

# MAURITIUS v. UNITED KINGDOM

A Case Summary for the  
Maritime Dispute Resolution Project  
Round II



U.S.-ASIA LAW INSTITUTE  
NEW YORK UNIVERSITY SCHOOL OF LAW

Maritime Dispute Resolution Project

# Mauritius v. United Kingdom

## Case Summary\*



A research project of the  
U.S.-Asia Law Institute

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\* The author of this case summary requested it be published without attribution.

## Contents

Project Overview .....	1
Section I – Summary of the Case .....	2
Section II – Summary of Key Substantive Issues.....	5
1. The UK’s rights as the “coastal state” under relevant provisions of the Convention.....	6
2. UK’s obligations under the UNCLOS in light of the “Lancaster House Undertakings” .....	7
Section III – Implementation of the Tribunal’s Decision.....	10
Section IV – Conclusions .....	10

## Project Overview

This case summary was prepared as part of the U.S.-Asia Law Institute's Maritime Dispute Resolution Project. The institute began the project in 2018 in order to better understand the circumstances in which interstate maritime disputes are successfully resolved and distill lessons for governments.

The two main questions the project seeks to answer are:

- When are international institutional dispute resolution mechanisms effective in resolving maritime disputes?
- What insights can be applied to the maritime disputes in East Asia?

To address these questions, leading international lawyers and legal scholars held workshops to analyze selected disputes from around the world. This and other case studies were prepared for the workshops and are based on the official records.

Citation:

Chagos Marine Protected Area Arbitration (Mauritius v. U.K.), 31 R.I.A.A. 359 (Perm. Ct. Arb. 2015); Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (Mauritius v. U.K.), Advisory Opinion, 2019 I.C.J. 95, para. 183 (Feb. 25).

### Section I – Summary of the Case

Mauritius is composed of a group of islands situated in the southwestern part of the Indian Ocean. In 1968, Mauritius became an independent State, prior to which time it was a British colony. During the colonial period, the United Kingdom of Great Britain and Northern Ireland (“UK”) administered the Chagos Archipelago—an isolated group of islands located in the middle of the Indian Ocean—as a “lesser dependency” of the colony of Mauritius.

In the years leading up to Mauritius’ independence, UK officials negotiated with Mauritian political leaders the terms of Mauritius’ independence, including arrangements for continued UK administration of the Chagos Archipelago as a separate administrative entity following Mauritius’ independence.

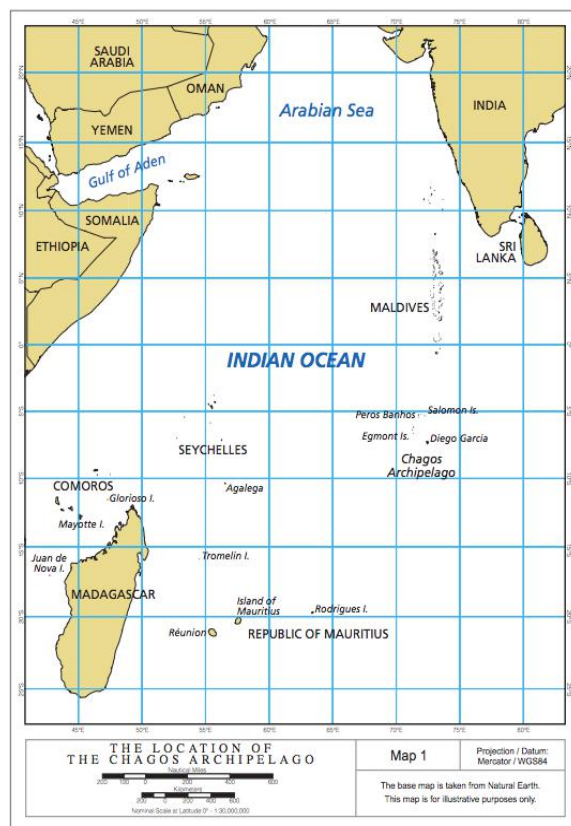
In the course of these negotiations, the UK made a series of undertakings relating to, among other things, fishing rights. The UK also undertook to “return” the Chagos Archipelago to Mauritius when it was no longer needed for defense purposes. Beginning in the 1980s, Mauritius began to challenge the UK’s retention of sovereignty over the Chagos Archipelago in various fora as an unlawful interference with Mauritian self-determination. Those challenges continue to date.<sup>1</sup>

