

PERMANENT COURT OF ARBITRATION  
ARBITRATION UNDER ANNEX VII OF THE 1982 UNITED NATIONS  
CONVENTION ON THE LAW OF THE SEA

In the Matter of Arbitration Between:

THE REPUBLIC OF MAURITIUS,

and

THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND

PCA Reference MU-UK

Volume 4

HEARING ON JURISDICTION AND THE MERITS

Friday, April 25, 2014

Pera Palace Hotel  
Mesrutiyet Cad. No:52 Tepebasi, Beyoglu  
Conference Room Galata II & III  
34430, Istanbul-Turkey

The hearing in the above-entitled matter convened at 9:30 a.m. before:

PROFESSOR IVAN SHEARER, Presiding Arbitrator

SIR CHRISTOPHER GREENWOOD, CMG, QC, Arbitrator

JUDGE ALBERT J. HOFFMANN, Arbitrator

JUDGE JAMES KATEKA, Arbitrator

JUDGE RÜDIGER WOLFRUM, Arbitrator

Permanent Court of Arbitration:

MR. BROOKS W. DALY  
Registrar  
MR. GARTH L. SCHOFIELD  
PCA Legal Counsel  
MS. FIONA POON  
PCA Legal Counsel

Court Reporter:

MR. DAVID A. KASDAN, RDR-CRR  
Certified Realtime Reporter (CRR)  
Registered Diplomat Reporter (RDR)  
Worldwide Reporting, LLP  
529 14th Street, S.E.  
Washington, D.C. 20003  
+001 202 544 1903  
info@wwreporting.com

APPEARANCES:

On behalf of the Republic of Mauritius:

MR. DHEERENDRA KUMAR DABEE, GOSK, SC  
Solicitor-General, Attorney General's Office  
Agent of the Republic of Mauritius

MS. ARUNA DEVI NARAIN  
Parliamentary Counsel, Attorney-General's Office  
Deputy Agent of the Republic of Mauritius

Counsel:

PROFESSOR JAMES CRAWFORD, AC, SC  
University of Cambridge

MR. PAUL S. REICHLER  
Foley Hoag LLP

PROFESSOR PHILIPPE SANDS, QC  
Matrix Chambers, London

MR. ANDREW LOEWENSTEIN  
Foley Hoag LLP

MS. ALISON MACDONALD  
Matrix Chambers, London

Advisers:

MR. SURESH CHUNDRE SEEBALLUCK, GOSK  
Secretary to Cabinet and Head of the Civil Service, Republic of Mauritius

H.E. DR. JAYA NYAMRAJSINGH MEETARBHAN, GOSK  
Ambassador and Permanent Representative of the  
Republic of Mauritius to the United Nations, New York

MS. SHIU CHING YOUNG KIM FAT  
Ministry of Foreign Affairs, Regional Integration and International Trade,  
Republic of Mauritius

DR. DOUGLAS GUILFOYLE  
University College London

MS. ELIZABETH WILMSHURST  
Doughty Street Chambers (academic panel), London

MR. YURI PARKHOMENKO

Legal Researchers:

MR. REMI REICHHOLD  
Legal Assistant, Matrix Chambers, London

MR. FERNANDO L. BORDIN

Assistants:

MR. RODRIGO TRANAMIL  
MS. NANCY LOPEZ  
Foley Hoag, LLP

On behalf of the United Kingdom:

MR. CHRISTOPHER WHOMERSLEY,  
Deputy Legal Adviser, Foreign and Commonwealth Office  
Agent for the United Kingdom

MS. MARGARET PURDASY  
Assistant Legal Adviser, Foreign and Commonwealth Office  
Deputy Agent for the United Kingdom

Counsel:

