



REPUBLIC OF MAURITIUS

**MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION
AND INTERNATIONAL TRADE**

Note No: 15/2021(18570/46/142)

8 June 2021

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/004/2021) dated 4 June 2021 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 provide clarifications in respect of certain assertions and assumptions which the UK Overseas Territories Directorate purports to present.

The first assertion is that the International Court of Justice (ICJ) ought not to have considered a bilateral dispute without the consent of the States concerned. In this regard, the Republic of Mauritius wishes to point out that the Court addressed this issue directly and decisively rejected the arguments of the United Kingdom: the Court carefully distinguished on the one hand, a purely bilateral dispute and on the other, a dispute about the lawfulness of decolonization, which might require the Court to address other legal issues arising within the broader framework of decolonization. The Court made it clear that the Advisory Opinion requested by the UN General Assembly concerned a matter related to decolonization, not a bilateral dispute. The United Kingdom is fully aware that the Court rejected its arguments.

The second assertion is that the Advisory Opinion merely offers advice to the General Assembly and is not a binding judgment. The ICJ determined that “obligations arising under international law ... require the United Kingdom, as the administering Power, to respect the territorial integrity of [Mauritius], including the Chagos Archipelago”, and to bring an end to its administration of the Chagos Archipelago as rapidly as possible.

While Advisory Opinions *per se* may not be binding on States (although binding in this case on the United Nations which has given effect to it), it is unquestionable that the obligations the ICJ identified as arising under international law are binding on the States concerned, including the United Kingdom. That such determinations of law in the Court's Advisory Opinions are as authoritative as they are in its Judgments is recognized by international and national courts, and by distinguished commentators, including Professors Rosenne, Pellet, Watts, Dugard and Kolb as well as Judge Nagendra Singh and Judge Yusuf, former Presidents of the ICJ.

The third assertion is that UN General Assembly Resolution 73/295 does not and cannot create legal obligations for UN Member States. Resolution 73/295 was adopted by 116 votes against 6 votes. The will of the international community is crystal clear: Member States are required to ensure the completion of the decolonization of the Republic of Mauritius given the *erga omnes* nature of the obligation in respect of the right to self-determination, as stated by the ICJ.

The fourth assertion is that the Judgment of the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) can have no effect for the United Kingdom. The Republic of Mauritius wishes to recall that in its Judgment of 28 January 2021, the Special Chamber of ITLOS ruled that the Republic of Mauritius has undisputed sovereignty over the Chagos Archipelago and that the United Kingdom's continued claim to sovereignty over the Chagos Archipelago is contrary to the determinations of the ICJ that the detachment of the Chagos Archipelago from Mauritius was unlawful and that the United Kingdom's continued administration of the Chagos Archipelago is an unlawful act of a continuing character. It also ruled that the Republic of Mauritius is to be regarded as the coastal State in respect of the Chagos Archipelago.

ITLOS also stressed that determinations made by the ICJ in an Advisory Opinion cannot be disregarded simply because the Advisory Opinion is not binding. The Special Chamber held that the determinations made by the ICJ in its Advisory Opinion of 25 February 2019 have legal effect and clear implications for the legal status of the Chagos Archipelago.

ITLOS further ruled that the continued claim of the United Kingdom to sovereignty over the Chagos Archipelago cannot be considered anything more than “a mere assertion” and that such assertion does not prove the existence of a dispute.

The ITLOS Judgment is binding under international law. It gives effect to, and applies, the ICJ Advisory Opinion. It is now indisputable that as a matter of 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 and that the United Kingdom cannot claim any rights over the Chagos Archipelago. The Judgment of ITLOS has further confirmed the illegality of the so-called “British Indian Ocean Territory”.

The Republic of Mauritius notes that three different international courts and tribunals have now had an opportunity to address the question of which State has sovereignty over the Chagos Archipelago: an Annex VII Arbitral Tribunal (2015), the ICJ (2019) and ITLOS (2021). A total of twenty-eight judges and arbitrators have had a chance to express their views, and not a single one has offered support for the position of the United Kingdom (23 have expressed support for the view that the Republic of Mauritius has sovereignty over the Chagos Archipelago, the other five have expressed no view on the merits, declining to express a view on grounds only of jurisdiction). The supposed claim by the United Kingdom has the support of no international court or tribunal, and not a single international judge or arbitrator. It is entirely without merit, and it is untenable.

It is deeply regrettable that the United Kingdom which professes support for the international rule of law should blatantly disregard both the authoritative determinations of the ICJ and the Judgment of ITLOS. The United Kingdom’s stand is all the more astounding, having regard to the fact that it participated actively in the proceedings that led to the authoritative determinations of the ICJ, and its objection to the stand of the Republic of Mauritius and a large number of other States that the decolonization of the Republic of Mauritius was still incomplete was rejected by the ICJ.

The Republic of Mauritius notes that the United Nations has changed its map, to show the Chagos Archipelago as part of the sovereign territory of the Republic of Mauritius. The United Nations, as well as other specialized agencies such as the Food and Agriculture Organization and

the Universal Postal Union, are taking steps to give effect to the ICJ Advisory Opinion and UN General Assembly Resolution 73/295.

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 pursuant to Article IV(1)(a)(i) of the Agreement for the Establishment of the Indian Ocean Tuna Commission.

It follows that neither the Instrument of Acceptance deposited by the United Kingdom on 22 December 2020 nor that deposited on 31 March 1995 could validly have been submitted on the basis of Article IV(1)(a)(i) of the Agreement for the Establishment of the Indian Ocean Tuna Commission.

The Republic of Mauritius would be grateful if a copy of this Note Verbale could be annexed to the report of the 25th Session of the IOTC scheduled for 7-11 June 2021 and posted on the IOTC's website.

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.

**Secretariat
Indian Ocean Tuna Commission
Victoria
Seychelles**