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<sup>1</sup> Mauritius led an effort in the UN General Assembly to request an advisory opinion from the International Court of Justice (ICJ) on “the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.” On February 25, 2019, the ICJ issued its opinion, concluding that the process of decolonization of Mauritius had not been “lawfully completed” and that the UK is under an obligation to bring to an end its administration of the Chagos Archipelago “as rapidly as possible.” Legal Consequences of the

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On April 1, 2010, the United Kingdom established a marine protected area (“MPA”) extending 200 nautical miles from the Chagos Archipelago. On December 20, 2010, Mauritius initiated arbitration against the UK under Annex VII of the 1982 United Nations Convention on the Law of the Sea (“UNCLOS” or “the Convention”), arguing that the UK was not entitled to establish the

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Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, 2019 I.C.J. 95, para. 183 (Feb. 25).

MPA and had, through its establishment, violated various provisions of the UNCLOS and other rules of international law.<sup>2</sup>

Mauritius' principal argument was that the United Kingdom is not the "coastal state" within the meaning of relevant provisions of the UNCLOS, and was therefore not entitled to establish an MPA or maritime zones from the territory of the Chagos Archipelago. Mauritius also advanced arguments that the UK's establishment of the MPA was inconsistent with its obligations under the Convention and other rules of international law in light of the undertakings made by the UK to Mauritian political leaders in the years leading up to Mauritius' independence (referred to by the tribunal as the "Lancaster House Undertakings").

The UK challenged the tribunal's jurisdiction over the entirety of the dispute, arguing that it was in reality a dispute concerning sovereignty over the Chagos Archipelago and was thus not one concerning the interpretation or application of the UNCLOS. The UK argued on the merits that it was the coastal state for purposes of the Convention and that its establishment of the MPA was consistent with the Convention and with other rules of international law.

The tribunal dismissed Mauritius' claims challenging the UK's status and rights under the Convention as the relevant "coastal state," finding that it involved, at its core, a dispute over sovereignty that was beyond the scope of the tribunal's jurisdiction. The Court upheld its jurisdiction to decide Mauritius' other claims relating to the compatibility of the MPA with several provisions of the Convention (namely, article 2(3) and 56(2)), insofar as they relate to

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<sup>2</sup> Chagos Marine Protected Area Arbitration (Mauritius v. U.K.), 31 R.I.A.A. 359 (Perm. Ct. Arb. 2015)(hereinafter "*Mauritius v. United Kingdom*"), para. 6.

the Lancaster House Undertakings (which the tribunal determined included binding obligations on the part of the UK), as well as the UK's obligations under article 194 related to measures taken to protect and preserve the marine environment.

### **Section II – Summary of Key Substantive Issues**

The tribunal heard the parties' arguments on jurisdiction and the merits simultaneously after rejecting a request from the United Kingdom to bifurcate the proceedings.<sup>3</sup> The principal issues addressed by the tribunal were (1) whether the UK is the "coastal state" within the meaning of various provisions of the UNCLOS and, relatedly, whether the UK was within its rights as a "coastal state" to establish the MPA and maritime zones from the territory of the Chagos Archipelago; and (2) the scope of the UK's obligations under various provisions of the UNCLOS in light of what the tribunal found to be binding obligations on the part of the UK reflected in the "Lancaster House Undertakings."<sup>4</sup> The tribunal dismissed the first set of issues on jurisdictional grounds, and evaluated a subset of the second set of issues on the merits.<sup>5</sup>

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<sup>3</sup> *Id.* para. 31.

<sup>4</sup> The Tribunal determined that it need not evaluate a separate request from Mauritius to prevent the UK from taking steps regarding a potential submission to the Commission on the Limits of the Continental Shelf (CLCS), finding that there was no dispute between the parties regarding this issue. *Id.*, para. 349.

