



REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

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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/006/2021) dated 25 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 state as follows:

The position taken by the United Kingdom in respect of the Chagos Archipelago is in manifest breach of international law, including its legally binding obligations thereunder, as clearly set out in 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*, UN General Assembly Resolution 73/295 of 22 May 2019 and the Judgment of the Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) of 28 January 2021.

In its Advisory Opinion, the ICJ made clear that the Chagos Archipelago is and has always formed an integral part of the territory of the Republic of Mauritius. The Court also found that 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 from the separation of the Chagos Archipelago from Mauritius. It accordingly concluded that the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible.

The United Kingdom claims that the 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 and squarely rejected the arguments of the United Kingdom. The ICJ 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 ICJ 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 further claims that it does not share the ICJ's approach and that the Advisory Opinion of the Court merely provides advice to the UN General Assembly and is not a legally binding judgment. The United Kingdom is fully aware that the Court considered thousands of pages of factual and legal arguments, and heard oral submissions from more than thirty States, including the United Kingdom, and the African Union over four days. The Court carefully examined those facts and legal arguments before reaching its conclusions which are entirely without ambiguity. The Court heard and rejected the arguments of the United Kingdom, the same ones now being asserted before the IOTC.

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 which 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.

In Resolution 73/295 which was adopted by an overwhelming majority of 116 votes to 6, the UN General Assembly fully endorsed the findings of the ICJ. It recognized that as a matter of international law, the Chagos Archipelago forms an integral part of the territory of the Republic of Mauritius and demanded the United Kingdom to withdraw its colonial administration from the Chagos Archipelago unconditionally by 22 November 2019. Given the *erga omnes* nature of the obligation in

respect of the right to self-determination, Member States are required to ensure the completion of the decolonization of the Republic of Mauritius.

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 further underscored 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 also 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".

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 8th meeting of the IOTC Technical Committee on Allocation Criteria scheduled for 28 June-1 July 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.



1st July 2021

Secretariat

Indian Ocean Tuna Commission

Victoria

Seychelles