THE RIGHT HONOURABLE DOMINIC GRIEVE, QC MP  
Her Majesty's Attorney General

SIR MICHAEL WOOD  
20 Essex Street Chambers, London

PROFESSOR ALAN BOYLE  
University of Edinburgh and Essex Court Chambers

MR. SAMUEL WORDSWORTH, QC  
Essex Court Chambers, London

MS. PENELOPE NEVILL  
20 Essex Street Chambers, London

MS. AMY SANDER  
Essex Court Chambers, London

Legal Researcher:

MR. ERAN STHOEGER

Advisers:

MS. JO BOWYER

Foreign and Commonwealth Office, London

MS. MINA PATEL

Foreign and Commonwealth Office, London

MS. NEELAM RATTAN

Foreign and Commonwealth Office, London

MS. REBECCA RAYNSFORD

Attorney General's Office, London

MR. DOUGLAS WILSON

Attorney General's Office, London

CONTENTS

	PAGE
INTRODUCTORY REMARKS.....	374
MAURITIUS ARGUMENT ROUND 1 (Continued):	
STATEMENT ON BEHALF OF THE REPUBLIC OF MAURITIUS:	
By Professor Crawford.....	374
By Ms. Macdonald.....	397
MAURITIUS' RESPONSE TO WRITTEN QUESTIONS.....	417
STATEMENT ON BEHALF OF THE REPUBLIC OF MAURITIUS:	
By Professor Sands.....	424
By Mr. Loewenstein.....	467
By Mr. Reichler.....	478

1 PROCEEDINGS

2 PRESIDENT SHEARER: Good morning, ladies and gentlemen.

3 Just before I call upon Professor Crawford, arising out of one of the documents  
4 referred to by Mr. Loewenstein in his presentation yesterday, Judge Greenwood would like to  
5 make a request, and I think it's directed to both Parties, not just one.

6 I give the floor to Judge Greenwood.

7 ARBITRATOR GREENWOOD: Thank you very much, President.

8 It's very much just a request for assistance. The document is in the Mauritius  
9 Arbitrators' bundle at Document 10.3, and the original is UK Rejoinder Annex 20. This is the  
10 letter from Mr. Carter of the East African department to Mr. Brown at the UK High Commission in  
11 Mauritius, and it's about something that Sir Seewoosagur is supposed to have said relating to  
12 jurisdiction of Mauritius over the waters surrounding Diego Garcia. I cannot, however, find any  
13 of documents to which this document refers. And those documents are High Commissioner's  
14 letter of 2 December 1977, Washington telegram 5233, and London telegram to Washington,  
15 4227. Now, those are obviously all British Government documents. It would be helpful to see  
16 them.

17 But also I wonder whether Mauritius has in its Government files any record of what  
18 Sir Seewoosagur said because obviously it would be interesting to see a direct report from the  
19 Mauritian Government of what he said rather than a British diplomat reporting what he had heard.

20 Thank you very much.

21 PRESIDENT SHEARER: Thank you.

22 Yes, Professor Crawford.

23 PROFESSOR CRAWFORD: Thank you, sir. My apologies for the slight delay.

24 *Mauritius v United Kingdom*

25 **Speech 11: In declaring the "MPA" the United Kingdom breached Article 300**



1 **Professor James Crawford AC SC**

2 **A. Introduction**

3 Mr. President, Members of the Tribunal:

4 1. The 1982 Convention lays down a framework for the peaceful, fair and sensible use of  
5 what is essentially a common space, or at least a set of partly-delimited but inherently  
6 undemarcated and interlinked common spaces: the world's oceans. That is why the provisions  
7 of the Convention seek to reach a balance between the sovereign and jurisdictional rights of  
8 coastal States in the various maritime zones and the rights and freedoms of all States in the high  
9 seas and—subject to limitations—those zones as well. It is striking that the Convention  
10 balances rights and obligations even over estuaries and certain internal waters of the sea.  
11 Essentially, the Convention seeks to ensure that no State can exercise its rights over the seas to  
12 the detriment of the rights of others; to this end, it imposes a series of obligations of  
13 coordination, consultation and cooperation.

