’t
- 18 really the “major step forward” proclaimed by Mr. Miliband, but merely a repackaging;
- 19 - that the “MPA” is somehow nevertheless a genuine attempt to protect the biodiversity of the
- 20 marine environment, even though there are no regulations, no budget, and (a single vessel to
- 21 patrol an area the size of France);
- 22 - that in November 2009 there was no commitment from Gordon Brown to Prime Minister
- 23 Ramgoolam to put the MPA “on hold”;
- 24 - that the various provisions of UNCLOS – one thinks of Article 2(3) – don’t actually create
- 25 any obligations, all they are intended to do is describe the situation;

- 1 - that the creation of the “MPA” doesn’t engage a single provision of UNCLOS, although it
- 2 covers half a million square kilometres of ocean;
- 3 - that even if it does, there is not a single provision of UNCLOS over which the Tribunal has
- 4 jurisdiction; and, in fact, to cut to the chase;
- 5 - that Mauritius is not entitled to anything under UNCLOS in relation to this area or its own
- 6 territory.

7 34. Mr. President, members of the Tribunal, you could, I suppose, suspend disbelief, in  
8 relation to all of these matters, you could ignore the historical record, you could put aside all of  
9 the evidence, you could interpret the 1982 Convention and its Part XV into a completely  
10 meaningless text. That would, of course, have the great merit for the United Kingdom of  
11 allowing you to preserve the colonial status quo, an outcome which the United Kingdom tells  
12 you, was the intentions of the drafters of this Convention. We say you cannot do any of those  
13 things, and that the reading of the United Kingdom pleading leaves the impression of living in a  
14 time warp, in the days of imperialism, when states drew borders, removed populations and  
15 expected international courts and international tribunals to do their bidding.

16 35. On that note, it is a surprise perhaps, that the United Kingdom has not taken you to one  
17 judgment from exactly that period, which was being argued exactly as the United Kingdom  
18 detached the Chagos Archipelago. You will all recall the judgment of the International Court of  
19 Justice, adopted on the casting vote of Sir Percy Spender, with Sir Gerald Fitzmaurice holding on  
20 to his coat-tails (or perhaps it was the other way around), to the effect that Ethiopia and Liberia  
21 were not entitled to bring claims against South Africa in respect of its actions and omissions in  
22 South West Africa.<sup>28</sup> The judgment springs to mind as one reads paragraph 8.39 of the United  
23 Kingdom Rejoinder: Mauritius “has no standing before the CLCS with respect to BIOT”. One  
24 wonders how it might be possible for anyone to read the evidence that was available in the

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<sup>28</sup> *South West Africa, Second Phase, Judgment, I.C.J. Reports 1996*, p. 6.

1 Memorial and Reply to then craft so very unfortunate a sentence. The United Kingdom is  
2 defending a colonial record in a forum created by a post-colonial treaty. Mauritius has come to  
3 this Tribunal with full respect for you and for the United Kingdom with a dispute that falls  
4 squarely within the Convention and Part XV. And we seek your assistance in helping the Parties  
5 to resolve this most unhappy of disputes.

6 Thank you very much, Mr. President.

7 PRESIDENT SHEARER: Thank you very much, Mr. Sands.

8 Now, does that bring us to the end of the Opening Statements of the Republic of  
9 Mauritius?

10 I think at this point we take a break for 20 minutes, and then after the break we will  
11 hear from the United Kingdom. Thank you. We will adjourn.

12 (Brief recess.)

13 PRESIDENT SHEARER: We will resume the Hearing. And shall I call upon  
14 Mr. Whomersley first, or Mr. Grieve?

15 MR. WHOMERSLEY: Mr. Grieve.

16 PRESIDENT SHEARER: Thank you very much.

17 **SPEECH BY THE ATTORNEY GENERAL: 22 APRIL 2014**

18 **MAURITIUS v. THE UNITED KINGDOM ARBITRATION**

19 Mr. President, Members of the Tribunal, the Delegation of Mauritius,

20 I would like first of all to say how honoured I am to be speaking in front of this  
21 distinguished Tribunal and in such pleasant surroundings. It is a pleasure to be here in Istanbul,  
22 but particularly here in the Pera Palace Hotel.

23 I would also like to thank the Permanent Court of Arbitration and its staff for all their  
24 hard work in arranging the hearing to date, and I have no doubt that, based on their excellent  
25 performance so far, we can expect that the next two and a half weeks should run very smoothly.

1           Mr. President, as Attorney General of England and Wales, I am here to speak to you this  
2 afternoon on behalf of the United Kingdom. From tomorrow, I will hand over to my colleagues  
3 to take forward the presentation of the United Kingdom's case. But the Government of the  
4 United Kingdom felt that it was right, as a way of demonstrating the importance which we attach  
5 to the case, that I should make the opening statement on behalf of my country.

6           Mr. President, Members of the Tribunal, I wish to make five key points on behalf of the  
7 United Kingdom in this opening speech. First, I would like to talk about the United Kingdom's  
8 approach towards its relations with Mauritius both generally and on the question of the British  
9 Indian Ocean Territory. My next point will concern the history of Mauritian interest in British  
10 Indian Ocean Territory. Thirdly, I shall explain the position of the Government of the United  
11 Kingdom on a matter which, while not part of this case, is clearly part of the background, namely  
12 the possible resettlement of the Territory. Fourthly, I want to address the crucial matter of your  
13 jurisdiction to deal with the case, particularly insofar as it concerns the issue of sovereignty,  
14 which has been clearly raised both in the pleadings but also in the opening speeches, which  
15 you've heard before you. I will then say a few words about the Marine Protected Area around  
16 the Territory.