<sup>5</sup> The Tribunal dismissed claims brought under articles 63 and 64 of the LOS Convention and article 7 of the 1995 Fish Stocks Agreement as falling under the mandatory exception set forth in article 297(3).



### 1. The UK's rights as the "coastal state" under relevant provisions of the Convention

Mauritius asked the Court to interpret and apply the term "coastal state" as it is used in various provisions of the UNCLOS in relation to the UK's establishment of the MPA. According to Mauritius, this request quite clearly concerned the interpretation or application of the Convention, and thus fell within the scope of the tribunal's jurisdiction as set forth in article 288(1) of the Convention.<sup>6</sup> Mauritius also asked the Court to resolve its request with reference to the sources of law set forth in article 293, namely, "[the] Convention and other rules of international law not incompatible with [the] Convention."<sup>7</sup>

The UK argued in response that it is "self-evident" that a dispute concerning sovereignty over land territory is not a dispute concerning the interpretation or application of the UNCLOS for purposes of article 288(1),<sup>8</sup> and that article 293 "cannot be invoked to support an expanded vision of a court or tribunal's jurisdiction under section 2 of Part XV."<sup>9</sup>

In evaluating the parties' arguments, the tribunal noted that the actions taken by the UK as the "coastal state" are merely a manifestation of the underlying sovereignty dispute,<sup>10</sup> and that the

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<sup>6</sup> *Supra* note 2, *Mauritius v. United Kingdom*, para. 177.

<sup>7</sup> *Id.* paras. 180-83.

<sup>8</sup> *Id.* para. 170.

<sup>9</sup> *Id.* para. 184.

<sup>10</sup> *Id.* para. 211.

drafters of the UNCLOS had not intended to bring disputes over territorial sovereignty under the Convention's compulsory dispute settlement umbrella.<sup>11</sup> The Court did, however, leave open the possibility that "a minor issue of territorial sovereignty could indeed be ancillary to a dispute concerning the interpretation or application of the Convention," while noting that this was not the case in the present dispute.<sup>12</sup> The tribunal extended the same rationale to its dismissal of Mauritius' claims regarding the UK's rights as a "coastal state" to establish an MPA and declare maritime zones from the territory of the Chagos Archipelago.<sup>13</sup>

### 2. UK's obligations under the UNCLOS in light of the "Lancaster House Undertakings"

Mauritius also argued that the UK had violated various provisions of the UNCLOS when it established the MPA, which it argued should be viewed in light of the UK's commitments reflected in the "Lancaster House Undertakings." Specifically, Mauritius argued that the MPA's establishment was incompatible with the UK's obligations under articles 2(3), 56(2), 194, and 300 of the UNCLOS, as well as its obligation to consult with and have regard for the rights of Mauritius in the exercise of its rights under the Convention.

The UK contested the tribunal's jurisdiction with reference to article 297 and on other grounds. According to the UK, the MPA was a measure relating to "sovereign rights with respect to living resources" in the EEZ and therefore falls within the mandatory

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<sup>11</sup> *Id.* para. 217.

<sup>12</sup> *Id.* para. 221.

<sup>13</sup> *Id.* para. 228-30.

exception set out in article 297(3)(a) concerning fisheries. The UK also rejected the idea that the UK's undertakings reflected in the Lancaster House Undertakings (which the UK had argued were non-binding political commitments) could be brought within the scope of the Convention's dispute resolution provisions by virtue of articles 2(3) and 56(2) (or other provisions), since there is no provision concerning dispute settlement within the meaning of article 288(2) that would bring those commitments under the Convention's dispute resolution umbrella. With regard to Mauritius' claim under article 194, the UK simply contended that there was no dispute.

Mauritius contended that the establishment of the MPA was an environmental measure and that jurisdiction was therefore established under article 297(1)(c), or, alternatively, that the exclusions set out in article 297(3)(a) did not apply.

