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**NOTE FROM THE LEGAL OFFICE OF FAO**PREPARED BY: THE LEGAL OFFICE OF FAO

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By Resolution 73/295 of 22 May 2019, entitled “*Advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965*”, the General Assembly of the United Nations:

*“Call[ed] upon the United Nations and all its specialized agencies to recognize that the Chagos Archipelago forms an integral part of the territory of Mauritius, to support the decolonization of Mauritius as rapidly as possible, and to refrain from impeding that process by recognizing, or giving effect to any measure taken by or on behalf of, the ‘British Indian Ocean Territory’” (operative paragraph 6).*

The Agreement for the Establishment of the Indian Ocean Tuna Commission (“the Agreement”) was concluded on 25 November 1993, under Article XIV of the FAO Constitution, and entered into force on 27 March 1996. The Agreement is deposited with the Director-General of the Food and Agriculture Organization (FAO).

As far as the membership in the Indian Ocean Tuna Commission is concerned, the procedure for becoming a member is set out in Article IV, paragraph 1 of the Agreement as follows:

*“Membership in the Commission shall be open to Members and Associate Members of FAO*

*(a) that are:*

*(i) coastal States or Associate Members situated wholly or partly within the Area;*

*(ii) States or Associate Members whose vessels engage in fishing in the Area for stocks covered by this Agreement;*

*(...)*

*and*

*(b) that accept this Agreement in accordance with the provisions of paragraph 1 of Article XVII”.*

The United Kingdom deposited its instrument of acceptance of the Agreement on 31 March 1995 and has been a party to the Agreement since it entered into force. The United Kingdom became a party to the Agreement pursuant to subparagraph (i) above “*in respect of the British Indian Ocean Territory only*”, as set out in the instrument of acceptance.

Mauritius has challenged the continued membership of the United Kingdom in the Indian Ocean Tuna Commission. At a recent meeting of the Technical Committee on Allocation Criteria, a subsidiary body of the Commission, held from 11 to 13 March 2019, Mauritius stated that it “*has the strongest possible reservations to the continued presence and membership of the United Kingdom of Great Britain and Northern Ireland in the IOTC as a ‘coastal State’ within the meaning of Article IV(1)(a)(i) of the Agreement for the Establishment of the Indian Ocean Tuna Commission, and requests a formal ruling on the matter*” (IOTC-2019-TCAC05-R[E], p. 15). In the same statement, Mauritius stated that “[*t*]he delegation also reserves its right to return to this matter at the next annual meeting of the Commission.”

At the same meeting, the United Kingdom stated as follows (IOTC-2019-TCAC05-R[E], p. 16):

*“The Agreement for the Establishment of the Indian Ocean Tuna Commission provides that IOTC membership shall be open, inter alia, to FAO members that are situated wholly or partly within the IOTC’s Area of Competence. As the British Indian Ocean Territory is situated wholly within the IOTC’s Area of Competence, there can therefore be no doubt that the United Kingdom, as the State with sovereignty over BIOT as aforementioned, is entitled to be a member of IOTC. As such, we are full members of the IOTC and have every right to be here”.*

The same issue was raised in the past on a number of occasions.

It is understood that issues related to the Chagos Archipelago, presumably including the United Kingdom’s continued membership in the Commission, might be brought up at the 23rd session of the Indian Ocean Tuna Commission, which will take place from 17 to 21 June 2019 in Hyderabad, India.

Sub-paragraph 4 of Article IV of the Agreement provides as follows:

*“If any Member of the Commission ceases to meet the criteria set out in paragraphs 1 or 2 above for two consecutive calendar years, the Commission may, after consultation with the Member concerned, determine that the Member is deemed to have withdrawn from this Agreement effective as from the date of that determination”.*

Therefore, the continued membership of a Member of the Commission appears to be a matter for the Commission.

Article XXIII of the Agreement further provides as follows:

*“Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred for settlement to a conciliation procedure to be adopted by the Commission. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement”.*

This procedure may also be relevant to any dispute regarding the continued membership of a Member of the Commission.

This note was prepared in consultation with the Office of Legal Affairs of the United Nations.