



The Chairperson's Report of the 6th Technical Committee on Allocation Criteria

By Video Conference,
15-16 September 2020

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ACRONYMS

CMM	Conservation and Management Measure (of the IOTC; Resolutions and Recommendations)
CPCs	Contracting Party and Cooperating Non-Contracting Party
DWFN	Distant Water Fishing Nation
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
IOTC	Indian Ocean Tuna Commission
IGO	Inter-governmental Organisation
IUU	Illegal, Unreported and Unregulated
NGO	Non-governmental organization
SC	Scientific Committee of the IOTC
TCAC	Technical Committee on Allocation Criteria

TABLE OF CONTENTS

1.	Opening of the Session	6
2.	Letter of Credentials	6
3.	Admission of Observers	6
4.	Adoption of the Agenda and arrangements for the session	6
5.	Presentation of revised proposals	6
6.	Proposed thematic approach for a face to face meeting in 2021	7
	Appendix 1. List of Participants	9
	Appendix 2. Statements of Mauritius, the United Kingdom (“BIOT”) regarding issues of sovereignty.....	15
	Appendix 3. Agenda of the 6 th Technical Committee on Allocation Criteria.....	19
	Appendix 4. List of Documents	20

EXECUTIVE SUMMARY

The 6th Session of the Technical Committee on Allocation Criteria (TCAC06) was held by Video Conference from 15 to 16 September 2020. Credentials were received for 182 delegates, comprising of 161 delegates from 25 Contracting Parties (Members), 14 delegates from 6 observer organisations and 7 invited experts.

Representatives of the Proponents of IOTC-TCAC06-03 and a representative of the Proponent of IOTC-TCAC06-04 presented their respective proposals, including any revisions made thereto since the last Commission meeting in 2019. Written presentations summarizing their respective proposals were provided to participants and appended to this report. Participants availed themselves of the opportunity to seek clarifications from the Proponents, and to provide comments and views on the 2 proposals.

The Chair then presented a way forward for framing the future discussions of the Committee based on themes. A Memorandum and written presentation describing this thematic approach were shared with participants, and the Chair presented the proposed approach and themes. The Chair also shared a Comparative Table of the two proposals currently on the table along the proposed themes, to help delegations in their preparations and discussions. Delegations shared their views on the proposed thematic approach and on how best to move forward in developing a consensus based allocation regime for the IOTC. Participants supported the thematic structure as a basis for framing the future discussions of the TCAC. Participants also supported the Chair proposing new text to help bridge gaps between the two proposals, while Proponents of IOTC-TCAC06-03 continue their parallel efforts to improve their proposal through dialogue.

The TCAC concluded that a face to face meeting of the TCAC would be unlikely while the COVID19 Pandemic is ongoing. The Chair informed delegations that next steps and future meetings of the TCAC would be discussed during the Commission meeting scheduled for November 2-6, 2020.

The Chair recommended that the TCAC should continue its work. In the absence of a face to face meeting in 2021, the TCAC could meet by video-conference on 3-4 occasions to advance its discussions on the basis of the thematic approach, then meet face to face in 2022 to consider the outcomes of these discussions and any text proposal from the Chair.

OPENING OF THE SESSION

The 6th Session of the Technical Committee on Allocation Criteria (TCAC06) was held by Video Conference, for two hours each on September 15 and 16, 2020. Credentials were received for 182 delegates, comprising of 161 delegates from 25 Contracting Parties (Members), 14 delegates from 6 observer organisations and 7 invited experts. The list of participants is provided at [Appendix 1](#).

Mrs. Nadia Bouffard, the independent Chairperson, introduced herself as the newly appointed Chair for the TCAC, thanked delegations for their support in her appointment, welcomed participants and asked them to introduce themselves.

LETTER OF CREDENTIALS

The TCAC **NOTED** that in accordance with Rule III, para. 1 of the IOTC Rules of Procedure (2014), a Letter of Credentials was received from 24 CPCs and the 7 observers present at the meeting.

The TCAC also **NOTED** the written statements made by Mauritius and the United Kingdom (OT) on sovereignty, which are provided in [Appendix 2](#).

ADMISSION OF OBSERVERS

Pursuant to Article VII of the Agreement establishing the IOTC, the Commission admitted the following observers, in accordance with Rule XIV of the IOTC Rules of Procedure (2014):

Intergovernmental organizations having special competence in the field of activity of the Commission.
Indian Ocean Commission (IOC)

Non-governmental organizations having special competence in the field of activity of the Commission.
Coalition for Fair Fisheries Arrangements (CFFA)

International Pole and Line Foundation (IPNLF)

Marine Stewardship Council (MSC)

PEW Charitable Trusts (PEW)

World Wide Fund for Nature (WWF)

Invited consultants and experts.