14 Many of our complaints yesterday were complaints about lack of consultation on the footing  
15 that the United Kingdom is “the” or “a” coastal State. They're nonetheless important for that. But  
16 in the various environmental cases that the International Court has heard, and also the Law of the  
17 Sea Tribunal has heard, questions of consultation have loomed large. One thinks of Pulp Mills  
18 and Malaysia Singapore Land Reclamation.

19 2. My colleagues have shown yesterday how the UK breached several of these obligations  
20 when it established the so-called ‘MPA’ around the Archipelago. I will now demonstrate that it  
21 breached one further obligation: the prohibition on abuse of rights contained in Article 300.

22 **B. Article 300 UNCLOS and the rights in issue**

23 3. Article 300, of course, provides that:

1 ‘States Parties shall fulfil [their obligations] in good faith... and shall exercise the rights,  
2 jurisdiction and freedoms recognized in this Convention in a manner which would not constitute  
3 an abuse of right.’

4 4. Now, we considered very carefully whether to raise Article 300. It's not, as it were, the  
5 necessary concomitant of every claim under UNCLOS and it should not become such. But the  
6 evidence is strong: lack of transparency, failure to consult, reliance on *fait accompli*, the obvious  
7 problems with the design and implementation or, I should say, non-implementation of the “MPA”.  
8 They all point to a breach of Article 300. The Attorney General the other day evoked the notion  
9 of a sham. We've never said that the “MPA” was a sham. But in certain respects it approaches  
10 such.

11 5. Article 300 is not an extraordinary clause. It reflects and articulates a general principle  
12 of law having a long pedigree. The prohibition on abuse of rights was recognised in the  
13 jurisprudence of the Permanent Court,<sup>1</sup> and has been frequently invoked in subsequent  
14 international disputes with or without the aid of Article 300. For example, the WTO Appellate  
15 Body has referred to the ‘doctrine of *abus de droit*’ as a ‘general principle’ and held that, and I  
16 quote:

17 ‘An abusive exercise by a Member of its own treaty right... results in a breach of the treaty rights  
18 of the other Members and, as well, a violation of the treaty obligation of the Member so acting’.<sup>2</sup>  
19 A purist might object to the phrase ‘as well’ – the breach of treaty rights is itself the violation of  
20 an obligation. But the basic point is made.

21 6. Let us take a closer look at Article 300. It plays an important role in the system  
22 envisaged by the Convention. It is the first of a list of ‘General Provisions’ contained in Part

---

<sup>1</sup> *Case Concerning Certain German Interests in Polish Upper Silesia (Germany v. Poland)*, 1926 P.C.I.J. (ser. A) No. 7, p. 30; *Case of the Free Zones of Upper Savoy and the District of Gex (France v. Switzerland)*, 1932 P.C.I.J. (ser. A/B) No. 46, p. 167.

<sup>2</sup> *United States – Import prohibition of certain shrimp and shrimp products* (Report of the Appellate Body, 12 October 1998), WT/DS58/AB/R.

1 XVI, which apply to the Convention as a whole. It is in terms an independent ground on which  
2 the Convention can be violated. But while that is the case, a breach of Article 300 typically  
3 occurs in connection with the exercise of one of the substantive rights provided for in the  
4 Convention. And in the recent judgment in the *Virginia* case, the International Tribunal for the  
5 Law of the Sea construed Article 300 as requiring a State making a claim, and I quote:

6 ‘to specify the concrete obligations and rights under the Convention, with reference to a  
7 particular article, that may not have been fulfilled by a respondent in good faith or were  
8 exercised in a manner which constituted an abuse of right’.<sup>3</sup> So that's a helpful, shall we say,  
9 precautionary note in relation to Article 300, and I propose to pay attention to it in relation to this  
10 presentation.