17           Finally, I will try to summarise my key legal submissions to be made to you by my  
18 learned colleagues on behalf of the United Kingdom during the course of the hearing as it  
19 unfolds.

20           So, Mr. President, let me begin by saying that the United Kingdom greatly values its  
21 relationship with Mauritius, and I think I can venture to say that, apart from the issue of the  
22 British Indian Ocean Territory, relations between the two Governments are excellent and indeed  
23 cordial. Moreover, the British Government have always expressed a willingness to cooperate  
24 closely with Mauritius over the issue of the British Indian Ocean Territory. We have no doubts  
25 about our sovereignty over the Territory, but we have always been clear that the differences

1 between us should not present any obstacle to practical cooperation on matters of common  
2 interest between the UK and Mauritius. In particular, we are very willing to talk further to  
3 Mauritius about the practical implementation of the Marine Protected Area. This includes a  
4 willingness on our part to listen to any points that Mauritius might wish to make about the  
5 implementation of the MPA. Indeed my colleague, Mr. Mark Simmonds, one of the Ministers  
6 in the Foreign and Commonwealth Office, wrote to Mr. Boolell, the Foreign Minister of  
7 Mauritius, only last month asking for input from Mauritius on our consideration of  
8 improvements to the current framework for managing the Marine Protected Area. I regret to say  
9 that Mr. Boolell has declined this invitation. Nevertheless, I am happy to repeat today the  
10 assurances about the United Kingdom's willingness to cooperate, which have been made on a  
11 number of occasions to our Mauritian colleagues.

12 And I have obviously noted – and I will come back to this in a moment – the way in  
13 which opening its case, it highlighted that in another area of sovereignty dispute with the French  
14 over the island of Tromelin, that the Mauritian Government appears to have been very content  
15 with an engagement with another Government against which it has a sovereignty claim in  
16 relation to how to manage fisheries and, I think, a Marine Protected Area, although I think in  
17 reality if one looks at such documents no such area has yet come into being.

18 Let me also add that the British Government have always tried to engage with Mauritius  
19 in as cooperative manner as possible, without standing on the legal niceties. In many respects we  
20 have gone far beyond what any legal obligations would require. I do hope and submit to this  
21 Tribunal that we will not be penalised for doing this by suggesting that the result of such action  
22 is that we have come under further legal obligations. I say that because in listening very carefully  
23 to what Mr. Sands had to say in his opening, it seemed to me that that was at least one of the  
24 main thrusts of his argument - that because the United Kingdom had been willing to engage and  
25 involve Mauritius in the way in which the Chagos Archipelago and the BIOT was run, that

1 therefore in some way it had shed some essential part of its sovereignty in the process. If the  
2 Tribunal did so hold, it would, we submit, discourage States from seeking practical ways to  
3 cooperate while leaving aside their legal differences.

4         Secondly, Mr. President, I think it is important to note that, although Mauritius became  
5 independent in 1968, it was not until twelve years later that they first made a claim to the  
6 sovereignty of the Territory. It was not until a change of Government in Mauritius in 1982 that  
7 Mauritian law was amended to lay a formal claim to British Indian Ocean Territory. Although  
8 they sought to explain away this delay, their reasons are frankly unconvincing. The fact is that  
9 British Indian Ocean Territory has never been part of the colony of Mauritius – it had been a  
10 dependency and ruled by the Governor of Mauritius as a matter of administrative convenience.  
11 Perhaps, Mr. President, worth bearing in mind, that we are talking here of a large group of  
12 islands which were ceded by the French to the United Kingdom in 1814. Much play was made  
13 about maintaining integrity in terms of decolonization, but it is perhaps worth pointing out that  
14 those Territories currently constitute two sovereign States: Seychelles and Mauritius; the  
15 BIOT, to which Mauritius lays claim and, as we've also heard, the island of Tromelin, which  
16 currently is under French sovereignty but to which Mauritius also makes a claim. And although  
17 what was said about British Ocean Territory in the mid-1960s, in the lead-up to Mauritius  
18 independence has loomed large in this arbitration, it is also right, I would submit, to point out  
19 that it is only with the benefit of hindsight that this has appeared to be a key issue. In fact at the  
20 time, there were far more important issues to be considered, most noticeably in how minority  
21 rights would be protected in the Constitution, and arrangements about dealing with internal and  
22 external threats to Mauritius were met, and that's quite apparent when one looks at the  
23 documents that were generated at the time and which appear in your bundles. And finally, I  
24 would also say this on this point, it's right to point out that the United Kingdom made clear to the  
25 United Nations in 1965 that the islands were attached to Mauritius purely as a matter of

1 administrative convenience; so the suggestion that was made in the opening on behalf of the  
2 Government of Mauritius by Mr. Sands that in some way this is a recent concoction by the  
3 United Kingdom Government to justify something which they had not previously said is  
4 manifestly wrong.