Taiwan, Province of China

ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION

The TCAC **ADOPTED** the agenda provided in [Appendix 3](#). The documents presented to the TCAC are listed in [Appendix 4](#).

Given the short time available, the TCAC **AGREED** that the report from this meeting would not be reviewed by the Committee, but instead constitute a Chair's report, reflecting what she heard during the discussions.

The following section contains the observations and conclusions of the TCAC Chairperson

PRESENTATION OF REVISED PROPOSALS

Representatives of Maldives and South Africa presented on behalf of the proponents of document IOTC-TCAC06-03, and a representative of the European Union presented their document IOTC-TCAC06-04. The TCAC was made aware of any revisions to the respective proposals since the last

Commission meeting in 2019. Written presentations summarizing the respective proposals were provided to participants and appended to this report.

Participants availed themselves of the opportunity to seek clarifications from the proponents and to provide general comments and views on the two proposals. In their questions and comments, delegations recognized the need for an allocation regime that applies to all Members of the IOTC in a fair and equitable manner. While delegations discussed the need to ensure a balance between the rights of coastal States to the exercise of their sovereign rights within their EEZ and the right for all States for their nationals to fish on the High Seas, it was clear from the comments that many felt that this balance had not yet been achieved in the proposals currently on the table.

The proponents of document IOTC-TCAC06-03 reiterated their view that, as a principle, all historical catches taken within an Exclusive Economic Zone within the IOTC Area of Competence, must be attributed solely to the coastal State with jurisdiction over that area, regardless of the flag State of the vessel/s that took such catches. Other delegations expressed clear opposition to this proposed principle. There is clearly a fundamental difference of views among the TCAC members on this issue. Some delegations suggested that a possible way forward could be to avoid the geographical consideration, and instead focus on eligibility and quantum.

Overall, while some longstanding positions were reaffirmed on several themes of the proposals, delegations expressed the need for compromise and openness to new ideas, if consensus is to be achieved on a new allocation regime for the IOTC.

There was a recognition that some form of transfer of fishing opportunities would be needed to accommodate the special requirements of developing coastal States, including small island developing States. Delegations expressed an openness to discuss the details of such transfers, including a gradual approach to implementing such transfers.

In reference to non-compliance, many delegations did not support this consideration in determining eligibility to an allocation, but instead, they preferred it be considered as a factor for adjusting allocations. Some delegations flagged the linkages to discussions of the IOTC Compliance Committee on this topic, and the need for an outcome to these discussions to help the TCAC frame the relevant provisions of the allocation regime. In this respect, the Commission may wish to consider tasking the Compliance Committee with providing an outcome of its deliberations and relevant advice on the matter of non-compliance records as factors for adjusting allocations to the TCAC in 2021.

Finally, some delegations expressed the need for practical measures for building capacity to address data gaps and to improve data systems, though seeking to improve data should not delay the development of an allocation regime for the IOTC.

PROPOSED THEMATIC APPROACH FOR A FACE TO FACE MEETING IN 2021

A Memorandum (IOTC-TCAC06-02) and written presentation (IOTC-TCAC06-Chair's Presentation) describing this thematic approach were presented as a way forward for framing the future discussions of the Committee based on themes. This approach aims to help build convergence of views and consensus on key allocation topics that consideration of the two opposing proposals had not been able to achieve to date. .

It was proposed that future discussions of the TCAC be framed under the 9 themes derived from the two proposals and past discussions and reports, namely: General Principles; Eligibility; Scope; Allocation Structure; Adjustments; Weighting; Implementation; Transition; and, Final Clauses. Several topics were proposed under each theme with the understanding that they were meant to be illustrative, to assist delegations, and not to restrict the discussions.

A Comparative table of the two proposals along with the proposed themes(IOTC-TCAC06-05), was provided to assist delegations in their preparations and discussions. It was emphasised that

delegations could continue to reference specific portions of their proposals as a basis to advance the discussion.

Delegations shared their views on the proposed thematic approach and on how best to move forward in developing a consensus-based allocation regime for the IOTC. TCAC participants supported the use of the thematic structure as a basis for framing the future discussions of the TCAC.

Participants also concurred with requests made by a number of delegations for the Chair to help bridge gaps between the two proposals currently on the table by proposing commonalities in the form of a draft text that could serve as the basis for a single allocation regime text. It was also noted that the proponents of IOTC-TCAC06-03 would continue their parallel efforts to improve their proposal, which would help inform the Chair's work.