11 7. Our claim is based on United Kingdom's abuse of the broad jurisdictional right which it  
12 claims to have under Article 56(1)(b)(iii) to take measures for ‘the protection and preservation of  
13 the marine environment’ in the waters around the Archipelago. But in relation to that claim, we  
14 also pay attention to what the United Kingdom has done, or not done, in areas adjacent to the  
15 “MPA” which in effect would have significant effects in terms of the implementation of the  
16 “MPA”, including the land territory of the Archipelago.

17 8. Mr. President, Members of the Tribunal, for a right, jurisdiction or freedom recognised in  
18 the Convention to be exercised ‘in a manner which would not constitute an abuse of rights’, two  
19 requirements have to be met. First, the right must not be exercised for a purpose that is entirely  
20 different from the purpose for which the right was created<sup>4</sup> – especially if this comes at the  
21 expense of the rights or legally-protected interests of others, of other States, or indeed, of other  
22 uses of the oceans.<sup>5</sup> Second, where a State takes measures in the exercise of a jurisdictional

---

<sup>3</sup> *The M/V 'Virginia G' Case* (Panama/Guinea-Bissau), Judgment of 14 April 2014, para. 399, available at: [https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.19/judgment/C19-Judgment\\_14\\_04\\_14\\_orig.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment/C19-Judgment_14_04_14_orig.pdf).

<sup>4</sup> Alexandre Kiss, ‘Abuse of Rights’, in MPEPIL (2012).

<sup>5</sup> H Lauterpacht, *The Function of Law in the International Community* p. 286 (1933).

1 right, those measures must at least be capable of fulfilling the purpose for which the right was  
2 exercised. If they are not, the manner in which the right is being exercised is objectionable,  
3 even if that is capable of repair. If it's not repaired, then there is a breach of Article 300.

4 9. Mauritius does not accept that the “MPA” was established, even on the footing that the  
5 United Kingdom was the or a coastal State, to pursue the aim of environmental protection, or that  
6 as things stand – four years after its proclamation – that it is remotely capable of doing so. The  
7 more we learn about what is going on in the “MPA”-free zone at the heart of the “MPA”, an area  
8 where trees are destroyed in large numbers, the hulls of ships are being sandblasted, sewage is  
9 discharged into the lagoon, and warships trundle in and out, the more we learn about these  
10 things, the more concerned we are.

11 10. Indeed, the record before you casts serious doubt on the purposes behind the  
12 proclamation of the “MPA”, and the manner in which it has been designed and implemented is  
13 certainly not conducive of the objectives officially declared.

14 Let me deal with the first of those points: the purpose underlying the “MPA”.

15 **C. The “MPA” was established for political purposes unrelated to environmental**  
16 **protection**

17 11. On the 12th May 2009, Mr. Roberts, the Director of the Overseas Territories Department  
18 of the FCO, met an American Political Counsellor at the US Embassy in London to discuss the  
19 plans to establish a marine reserve. The purpose of the meeting was to assess the implications  
20 of the “MPA” for the military and strategic interests of the United States in Diego Garcia.  
21 Now, as you know, a cable reporting that meeting came into the public domain through the  
22 *Wikileaks* website, and the cable is reproduced at Tab 2.13 of your Folders [MM Annex 146].  
23 And the paragraph I am referring to is at page 77 of the Folder; you've been taken to it already  
24 and, I believe, familiar to you, but it's at page 77. This is the Man Friday document, although

1 there is controversy about whether the words "Man Friday" were used. Mr. Roberts is recorded  
2 as saying, and I quote:

3 'BIOT's former inhabitants would find it difficult, if not impossible, to pursue their claim for  
4 resettlement on the islands if the entire Chagos Archipelago were a marine reserve.'<sup>6</sup>