5 Thirdly, Mr. President and Members of the Tribunal, you will have read in the  
6 submissions by Mauritius, and quite possibly in the newspapers, about those who lived in the  
7 British Indian Ocean Territory prior to 1973. Now, I have to say I was a little startled to hear  
8 what Mr. Sands had to say on this point because I can only repeat what the British Government  
9 has said on a number of occasions in the past. That is, that we regret very much the  
10 circumstances in which they were removed from the islands and recognise that what was done  
11 then should not have happened. A substantial sum in compensation was paid to the former  
12 inhabitants in the 1980s – a point that was recognised by the European Court of Human Rights in  
13 their recent decision. When in Opposition, the political party of which I'm a member said that  
14 we would look again at our current policy for BIOT. When we first came into Government, we  
15 were constrained by the proceedings in the European Court of Human Rights. But immediately  
16 after those proceedings were concluded, my colleague, the Foreign Secretary, announced that we  
17 would be looking again at the question of the United Kingdom's policy towards BIOT. As part  
18 of that review we are looking again at the question of resettlement. And we hope to be able to  
19 reach conclusions in the early part of next year in respect of that. I say all this so that, Mr.  
20 President, you and the Members of the Tribunal can be fully informed on the position. It is clear  
21 that these issues are not, in fact, relevant to the questions that you will have to address in this  
22 claim that has been brought before you. But I think it is important that I put the position of the  
23 British Government on these questions on the record. And also I hope to dispel a suggestion  
24 that British Government has never expressed any regret in the matter, because it has done so  
25 repeatedly.

1 My fourth point concerns the prospect which Mauritian colleagues have alluringly  
2 presented to you, namely that you should be able to decide upon the sovereignty of the British  
3 Indian Ocean Territory. As I have said, we are confident of our own sovereignty. But the  
4 dispute settlement procedures set out in the United Nations Convention on the Law of the Sea,  
5 which are the ones you have to apply in these proceedings, cannot be used to test the issue  
6 through a judicial procedure. On the contrary, I am clear and would submit that it would be  
7 dangerous – and I use the word ‘dangerous’ advisedly – if you were to seek to go down that  
8 route. It is clear that the States Parties to the Convention did not intend, when they became a  
9 party to it, to confer upon the courts and tribunals referred to in the Convention a general and  
10 very wide power to adjudicate upon any dispute about the sovereignty over land territory that  
11 happened to have a coast. Mauritius is in effect asking this Tribunal to reach a decision on  
12 jurisdiction that would be seen to be perverse. We have no doubt at all that for the Tribunal to  
13 seek to apply such a wide ranging jurisdiction would be quite wrong and would call into question  
14 the whole system of dispute settlement under the Convention, and with it, the Convention itself.  
15 I speak to you bluntly about this because we perceive these to be very serious issues, and it is  
16 only right that I should draw your attention to them.

17 Next, Mr. President, I want to explain to you the Government’s attitude towards the  
18 establishment of marine protected areas. As the Members of the Tribunal will know, the  
19 internationally agreed target is that ten per cent of the world’s oceans should be declared as  
20 marine protected areas by 2020. In fact, and frankly regrettably, it looks as if this target is not  
21 going to be met. But the United Kingdom Government has made it clear that it is keen to do  
22 what it can to pursue that objective. Indeed, the marine protected areas around the British  
23 Indian Ocean Territory, together with that around another UK territory, South Georgia and the  
24 South Sandwich Islands, are two of the largest marine protected areas in the world. We are  
25 proud of the fact that two British territories have marine protected areas around them, and of the

1 contribution they are making to the global public good. I need hardly say therefore that we  
2 would greet with considerable alarm any decision by this Tribunal which casts doubt upon the  
3 validity of the declarations of marine protected areas, either in general, or around territories  
4 where third states may claim sovereignty. We are committed to furthering biodiversity of the  
5 oceans, and we believe that one significant way of doing this is through the establishment of  
6 marine protected areas.

7 Mr. President, Members of the Tribunal, it is not understating the case to say that the  
8 world's oceans are in peril; indeed, that is the term used by various United Nations agencies.<sup>29</sup>  
9 The UN Secretary-General, Ban Ki-Moon, in his Oceans Compact initiative launched in August  
10 2012 to address ocean health and governance, observed that: “[h]umans ... have put the oceans  
11 under risk of irreversible damage by over-fishing, climate change and ocean acidification (from  
12 absorbed carbon emissions), increasing pollution, unsustainable coastal area development, and  
13 unwanted impacts from resource extraction, resulting in loss of biodiversity, decreased  
14 abundance of species, damage to habitats and loss of ecological functions”.<sup>30</sup>

15 The United Nations Food and Agriculture Organisation said in its 2012 Report on the  
16 State of the World's Fisheries that the “state of world marine fisheries is worsening”.  
17 According to its figures, 87.3 percent of the world's fish stocks are either over-exploited,  
18 requiring strict management plans to restore their full and sustainable productivity, or are very  
19 close to their maximum sustainable production, requiring effective management to avoid decline.

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<sup>29</sup> The interagency Report prepared by UNESCO, the IMO, the FAO and UN Development Programme for the 2012 Rio+20 UN Conference on Sustainable Development, “A Blueprint for Ocean and Coastal Sustainability”, 2011 (“A Blueprint for Ocean and Coastal Sustainability”), p. 4, [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/interagency\\_blue\\_paper\\_ocean\\_rioPlus20.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/interagency_blue_paper_ocean_rioPlus20.pdf)

<sup>30</sup> “The Oceans Compact: Healthy Oceans for Prosperity – An Initiative of the United Nations Secretary-General”, July 2012, p. 2, [http://www.un.org/depts/los/ocean\\_compact/SGs%20OCEAN%20COMPACT%202012-EN-low%20res.pdf](http://www.un.org/depts/los/ocean_compact/SGs%20OCEAN%20COMPACT%202012-EN-low%20res.pdf)

<sup>31</sup> Food and Agriculture Organization of the United Nations (“FAO”), *The State of World Fisheries and Aquaculture 2012*, p. 11, <http://www.fao.org/docrep/016/i2727e/i2727e00.htm>

1 According to UNESCO and others, 60% of the world's major marine ecosystems that  
2 underpin livelihoods have been degraded or are being used unsustainably<sup>32</sup>.