Chair's Advice and Recommended Way Forward

While there are clear differences of views in the TCAC on the topic of allocation of fishing opportunities for the IOTC, there are many areas with a potential for convergence of views. The full and active participation of IOTC members during the TCAC06 meeting demonstrated a clear desire to continue the work of the Committee. Delegations also clearly recognised that flexibility, compromises and openness to new, constructive ideas will be necessary to achieve an allocation regime for the IOTC.

Having said this, much work is still needed to help build a consensus on the various parts of an allocation regime text. The Commission had agreed in its last meeting that the TCAC needed more time to conduct its work, and agreed for the TCAC to meet for 5 whole days in Bangkok, Thailand in 2020. Unfortunately, this meeting was postponed due to the COVID19 global pandemic. However, the TCAC06 video-conference meeting helped to frame the way forward for these future TCAC discussions.

I understand the impact of the pandemic on the 2021 meetings of the TCAC and other Commission bodies will be discussed during the Commission annual meeting scheduled for 2-6 November 2020.

I recommend that the Commission authorize the TCAC to continue its work in 2021 and 2022, and structure its meetings on the basis of the thematic approach. Due to the COVID-19 pandemic, it is highly uncertain whether a face to face meeting of the TCAC will take place in 2021. Therefore, in the absence of a face to face meeting, I recommend that the TCAC to hold 3-4 two-day sessions by Video Conference throughout the year. These sessions would cover the various themes agreed to by the TCAC and help advance its work. This would be followed up with a face to face meeting early in 2022, subject to the state of the global pandemic. Such a face to face meeting of the TCAC in 2022 would review the outcomes of the 2021 Video Conference sessions, and consider any text proposals from the Chair, which may help build consensus on an allocation regime for the IOTC prior to the 2022 session of the Commission.

I would like to thank all delegations for their generous contributions to the discussion and assure all participants that there will be future opportunities to have more fulsome discussions on all relevant topics, within the frame of themes discussed under agenda item 6.

I remain at the Commission's disposal for any clarifications or to hear any direction on the way forward for the TCAC.

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APPENDIX 2.**STATEMENTS OF MAURITIUS, THE UNITED KINGDOM (“BIOT”) REGARDING ISSUES OF SOVEREIGNTY****Statements by the Republic of Mauritius on Agenda Item 2: Letter of Credentials****6th Meeting of IOTC Technical Committee on Allocation Criteria****15-16 September 2020****Agenda Item 2: Letters of Credentials****Statement by the Republic of Mauritius**

Madam Chairperson,

The Delegation of the Republic of Mauritius wishes to place on record its objection to the participation of the United Kingdom of Great Britain and Northern Ireland as a coastal State purporting to represent the Chagos Archipelago in this meeting of the Technical Committee on Allocation Criteria.

As we are all aware, the Advisory Opinion of the International Court of Justice (ICJ) of 25 February 2019 on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 and UN General Assembly Resolution 73/295 of 22 May 2019 have made it clear that the Chagos Archipelago is and has always been an integral part of the territory of the Republic of Mauritius.

In Resolution 73/295, the General Assembly also demanded the United Kingdom to withdraw its colonial administration unconditionally from the Chagos Archipelago within a period of no more than six months, that is, by 22 November 2019. It further called upon the United Nations and all its specialized agencies as well as all other international, regional and intergovernmental organizations to recognize that the Chagos Archipelago forms an integral part of the territory of the Republic of Mauritius.

It follows that under international law, the Republic of Mauritius is the sole State lawfully entitled to exercise sovereignty and sovereign rights over the Chagos Archipelago and its maritime zones. As such, the United Kingdom is not and cannot be the coastal State in relation to the Chagos Archipelago. The United Kingdom is therefore not entitled to be a member of the Indian Ocean Tuna Commission (IOTC) as a coastal State.

The Republic of Mauritius wishes to recall that at the last Session of the Commission held from 17-21 June 2019 in Hyderabad, India, it had asked for the inclusion on the agenda of that meeting of an item relating to the termination of the United Kingdom’s membership of the IOTC as a coastal State. Since Members required time to seek instructions from their capitals, it was decided to postpone the item to the next Session of the Commission. Subsequently, the Republic of Mauritius formally requested on 4 March 2020 that an item entitled “Termination of United Kingdom’s membership in the IOTC as a coastal State” be inscribed on the agenda of the 24th Session of the IOTC. However, in view of the current situation surrounding the COVID-19 pandemic and the conduct of the 24th Session of the IOTC as a virtual meeting that will consider only essential matters requiring urgent attention, the Republic of Mauritius indicated in a letter dated 8 July 2020 addressed to the Chairperson that it has no objection to the consideration of that item being postponed to the 25th Session of the Commission. A statement to that effect was also made at the Heads of Delegation consultations held on 18 August 2020.