5 12. And then on page 78 at paragraph 7, he is said to have emphasised that 'according to  
6 HMG's current thinking on a reserve, there would be "no human footprints" or "Man Fridays"  
7 on the BIOT's uninhabited islands'. 'In effect', Mr. Roberts says that 'establishing a marine  
8 park would... put paid to resettlement claims of the archipelago's former residents.' He  
9 acknowledged that the UK needed, and I quote, to 'find a way to get through the various  
10 Chagossian lobbies'. But that did not faze him: 'the UK's environmental lobby is far more  
11 powerful than the Chagossians' advocates'.<sup>7</sup>

12 13. Now, with respect, whether particular phrases were used or not, this memorandum, which  
13 there's no reason to think did not reflect an actual conversation, puts into question the purposes  
14 behind the proclamation of the "MPA". There may be a tendency for advocates arguing  
15 abusive of faith, to jump and down and issue rhetorical phrases. I don't propose to do that.  
16 And in fairness to Mr. Roberts, he denies making the 'Man Friday' remark. The High Court in  
17 the judicial review proceeding was inclined to believe him: see paragraph 60 of the judgment.<sup>8</sup>  
18 Of course if he did make it, it was a potentially noxious remark. On the other hand, there is no  
19 reason to believe that an American diplomat simply made up the account of the meeting itself  
20 and the substance of what he said can't be denied. I would refer you to the cross-examination of  
21 Mr. Roberts in the judicial proceeding, which is in the transcript. Whether he used particular  
22 phrases or not is of lesser significance. The issue is whether the UK can take advantage of the

---

<sup>6</sup> Cable from US Embassy, London, on UK Government's Proposals for a Marine Reserve Covering the Chagos Archipelago, May 2009: Mauritius Application, 20 December 2010, Annex 2: Annex 146.

<sup>7</sup> *Ibid.*

<sup>8</sup> UKCM, Authority 43.

1 broad jurisdictional right recognised in Article 56 to consolidate its denial of rights, the rights to  
2 which Mauritius was entitled under the Lancaster House agreement.

3 14. Now, the Attorney-General said on Tuesday that after reading all the internal FCO  
4 documents, it would be only be an extraordinarily far-fetched scenario on the basis of which one  
5 would conclude that the purpose of the “MPA” was to avoid resettlement. The transcripts of  
6 Mr. Roberts' cross-examination are Reply, Annex 174 Tab 2.14 [MR Annex 174]. On page 81  
7 of that transcript, Mr. Roberts is asked how he was ‘activating the environmental lobby designed  
8 to weaken the Chagossian movement’.<sup>9</sup>Of course the claim was brought on behalf of a former  
9 resident of the Chagos Archipelago. Mauritius' claim is a different claim and it's in relation to  
10 rights to which Mauritius as a State is now entitled by virtue of the combination of the Lancaster  
11 House undertaking and the subsequent practice of the United Kingdom in affirming those  
12 undertakings on a State-to-State basis. Nonetheless, what Mr. Roberts said is relevant . His  
13 answer is revealing, and I quote – this comes from page 81 of the folder:

14 ‘the government was in a very difficult public position. Not only was there a great deal of  
15 political pressure relating to the Chagossian movement but we also were dealing with a series of  
16 allegations relating to rendition and we were looking to see what we could do to try and improve  
17 the reputation of the government in relation to the Territory specifically but also other  
18 territories.’

19 15. So the “MPA” was conceived as a multi-purpose enterprise, and that itself puts into  
20 question the objective of ‘protection and preservation of the marine environment’ underlying the  
21 right that the United Kingdom claims to be exercising under UNCLOS. It is conceded by the  
22 United Kingdom that a no-take MPA was not the only option available. In assessing whether  
23 the United Kingdom has acted in a manner which constituted an abuse of rights, or now

---

<sup>9</sup> Extract of Transcript, R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs, Examination and Cross-Examination of Mr Colin Roberts, 15-17 April 2013 (MR, Annex 174)

1 constitutes an abuse of right, your Tribunal should not, with all respect, turn a blind eye to the  
2 political aims the United Kingdom was pursuing.