3 And that has a direct impact on the livelihoods and food security of millions, including in  
4 particular Low Income Food Deficit Countries, many of which lie in and around the Indian  
5 Ocean.

6 According to 2012 UN figures, around 40 per cent of the world's coral reefs have been  
7 lost due to human impacts or are degraded<sup>33</sup>. The 2008 Status of the World's Coral Reefs  
8 Report gives a figure of around 34%, with another 20% under threat in 20-40 years<sup>34</sup>. And  
9 other estimates are more pessimistic, suggesting the global coral reef ecosystem is on a trajectory  
10 to collapse within a human generation<sup>35</sup>.

11 Now, Mr. President, I focus on coral reefs because these are the nurseries of tropical  
12 coastal fish stocks and a storehouse of biodiversity. Without them, as one expert has put it,  
13 "What we will be left with is an algal-dominated hard ocean bottom... with lots of microbial life  
14 soaking up the sun's energy by photosynthesis, few fish but lots of jellyfish grazing on the  
15 microbes. It will be slimy and look a lot like the ecosystems of the Precambrian era, which  
16 ended more than 500 million years ago".<sup>36</sup>

17 And all of that is particularly true of the Indian Ocean, which has experienced massive  
18 fisheries exploitation since 1950. As a result, Indian Ocean reef fisheries are grossly

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<sup>32</sup> UNESCO website, "Facts and figures on marine biodiversity",  
<http://www.unesco.org/new/en/natural-sciences/ioc-oceans/priority-areas/rio-20-ocean/blueprint-for-the-future-we-want/marine-biodiversity/facts-and-figures-on-marine-biodiversity/>

<sup>33</sup> A Blueprint for Ocean and Coastal Sustainability, above n. 29, p. 14.

<sup>34</sup> Koldewey et al, "Potential benefits to fisheries and biodiversity of the Chagos Archipelago/British Indian Ocean Territory as a no-take marine reserve", *Marine Pollution Bulletin* (2010), vol. 60, p. 1906, UKR, Annex 63, at p. 7 (internal page numbering of version in Annex 63), UKAF, Folder 1, Tab 18, citing Global Coral Reef Monitoring Network, Wilkinson ed., "Status of Coral Reefs of the World 2008".

<sup>35</sup> See the entry on the Chagos Conservation Trust ("CCT") website:  
<http://chagos-trust.org/news/world-without-coral-reefs>. The CCT's members and trustees include scientists working on coral reefs: see <http://chagos-trust.org/about/who-we-are>.

<sup>36</sup> Dr Roger Bradbury, 'A World Without Coral Reefs', *The New York Times*, 13 July 2012:  
[http://www.nytimes.com/2012/07/14/opinion/a-world-without-coral-reefs.html?\\_r=0](http://www.nytimes.com/2012/07/14/opinion/a-world-without-coral-reefs.html?_r=0)

1 overexploited<sup>37</sup>, as is the yellowfin tuna fishery<sup>38</sup>. 90% of the sharks are gone<sup>39</sup>. And they are  
2 regarded as being a great indices of the overall health of the ecosystem. Many representative  
3 Indian Ocean ecosystems have been badly damaged<sup>40</sup> in the “decades of destruction” since the  
4 1970s caused by huge increases in population and pollution, increasing overfishing, and, more  
5 recently, the impact of climate change<sup>41</sup>. The seas around three-quarters of Indian Ocean  
6 islands and the Ocean rim have deteriorated markedly<sup>42</sup>. And 17% of the coral reefs of the  
7 Indian Ocean are estimated to have been lost; 22% are in a critical condition; and 32% are  
8 threatened<sup>43</sup>.

9 If you have not already had the opportunity to do so, I do invite the Tribunal to look at  
10 the three ten minute films which we submitted with our Rejoinder. I don't know whether you  
11 have yet had an opportunity of doing that. I hope you have seen the footage in the first BIOT  
12 Science in Action film which shows the stark contrast between the healthy BIOT reefs and those  
13 in Madagascar which have significantly deteriorated as a result of human activities. They are  
14 few signs of life and fish in comparison to those in the MPA.

15 In that context, I was a little startled to see Mr. Sands suggest that the creation of the  
16 MPA was in some way a sham and that that could be illustrated by the lack of action that was  
17 being taken. He took you to the report of Mr. Sheppard, an environmental expert, that the  
18 United Kingdom Government had sent out, in fact, principally to look at the conditions in the  
19 lagoon at Diego Garcia, which is outside of the MPA area, but also to make some more general  
20 comments. I would strongly submit that if you come and go back to look at that document, far

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<sup>37</sup> “Marine conservation in the British Indian Ocean Territory: science issues and opportunities”, Final Report of Workshop held 5-6 August 2009 at the National Oceanography Centre, Southampton (“NOC Report”), UKCM, Annex 102, UKAF, Folder 1, Tab 17, p. 7.

<sup>38</sup> Koldewey et al, above n. 34, p. 3, citing Indian Ocean Tuna Commission figures.

<sup>39</sup> NOC Report, above n. 37, p. 6.

<sup>40</sup> NOC Report, above n. 37, p. 2.

<sup>41</sup> DVD, Chagos Science in Action I, around 1 min 25 sec.

<sup>42</sup> DVD, Chagos Science in Action I, around 1 min 50 sec.

<sup>43</sup> NOC Report, above n. 37, p. 4.