In the light of the foregoing, the Republic of Mauritius strongly objects to the participation of the UK delegation in the 6th Meeting of the Technical Committee on Allocation Criteria and to the ‘Letter of Credentials’ which it has purportedly submitted to the Executive Secretary.

The Republic of Mauritius requests that this statement be included in the report of this meeting.

Thank you, Madam Chairperson.



REPUBLIC OF MAURITIUS

Ministry of Foreign Affairs, Regional Integration and International Trade

No. (03/2020) 18570/46/142T

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the Secretariat of the Indian Ocean Tuna Commission (IOTC) and with reference to the Note Verbale (No. OTD/001/2020) dated 11 September 2020 from the Overseas Territories Directorate of the Foreign, Commonwealth and Development Office of the United Kingdom of Great Britain and Northern Ireland, has the honour to state as follows.

The Republic of Mauritius is deeply disappointed that the United Kingdom has chosen to ignore the determinations of international law made by the International Court of Justice (ICJ) in its Advisory Opinion of 25 February 2019, and the provisions of Resolution 73/295 of the UN General Assembly in recognition of and in conformity with the Court's legal determinations. The United Kingdom's claim, notwithstanding the determination to the contrary made by the ICJ, that it is "sovereign" over the Chagos Archipelago – which the Court expressly found to be an integral part of the Republic of Mauritius' territory – is unsustainable as a matter of law, disrespectful of the Court, and ignores the decision of the United Nations.

The ICJ carefully examined all the arguments presented by the United Kingdom and other UN Member States as well as the African Union before reaching the conclusion that the questions put to it by the General Assembly relate to the decolonization of Mauritius and not a territorial dispute between two States. The purpose of the request for an Advisory Opinion, as has been pointed out by the ICJ, "is for the General Assembly to receive the Court's assistance so that it may be guided in the discharge of its functions relating to the decolonization of Mauritius". The ICJ also concluded that:

- (a) the Chagos Archipelago is and has always been part of the territory of the Republic of Mauritius;
- (b) the process of decolonization of the Republic of Mauritius was not lawfully completed when that country acceded to independence in 1968, following the separation of the Chagos Archipelago;
- (c) the United Kingdom's continued administration of the Chagos Archipelago constitutes a wrongful act entailing the international responsibility of the United Kingdom and is an unlawful act of a continuing character which arose as a result of the separation of the Chagos Archipelago from Mauritius;
- (d) the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling the Republic of Mauritius to complete the decolonization of its territory in a manner consistent with the right of peoples to self-determination;
- (e) since respect for the right to self-determination is an obligation *erga omnes*, all States have a legal interest in protecting that right; and
- (f) all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of the Republic of Mauritius.

Furthermore the United Kingdom misstates the law and sows confusion when it insists that the Court's Opinion is not binding. While Advisory Opinions are not themselves legally binding in the same sense as Judgments in contentious cases, the Court's determinations of questions of law in its Advisory Opinions are authoritative. When the Court determines, in resolving those questions, that States have "obligations" under international law to perform or refrain from certain acts, those "obligations" are binding on the States concerned. This is universally accepted and well documented.

The Republic of Mauritius therefore considers it of paramount significance that the Court determined that "the United Kingdom is under an obligation to bring an end to its administration of the Chagos Archipelago as rapidly as possible, thereby enabling Mauritius to complete the decolonization of its (that is, Mauritius) territory in a manner consistent with the right of peoples to self-determination"; and that the Court further determined that "all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius". This obligation applies, of course, to the UN Member States which are members of the IOTC.

The Republic of Mauritius further wishes to point out that the conclusions of law reached by the ICJ were upheld in their entirety by UN General Assembly Resolution 73/295. That Resolution, which was adopted by an overwhelming majority of votes, *inter alia*, called upon the United Nations and all its specialized agencies as well as all other international, regional and intergovernmental organizations, including those established by treaty, to recognize that the Chagos Archipelago forms an integral part of the territory of the Republic of Mauritius, to support the decolonization of the Republic 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 so-called "British Indian Ocean Territory". It follows that Resolution 73/295 is binding on all United Nations bodies and entities, including the FAO, under which the IOTC falls. In this regard, at the direction of the UN Secretary-General, since February this year, the new, official United Nations map depicts the Chagos Archipelago as an integral part of the Republic of Mauritius. A copy of the map is attached herewith.

