



NOTE

from the Legal Counsel of the Food and Agriculture Organization of the United Nations (“FAO”) in relation to Agenda item 4 of the agenda for the 26th Session of the Indian Ocean Tuna Commission (“IOTC”), proposed by Mauritius: “Clarification of the Status of the United Kingdom’s Membership in the IOTC”

The procedure for becoming a member of the IOTC is set out in Article IV, paragraph I of the Agreement for the Establishment of the IOTC (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; or

(iii) regional economic integration organizations of which any State referred to in subparagraphs (i), or (ii) above is a member and to which that State has transferred competence over matters within the purview of this Agreement;

and

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

Article XXIV of the IOTC Agreement provides that the FAO Director-General shall be the Depositary of the Agreement.

On 22 December 2020, the Government of the United Kingdom of Great Britain and Northern Ireland (“the United Kingdom”) deposited an instrument of acceptance for the United Kingdom of Great Britain and Northern Ireland in accordance with Article IV(1)(a) of the Agreement, without further specification as to whether the instrument was deposited pursuant to sub-paragraphs (i) or (ii) of that Article. This instrument was accepted by the FAO Director-General in his capacity as the Depositary of the Agreement. In conformity with Article XXIV(d)(i) of the Agreement, all members of the Commission and Members of the Organization were informed of the deposit of the instrument and advised that, in accordance with its Article XVIII, the Agreement entered into force for the United Kingdom on 22 December 2020.

As reflected in document IOTC-2021-S25-07[E] entitled “Implementation of Paragraph 6 of the UNGA Resolution 73/295” circulated at the 25th IOTC Session in response to the Commission’s request made at its 23rd Session, the Organization informed the Commission that, as a Specialized Agency of the United Nations, it is implementing General Assembly resolution 73/295.

It is recalled that, by operative paragraph 6 of that resolution, the General Assembly “[c]alls 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’ ”.

Thus, as contemplated in paragraph 6 of the resolution, the FAO and the Depositary recognize that “the Chagos Archipelago forms an integral part of the territory of Mauritius”.

If an instrument was deposited at this time by the United Kingdom purporting to extend the application of the IOTC Agreement to the "BIOT", such an instrument would not be accepted by the Depositary. From a legal perspective, it would be anomalous to consider the 1995 instrument as remaining valid simply on the basis that it was valid at the time of deposit, bearing in mind that it is inconsistent with the position that *"the Chagos Archipelago forms an integral part of the territory of Mauritius"*.



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6 May 2022