1 from suggesting that the United Kingdom is doing nothing about the careful management of the  
2 MPA, that it actually illustrates really detailed and careful management been carried out, not just  
3 within the MPA but within the lagoon as well, to ensure that the near-pristine conditions are  
4 maintained, even when there are probably quite minor threats to it from within the operation of  
5 Diego Garcia base itself.

6 Marine protected areas are recognised by scientists and the international community as  
7 essential<sup>44</sup> to promote the conservation and management of oceans and fisheries<sup>45</sup>, as reflected  
8 in the internationally agreed target of 10 per cent coverage by 2020<sup>46</sup>. The 2002 World Summit  
9 on Sustainable Development demanded that all over exploited fish stocks be restored to the level  
10 that can produce maximum sustainable yield by 2015. These goals will almost certainly be  
11 missed. Certainly, the 2015 target for restoration of overexploited fish stocks is unlikely to be  
12 met, according to the FAO.<sup>47</sup> In 2010, the global MPA coverage was only just over 1% and, as  
13 I have already noted, is unlikely to be achieved.

14 The BIOT MPA is a regionally and internationally critical step in beginning to address  
15 the risk of irreversible damage to the oceans. It has substantially increased the global coverage  
16 of MPAs. The scientific case for the BIOT MPA is robust actually hasn't been challenged in  
17 this case at all. The waters around British Indian Ocean Territory are some of the most pristine in  
18 the Indian Ocean, indeed on the planet, and have a genuinely world-wide importance: scientists  
19 agree it is an exceptional place and merits protection.

20 The three short films I have mentioned provide an illustration of this. But perhaps I might  
21 interject that, as a diver myself, the films show what for me is a truly remarkable environment  
22 and rather different, if may say so, from the very pleasant environment, but nevertheless

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<sup>44</sup> Koldewey et al, above n. 34, p. 5.

<sup>45</sup> Johannesburg Plan of Implementation, 2002 World Summit on Sustainable Development (UKCM, para. 3.23); FAO report on *The State of World Fisheries and Aquaculture 2012*, above n. 31, pp. 164-5.

<sup>46</sup> UKCM, para. 3.25.

<sup>47</sup> FAO report on *The State of World Fisheries and Aquaculture 2012*, above n. 31, p. 11.

1 markedly different, where I was diving only four to five days ago in the Maldives, a mere few  
2 hundred miles north of BIOT.

3 The MPA, because of its size, location, biodiversity, and the near-pristine nature and  
4 health of the Chagos coral reefs, is likely to make a significant contribution to the wider  
5 biological productivity of the Indian Ocean more generally<sup>48</sup>. Size is important because many  
6 conservation-related benefits increase non-linearly with size. Smaller areas are much less  
7 effective in maintaining viable habitats or populations of threatened species.<sup>49</sup>

8 Indeed, large scale MPAs, like the BIOT MPA, are important for protecting migratory  
9 and highly mobile pelagic species, as well as those species that remain within the MPA<sup>50</sup>. The  
10 bycatch of sharks and rays and other species in the BIOT tuna longline and purse fisheries was  
11 previously significant, especially for sharks, and that happens wherever such fishing takes  
12 place<sup>51</sup>.

13 The assessment of the potential benefits to fisheries and biodiversity in the Indian Ocean  
14 of the BIOT MPA are there in Doctor Koldewey and her colleagues, in the report published in  
15 the peer reviewed *Marine Pollution Bulletin*, which is amongst your documents, and that  
16 concluded that “the closure of Chagos/BIOT to all commercial fishing will eliminate bycatch in  
17 the Western Indian Ocean as a whole by providing a temporal and spatial haven”<sup>52</sup> and will  
18 maintain both fish populations and the near-pristine habitat that exists in the area.

19 The BIOT MPA safeguards around half the high quality reefs in the Indian Ocean<sup>53</sup>, and  
20 Doctor Koldewey’s publication notes the BIOT MPA is particularly important because of the  
21 status of the world’s reefs.

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<sup>48</sup> NOC Report, above n. 37, p. 1.

<sup>49</sup> *Ibid.*, p. 4.

<sup>50</sup> Ceccarelli, “The value of oceanic marine reserves for protecting highly mobile pelagic species: Coral Sea case study”, UKR, Annex 68.

<sup>51</sup> Koldewey et al, above n. 34, p. 5.

<sup>52</sup> Koldewey et al, above n. 34, p. 5.

<sup>53</sup> NOC Report, above n. 37, p. 1.

1 It also contains an exceptional diversity of deepwater habitat types, 97% of which are  
2 unexplored.<sup>54</sup>

3 And a further scientific study published earlier this year has confirmed that the efficacy  
4 of MPAs is highly influenced by being no-take, large and isolated.<sup>55</sup>

5 The MPA also provides a crucial scientific reference site for Earth system science studies  
6 and regional conservation. It is one of the world's few remaining examples of what a pristine  
7 marine environment ought to be like and the world's biggest coral reef atoll system. Scientists  
8 all agree that it is an exceptional place. As such it provides a baseline, an unpolluted reference  
9 site for studies elsewhere in the world measuring the effects of pollution, the processes that  
10 collectively create climate change and managing the threats climate change poses. It is one of  
11 the few tropical locations where global climate change effects can be separated from those of  
12 pollution and exploitation<sup>56</sup>.

13 Now, Mr. President, as I said, I have only very recently seen some of the great riches of  
14 the marine environment in the Indian Ocean, including a rather large shark at probably closer call  
15 than I might have necessarily have wished in the last few days, but the thing that strikes one  
16 when diving in the Maldives which in location and structure resembles the natural environment  
17 of the Chagos Archipelago is that, as good as it is, and despite the very great efforts to preserve  
18 it, the effects of human interference in the Maldives are very visible when one dives and also on  
19 the surface. The lack of serious adverse human interference in BIOT makes it quite exceptional  
20 not just in terms of conservation but also in terms of maintaining and restoring the fish stocks  
21 that may then be taken commercially elsewhere.