3 Mr. President, Members of the Tribunal:

4 16. Mauritius takes note of the reports in the press last March of renewed plans by the FCO  
5 to conduct studies to assess the feasibility of resettlement, and the Attorney General referred to  
6 those plans on Tuesday.<sup>10</sup> If the UK is serious about this course of action, this would signal a  
7 shift in the policy pursued so far – the policy of eviction expressed with such clarity by Mr.  
8 Roberts. But so long as the “MPA” stands, and unless it is reconsidered, the UK continues to  
9 exercise its jurisdictional rights in a manner which is contrary to Article 300.

10 I turn to the question of the design and implementation of the “MPA.”

11 **D. The design and implementation of the “MPA” is not reasonable in relation to its**  
12 **stated objectives**

13 17. In the present case, a finding of abuse of rights would be warranted on the basis of the  
14 evidence now in the record. But, even if the motives that led Her Majesty’s Government to  
15 establish the “MPA” were in principle purely environmental, the Tribunal could still conclude  
16 there had been a breach of Article 300 because there has been no serious attempt to follow up on  
17 those objectives.

18 18. Here the judgment of the International Court in the *Whaling* case is helpful. Assessing  
19 the programme, JARPA II, the whaling program in the Southern Ocean, to determine whether it  
20 fell within the exception provided for by Article VIII of the Whaling Convention, the Court  
21 observed, and I quote, ‘whether a programme is for purposes of scientific research does not turn  
22 on the intentions of individual government officials, but rather on whether the design and  
23 implementation of a programme are reasonable in relation to achieving the stated research

---

<sup>10</sup> Day 1 Transcript, p. 43, lines 5-25 (Grieve); see also, *e.g.* The Guardian, ‘Chagos Islands: UK experts to carry out resettlement study’, 13 March 2014, available at: <http://www.theguardian.com/world/2014/mar/13/chagos-islands-uk-experts-resettlement-study>.

1 objectives'.<sup>11</sup> Now, of course, the specific legal context of the *Whaling* case was different from  
2 the present one. But the test that the Court formulated in the *Whaling* case can be extended by  
3 analogy to the assessment of whether a State has acted and in breach to Article 300 in the  
4 exercise of rights under Article 56. A State taking measures for the purpose of protection and  
5 preservation of the marine environment will abuse its rights unless the measures which encroach  
6 on the rights and interests of other States, as these measures plainly do, are reasonable in relation  
7 to the stated objectives. And I think the Court struck an important note when it said it was not  
8 concerned with the subjective intentions of individual government officials. International  
9 courts are not criminal courts in State-to-State cases, unless there is the plainest evidence of  
10 individual wrongdoing. Their concern is with the conduct of the State, not with the conduct of  
11 the particular minister who makes a particular decision, which may be made "on the hoof" to use  
12 a phrase derived from the documents, or maybe made with the best of intentions about which the  
13 Government has no objective intention of following through.

14 19. So the question is whether it can be said that, whatever the actual purposes of individuals  
15 might have been, the "MPA" is still capable of succeeding in fulfilling its official purpose – the  
16 protection of the living resources and the environment of the waters around the Archipelago?  
17 Can it be said that the design and implementation of the "MPA" is reasonable in relation to  
18 achieving its stated objective? The answer to these questions is 'no', categorically. As things  
19 stand, and the possibility of reparation is a function of these proceedings, not a reason for  
20 denying the claim. There are five reasons for that.

21 20. First, the scientific justification that the UK has provided is not established. The  
22 previous efforts to manage fisheries around the Archipelago were generating good results. At  
23 Tab 11.1 [UKCM Annex 76] it's Tab 11.1 in the Folder, and this time I've drawn the blue straw,  
24 page 444, you will find an excerpt from the Chagos Conservation Management Plan, submitted

---

<sup>11</sup> *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening)*, Judgment of 31 March 2014, para 97.