In these circumstances, the United Kingdom's position with regard to the Advisory Opinion of the ICJ and General Assembly Resolution 73/295 constitutes, in the view of the Republic of Mauritius, a flagrant disregard of the rule of law. Moreover, it challenges the highest court of the world and the very institution that the United Kingdom helped to create 75 years ago.

The Republic of Mauritius reiterates that in the light of the foregoing, the United Kingdom is not and cannot be the coastal State in relation to the Chagos Archipelago and is therefore not entitled to be a member of the IOTC as a coastal State.

The Republic of Mauritius would be grateful if a copy of this Note Verbale could be annexed to the report of the 6th Meeting of the Technical Committee on Allocation Criteria scheduled for 15-16 September 2020.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the Secretariat of the Indian Ocean Tuna Commission the assurances of its highest consideration.



Port Louis, 16 September 2020

Secretariat
Indian Ocean Tuna Commission
Victoria
Seychelles

UK Position on Sovereignty of the British Indian Ocean Territory

Note Number: OTD/001/2020

The Overseas Territories Directorate of the Foreign, Commonwealth and Development Office presents its compliments to the Secretariat of the Indian Ocean Tuna Commission (IOTC) and Chair of the Technical Committee on Allocation Criteria (TCAC). In advance of the 6th session of TCAC, the United Kingdom wishes to restate its position on the British Indian Ocean Territory (BIOT).

The United Kingdom has no doubt about its sovereignty over the Chagos Archipelago, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the Archipelago and we do not recognise its claim. However, we have a long-standing commitment, first made in 1965, to cede sovereignty of the territory to Mauritius when it is no longer required for defence purposes. We stand by that commitment.

The United Kingdom was disappointed that this matter was referred to the International Court of Justice (ICJ), contrary to the principle that the Court should not consider bilateral disputes without the consent of both States concerned. Nevertheless, the United Kingdom respects the ICJ and participated fully in the ICJ process at every stage and in good faith. An Advisory Opinion is advice provided to the United Nations General Assembly at its request; it is not a legally binding judgment. The UK Government has considered the content of the Opinion carefully, however we do not share the Court's approach.

UN Resolution 73/295, adopted following the ICJ's Advisory Opinion, does not and cannot create any legal obligations for UN Member States. Neither the non-binding Advisory Opinion nor the non-binding General Assembly resolution alter the legal situation, that of a sovereignty dispute between the United Kingdom and Mauritius. The General Assembly is not the appropriate forum to resolve such a bilateral dispute.

The United Kingdom, in respect of the British Indian Ocean Territory, is a full member of the IOTC. The United Kingdom deposited instrument of acceptance to the IOTC Agreement on 31st March 1995 and have been a party to the Agreement since it entered into force. 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.

The Overseas Territories Directorate of the Foreign, Commonwealth and Development Office avails itself of the opportunity to renew to the Secretariat of the Indian Ocean Tuna Commission the assurances of its highest consideration.

FOREIGN, COMMONWEALTH AND DEVELOPMENT OFFICE
LONDON

11 September 2020

APPENDIX 3.
AGENDA OF THE 6TH TECHNICAL COMMITTEE ON ALLOCATION CRITERIA

Date: 15–16 September 2020

Location: Video Conference

Chairperson: Mrs Nadia Bouffard

1. **OPENING OF THE SESSION**
2. **LETTER OF CREDENTIALS**
3. **ADMISSION OF OBSERVERS**
4. **ADOPTION OF THE AGENDA AND ARRANGEMENTS FOR THE SESSION**
5. **PRESENTATION OF REVISED PROPOSALS**
 - Coastal States proposal
 - EU proposal
 - Q&A and discussion
6. **PROPOSED THEMATIC APPROACH FOR A FACE TO FACE MEETING IN 2021**
 - Presentation from the Chair
 - Q&A and discussion
7. **NEXT STEPS**
8. **CONCLUSION OF THE MEETING**

APPENDIX 4.
LIST OF DOCUMENTS

All documents are available on the IOTC website [\[click here\]](#)

Document number	Title
IOTC-2020-TCAC06-01	Draft agenda v22 July
IOTC-2020-TCAC06-02	Chairpersons explanatory memorandum
IOTC-2020-TCAC06-03	Draft proposal - Allocation of fishing opportunities - Coastal State
IOTC-2020-TCAC06-04	Draft Proposal - On a quota allocation system (European Union)
IOTC-2020-TCAC06-05	Chair's Thematic Comparative Table.
Presentation	Chair's Presentation on Thematic Approach for TCAC07
Presentation	Coastal States - Allocation of fishing opportunities
Presentation	TCAC06 - Presentation of EU proposal