22 The BIOT MPA plays a key role as a regional stepping stone and re-seeding source for  
23 species in the Indian Ocean, and that stepping stone is critical to the viability of

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<sup>54</sup> NOC Report, above n. 37, p. 4.

<sup>55</sup> Edgar et al, "Global conservation outcomes depend on marine protected areas with five key features",  
*Nature*, vol. 506, 13 February 2014, p. 216, UKR, Annex 80.

<sup>56</sup> Koldewey et al, above n. 34, p. 7; NOC Report, above n. 37, p. 1.

1 heavily-harvested fish populations elsewhere<sup>57</sup>. It is also the only place in 1000 miles of ocean  
2 for seabirds to roost and breed<sup>58</sup>.

3 Results from the recent scientific research expeditions show it has the cleanest seas in the  
4 world.<sup>59</sup>

5 So, I don't apologize, Mr. President, for belabouring this a little bit because, in sum, the  
6 United Kingdom Government is extremely proud of the MPA. The BIOT is one of the very  
7 few remaining places on earth and the only remaining place in the Indian Ocean where it is  
8 practically possible to protect a large-scale, pristine marine environment for future generations,  
9 vital research into climate change, coral reefs and fisheries, and for fisheries conservation  
10 necessary to the food security of the people who live around the Indian Ocean, and that includes  
11 those who live on Mauritius.

12 Let me nevertheless emphasise this. The United Kingdom acknowledges the special  
13 interests of Mauritius and the Chagossian communities in the BIOT. It took them into account  
14 as part of its assessment and development of MPA policy. In particular, the MPA does no harm  
15 to Mauritius, to the contrary, it is an important regional and international asset from which it  
16 benefits. We have also said quite clearly in the Terms of Reference for the Chagossian  
17 resettlement Feasibility Study that the MPA is not a barrier to resettlement.

18 It is a matter of regret that Mauritius doesn't appear to recognise the importance of  
19 maintaining the pristine environment of the archipelago and has currently given no commitment  
20 to protecting the vulnerable eco-system around the British Indian Ocean Territory when the  
21 territory is ceded to Mauritius when it's no longer needed for defence purposes.

22 Mr. President, I will now set out the most important legal points which will be made by  
23 those representing the UK during the hearing:

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<sup>57</sup> NOC Report, above n. 37, p. 5.

<sup>58</sup> DVD, Chagos Science in Action, II, around 7 mins 10 secs.

<sup>59</sup> DVD, Chagos Science in Action II, around 7 mins 48 secs.

1 The first – and we say determinative points – concern your jurisdiction. I have already touched  
2 on the absence of jurisdiction to determine the issues of sovereignty that have been raised by  
3 Mauritius. I have highlighted this already because of the radical and untenable nature of the  
4 jurisdiction that is asserted. But the United Kingdom’s objection here also belongs up front  
5 because it is the Mauritian claim to sovereignty that is the real issue in and behind the current  
6 proceedings. The claim to sovereignty has been put forward here in the guise of a case under  
7 UNCLOS. But it is the same underlying claim as has been presented or mooted before other  
8 fora and in bilateral exchanges spanning three decades or more. And that dispute as to  
9 sovereignty, however it is cast or re-cast, is not a dispute concerning the interpretation or  
10 application of the Convention at all. Hence I’ve submitted this tribunal lacks jurisdiction to  
11 determine the issues, such as self-determination and territorial integrity, that are really  
12 fundamental to Mauritius’ claim. That is, we say, a very unsurprising outcome – and Mauritius –  
13 I listened carefully to what was being said – has been unable to point to any provision of the  
14 Convention, or any judicial or other decision, or any State practice to suggest that we are wrong  
15 on this point.

16 You will be taken by Mauritius to views – including views of some of the members of  
17 this distinguished tribunal – on so-called "mixed disputes" and to the intricacies of article  
18 298(1)(a) of the Convention. But those views have been expressed, I submit, in the very  
19 particular context of an incidental jurisdiction to determine disputed territorial matters, where  
20 this is necessary for, and incidental to, the resolution of a maritime delimitation case. But that's  
21 not this case here: indeed, the BIOT and Mauritius are many hundreds of miles apart and there  
22 can be no maritime delimitation between them at all. The territorial sovereignty issues plainly  
23 underlie and are fundamental – and are certainly not incidental – to the claims made by  
24 Mauritius. And ultimately article 298(1)(a) of the Convention, however interpreted, supports the  
25 United Kingdom's position. If there truly were the broad jurisdiction over disputes concerning

1 the sovereignty of the coastal state for which Mauritius contends, then there would surely be the  
2 same opt-out from compulsory jurisdiction as in article 298(1)(a). But there is no such opt -out;  
3 and that I would submit is because it's perfectly clear there is no such jurisdiction.

4 Second, even the most cursory analysis of Mauritius' claim to sovereignty over the BIOT  
5 confirms that this claim is not a matter falling for resolution under the Law of the Sea  
6 Convention. For example, you are asked to rule upon the precise contours of the principle of  
7 self-determination in 1965; when precisely the principle became part of customary international  
8 law; and when it became binding upon the United Kingdom. In this regard you are taken by  
9 Mauritius to resolutions of the UN Security Council and General Assembly, and to political  
10 declarations of various international groupings. You are asked to consider questions of duress.  
11 You are asked – or at least you were asked – to consider and apply the *uti possidetis juris*  
12 principle to the facts of this case, although it appears that Mauritius lost faith with this line of  
13 argument in its Reply. What you are not being asked to do, by contrast, is to really consider the  
14 actual provisions of the Convention – save by the sleight of hand of saying that somehow all  
15 these principles fit within any given reference in the Convention to the “coastal State”.