The tribunal found that the establishment of the MPA did affect Mauritius' rights, and that the UK's consultations with Mauritius prior to establishing the MPA had been insufficient. In terms of the jurisdictional objections raised by the UK, the tribunal noted that article 297(1) expands the scope of the tribunal's jurisdiction beyond that which would follow from a reading of article 288(1) alone, extending the Convention's compulsory dispute settlement provisions in certain respects to disputes involving international obligations stemming from sources beyond the four corners of the Convention.<sup>14</sup>

As a result of its conclusion that the Lancaster House Undertakings reflected binding international obligations on the part of the UK, including those relating to fishing rights, the tribunal found that

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<sup>14</sup> *Id.* para. 316.

Mauritius had a significant interest in decisions taken by the UK that might bear on Mauritius' future use of the resources in the maritime zones derived from the territory of the Chagos Archipelago. In this connection, it concluded that:

- The UK's obligation under article 2(3) of the Convention to exercise sovereignty over the territorial sea "subject to th[e] Convention and to other rules of international law" required the UK to "exercise good faith" with respect to Mauritius' rights in the territorial sea;<sup>15</sup> and
- The UK's obligation under article 56(2) required the UK to "have due regard for" Mauritius' rights in the EEZ.<sup>16</sup>

In the tribunal's assessment, this required the UK to balance its own interests with those of Mauritius (including those reflected in the Lancaster House Undertakings), and the UK fell short in carrying out that task. The tribunal further concluded that article 194(4) requires a balancing act between competing rights that is "functionally equivalent" to the obligation to give "due regard" set out in article 56(2) and the obligation to "exercise good faith" in reference to article 2(3).

The tribunal concluded by noting that "[t]he Tribunal's concern has been with the manner in which the MPA was established, rather than its substance," noting that "the Tribunal has taken no view on

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<sup>15</sup> *Id.* para. 520.

<sup>16</sup> *Id.*

the substantive quality or nature of the MPA or on the importance of environmental protection.”<sup>17</sup>

### **Section III – Implementation of the Tribunal’s Decision**

As the underlying dispute concerning sovereignty over the Chagos Archipelago is ongoing, the tribunal’s award featured prominently in subsequent arguments presented by the parties in various fora. Most notably, both Mauritius and the UK relied heavily on the tribunal’s findings in written and oral submissions made in connection with the advisory proceedings before the International Court of Justice (ICJ) in *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. Based on those submissions, there appears to be substantial differences in the two sides’ interpretation of both the nature and scope of the tribunal’s award.

### **Section IV – Conclusions**

The tribunal’s award is significant in several ways. First, it affirmed that territorial sovereignty disputes are not ones concerning the interpretation or application of the UNCLOS, and thus fall beyond the scope of an Annex VII tribunal’s jurisdiction, as set forth in article 288 of the UNCLOS. At the same time, the tribunal left open the possibility that “a minor issue of territorial sovereignty” might fall within its jurisdiction if it was “ancillary to” a dispute concerning the interpretation or application of the convention.

Second, the tribunal declined to exercise jurisdiction over any question that required it to evaluate the UK’s status or rights as a

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<sup>17</sup> *Id.* para. 544.

“coastal state,” since disputes over those issues were a manifestation of the underlying territorial sovereignty dispute.

Third, the tribunal dismissed certain claims relating to access to fish stocks as falling within the mandatory exclusion to compulsory dispute settlement set forth in article 297(3)(a), given their connection to the coastal state’s sovereign rights with respect to living resources in the EEZ.

Fourth, the tribunal offered a somewhat generous reading of article 297(1)(c) when it affirmed its jurisdiction to evaluate the UK’s obligations under articles 2(3) and 56(2) in light of undertakings made by the UK prior to Mauritius’ independence relating to fishing rights and the commitment to return the Chagos Archipelago to Mauritius when no longer needed for defense purposes.

With regard to historic rights, however, the tribunal’s award offers relatively little that could be invoked to contest the limits of coastal state rights and jurisdiction set forth in the UNCLOS. Mauritius did not purport to assert rights beyond those to which the coastal state (whatever its identity) was entitled. And because the tribunal found that Mauritius is entitled to fishing rights pursuant to the Lancaster House Undertakings, it declined to address whether Mauritius possessed traditional fishing rights independently of any commitment made by the UK in the Lancaster House Undertakings.<sup>18</sup>

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<sup>18</sup> *Id.* para. 456.



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