16 And that, Mr. President, takes me to the next jurisdictional objection. Consistent with the  
17 real dispute being over sovereignty, the first time that the UK learned of the existence of the  
18 claim in respect of the MPA was when Mauritius lodged the Notice of Arbitration. Now, I do  
19 want to emphasise that the requirements of Article 283, in terms of the existence of a dispute and  
20 the obligation to exchange views, go to your jurisdiction. These are not mere formalities, waiting  
21 to be bypassed when issue is joined through an exchange of pleadings once an Annex VII  
22 proceeding is underway. The pre-conditions in Article 283 are an essential part of States' consent  
23 to jurisdiction when becoming parties to UNCLOS.

24 The recent jurisprudence of the International Tribunal for the Law of the Sea and the  
25 International Court of Justice strongly confirms, we say, our position in this respect, and the

1 particular claims of this case provide a very good illustration of why international tribunals must  
2 be right to insist on the fulfilment of all the pre-conditions to compulsory jurisdiction. For  
3 example, many of the claims before you go to alleged failures to consult. As such, the allegations  
4 could readily have been considered, and addressed as appropriate, if they had been brought to the  
5 United Kingdom's attention before the commencement of proceedings, as Article 283 requires.  
6 But that in fact never happened, and so we now litigate, at great public expense for both the  
7 Mauritian taxpayers and the United Kingdom's, alleged failures to consult that have now taken  
8 on a life of their own as claims in international arbitration.

9         The fourth and final jurisdictional objection concerns the non-sovereignty claims alone.  
10 Simply put, the MPA has been implemented through a ban on commercial fishing. This involves  
11 the exercise by the United Kingdom of its sovereign rights over conservation and management of  
12 living resources under article 56 of the 1982 Convention. Now, the exercise of those rights does  
13 not fall within your jurisdiction over environmental disputes under article 297(1) of the  
14 Convention. And it is expressly excluded from your jurisdiction over disputes relating to  
15 fisheries under article 297(3). Now, Mauritius seeks to get around these two provisions by some  
16 more re-packaging – this time, saying that its claim is that a coastal State has acted in  
17 contravention of specified international rules and standards for the protection and preservation of  
18 the marine environment, and thus falls within article 297(1)(c). But I submit it can point to no  
19 such, or has not been able to point to any such specified international rules and standards that are  
20 relevant to its claim. That merely demonstrates the artificial nature of the attempt to fit the  
21 exercise of sovereign rights with respect to marine living resources, over which an Annex VII  
22 tribunal has no jurisdiction, within the strictly delimited confines of article 297(1)(c).

23         Mr. President, I do not want to say too much on the merits since we strongly believe that  
24 you should never reach that point, which you will appreciate from my submissions, but I will  
25 limit myself to three observations on the merits of this case.

1           Firstly, aside from the sovereignty issue, the claim comes down to a number of  
2 after-the-event complaints of a failure to consult and claims to exclusion from alleged fishing  
3 rights.

4           The complaints on consultation also, I think, should not detain the Tribunal very long.  
5 There were bilateral consultations in 2009, on that everybody is agreed. We say the United  
6 Kingdom wanted further consultations. Again there can be little debate about that, nor about the  
7 fact that Mauritius refused to participate in further bilaterals save on terms that the United  
8 Kingdom could not accept. It then comes down to a finger-pointing exercise before this tribunal  
9 as to who was responsible for the breakdown – we say we are firmly in the right, but this is  
10 scarcely a matter which an international tribunal should be troubled with. There is an assertion  
11 that a commitment was made by former British Prime Minister Gordon Brown that the MPA  
12 would be put on hold. That may be a misunderstanding, but we are quite clear that no such  
13 government to government commitment was given.

14           As to fishing rights, a great deal has now been written by Mauritius in the pleadings in  
15 this case, but some perspective I think is called for. Mauritian fishing in the maritime area now  
16 within the MPA has, over the past almost 50 years, been on the spectrum from very low to  
17 non-existent. When a licence regime was first introduced by BIOT, there was no complaint by  
18 Mauritius that this breached alleged fishing rights. Likewise, when the number of available  
19 licences was cut from six to four in 1999, there was no complaint that this breached fishing  
20 rights. In many of the years, Mauritian-flagged vessels did not apply for any licences at all, or  
21 just one. And I should interject here that, in fact, no application by a Mauritian-flagged vessel  
22 has ever been turned down when licences were being granted. You have before you a table – and  
23 I hope it's in your Arbitrators' folder – a table from the UK Counter-Memorial which  
24 demonstrates the very limited Mauritian fishing activity in BIOT waters. And it might,

1 Mr. President, just be worth looking at it very briefly, if you have it. I think it's now on screen  
2 as well.

3 The top table shows fishing licenses issued by BIOT from 1991 to 30th of March 2010,  
4 and the red and pink alongside it shows those taken up by vessels from Mauritius. So, the  
5 Tribunal will see how it all times it has been a tiny percentage share of the total fishing that has  
6 taken place in BIOT, and that, indeed, in 2002, 2005, 2006, 2007, and 2008 there was, in fact,  
7 no-takeup at all. And if one looks at the bottom, and it shows simply the Mauritian vessels and  
8 shows the same picture. So, the reality is probably due to the vast distance that actually exists  
9 between Mauritius and its other islands and the British Indian Ocean Territory, hundreds, if not  
10 actually over a thousand miles away certainly between the main island and over I think it's 1200  
11 nautical miles, one of the reasons why, in fact, this offer that was being made in 1965 of free  
12 licensing has been only rarely taken up.

13 Against this unpromising backdrop, an elaborate case has been built in these proceedings  
14 by reference to an understanding on "fishing rights" reached in 1965, which I would have to say  
15 reached its greatest stridency in the Mauritian Reply, where the United Kingdom was accused of  
16 suppressing evidence by certain documents being redacted where the redactions are said to have  
17 been unhelpful to the United Kingdom. I can assure you that as the Minister responsible for the  
18 Government's Legal Service and indeed for propriety, to an extent, in the way government  
19 conducts litigation, I would not countenance such a thing. I'm grateful to the Tribunal for the  
20 way that the Tribunal has dealt with that aspect of the matter.

21 Now the nature, correct interpretation and scope of the 1965 understandings are all  
22 matters that, if our jurisdictional objections are surmounted, are indeed for the Tribunal to  
23 determine. Mauritius has picked from the disclosure in the domestic judicial review claim those  
24 documents that it considers as showing UK personnel taking the view that the 1965  
25 understandings gave rise to binding obligations in respect of fishing rights. When the

1 documentation is looked at in its entirety - and we have a detailed appendix to our Rejoinder  
2 devoted to that - what one in fact sees is a broad range of views, none of which are backed up by  
3 considered or detailed legal advice, and none of which are relevant and material to the issue  
4 which you must now determine. The internal views of officials cannot, we submit, be material  
5 to the consideration by an international tribunal of the meaning and effect of a particular  
6 document. Were it otherwise, disclosure in state-to-state cases would have taken a markedly  
7 different course in arbitration proceedings, and indeed, I do note that Mauritius has disclosed  
8 only five internal documents.

9 Finally, there is the asserted claim by Mr. Sands, of bad faith on the substance – the  
10 claims that the MPA is an abuse of rights held under the Convention, ultimately as I said at the  
11 start apparently an elaborate charade to prevent the resettlement of BIOT by its former  
12 inhabitants. I have already touched on the United Kingdom’s policy on resettlement. Issues of  
13 potential resettlement played no role whatsoever in the declaration of the MPA. Mauritius now  
14 suggests otherwise, and alleges breach of article 300 of the Convention. Yet it does so without  
15 any evidence to challenge the scientific basis for the MPA, which I touched on earlier. And I  
16 might add, without finding a single document in the UK’s extensive disclosure in the domestic  
17 judicial review proceedings that suggests that the declaration of the MPA was motivated by  
18 anything other than scientific and conservational intent. The United Kingdom as I said is proud  
19 of the MPA. Mauritius was initially in favour, and quite rightly so. Its current litigation strategy  
20 cannot cut across that. And, in the longer term, it will be Mauritius in particular, as well as the  
21 broader global community more generally, that will benefit from this MPA and the preservation  
22 of a unique maritime area.

23 As the tribunal will be aware, the allegation of improper motive was also made in the  
24 domestic proceedings. The decision of the High Court is the subject of an appeal to the Court of  
25 Appeal, and although the hearing has taken place, the judgment has yet to be handed down.

1 Nevertheless, I would like to quote briefly from the High Court’s judgment. It said this: “For  
2 the claimant’s case on improper purpose to be right a truly remarkable set of circumstances  
3 would have to have existed. Somewhere deep in Government a long-term decision would have to  
4 have been taken to frustrate Chagossian ambitions by promoting the MPA. Both the  
5 administrator of the Territory in which it was to be declared, Ms. Yeadon, and the person who  
6 made the decision, the Foreign Secretary, would have to have been kept in ignorance of the true  
7 purpose. Someone – Mr. Roberts, [we have seen referred to in an American memo]? – would  
8 have been the only relevant official to have known the truth. He, and whoever was privy to the  
9 secret, must then have decided to promote a measure which could not achieve their purpose, for  
10 the reasons explained above, while explaining to all concerned that the MPA would have to be  
11 reconsidered in the light of an adverse judgment of the Strasbourg Court. Those circumstances  
12 would provide an unconvincing plot for a novel. They cannot found a finding for the claimant on  
13 this issue.”

14 So, Mr. President, to conclude: the United Kingdom takes the strong view that the claims  
15 made by Mauritius are not within your jurisdiction and we urge you to dismiss them in their  
16 entirety.

17 Mr. President, Members of the Tribunal. You now will have several weeks of detailed  
18 legal argument before you, and I am afraid that I am not able to stay, as interesting as it would be  
19 for me to do so, but other government business claims me back. But I am very grateful to you  
20 to have given me the opportunity to make an opening speech and make these few points.

21 Thank you very much for your attention.

22 PRESIDENT SHEARER: Thank you very much, Mr. Grieve.

23 Now, is there a continuation?

24 ATTORNEY GENERAL GRIEVE: Just me.

25 PRESIDENT SHEARER: Very good. Thank you.

1                                Well, in that case, we can adjourn until 9:30 tomorrow morning, and I hope in the  
2 meantime we would be able to do something about the temperature in this room and the extraneous  
3 noises, but I hope you bear with us. Thank you very much, and we adjourn until tomorrow  
4 morning. Thank you.

5                                (Whereupon, at 4:58 p.m., the hearing was adjourned until 9:30 a.m. the following  
6 day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "David A. Kasdan", is written over a horizontal line.

DAVID A. KASDAN

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