1 to the FCO by the environmental adviser to the “BIOT” in October 2003. In the second  
2 paragraph under section 6, headed Fisheries, the environmental advisers observe, and I quote, the  
3 ‘[f]isheries arrangement provide[s] a good example of successful management’ in the territory,  
4 the waters of which were ‘one of the few large areas of the Indian Ocean with demonstrable and  
5 beneficial husbandry’.<sup>12</sup> That is well before the “MPA”.

6 21. Why did then the UK decide that a stricter regime, if a refusal to issue permits can be  
7 described as a regime, was necessary to promote the conservation of fish stocks? The UK has  
8 put in no expert evidence showing that the “MPA” meets the environmental goals that the EPPZ  
9 could not meet. The UK disregarded advice received from its own consultants, in particular  
10 MRAG Ltd., which strongly disapproved of the plan. That advice is available on Tab 5.25 [MR  
11 Annex 137] of the Reply. Again, you don't need to go to it because you've been taken to it  
12 already. But the relevant passage is at page 243 of the Folder, which says in big letters, and I  
13 quote:

14 ‘There are alternatives to declaring the entirety of BIOTs Exclusive Economic Zone (EEZ) a  
15 no-take Marine Protected Area (MPA) that can achieve similar environmental and political  
16 benefits, could have a more beneficial economic outcome and would be consistent with  
17 international law.’<sup>13</sup>

18 22. On the next page at page 244 of the Folder, the consultants warned the UK that closing its  
19 highly sustainable fishing zone would not only fail to ‘address all conservation concerns’: it was  
20 ‘likely to fall short of expectations’ and even be ‘negative in some cases’.<sup>14</sup> The consultants  
21 were sceptical because the “MPA” would be of limited relevance to the conservation of highly

---

<sup>12</sup> “Chagos Conservation Management Plan, for the BIOT Administration, FCO”, by Dr Charles Sheppard & Dr Mark Spalding, October 2003 (UKCM, Annex 76), p. 8.

<sup>13</sup> Email dated 9 July 2009 from Development Director of MRAG to Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office, & “MRAG Comments on the proposal to designate the BIOT FCMZ as a marine reserve”: MR, Annex 137.

<sup>14</sup> Email dated 9 July 2009 from Development Director of MRAG to Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office, & “MRAG Comments on the proposal to designate the BIOT FCMZ as a marine reserve”: MR, Annex 137.

1 migratory species such as tuna, because closing the fishing zone would create an incentive for  
2 unregulated fishing in areas outside the “MPA” – you can see that at the top of page 246 of the  
3 Folder.<sup>15</sup> The conclusion that follows from that assessment is that the UK has traded an  
4 effective and tested conservation regime for a radical ban that will encourage ‘illegal,  
5 unregulated and unreported fishing’<sup>16</sup> with the potential for depleting the fish stocks that the  
6 “MPA” was ostensibly meant to protect.

7 23. The UK argues in its Rejoinder, and the Attorney-General argued in his very engaging  
8 presentation the other day,<sup>17</sup> that Mauritius has provided no expert evidence to underlie its  
9 criticism of the scientific basis of the “MPA”. I stress, we are not asking the Tribunal to judge  
10 the scientific worth of the “MPA” or to make its own environmental assessment of the need for  
11 the “MPA”. The present dispute is not about the scientific justifiability of the “MPA”. It's  
12 about the denial of Mauritian rights. But it is relevant to draw attention to the scientific  
13 assessment commissioned by the UK itself which it disregarded. Moreover, there is no  
14 indication that the UK is engaging in any significant research to back up the “MPA”. It's the  
15 way in which the UK has dealt with the science must give rise to doubts about the  
16 reasonableness of its stated objectives.

17 24. Second reason. The UK has not enacted and implemented regulations setting out in  
18 detail the particular measures required to achieve the stated goals of environmental protection.  
19 This is despite the fact that the Proclamation establishing the “MPA” indicated that these would  
20 follow soon. You just have to compare the “MPA” with similar initiatives, such as the United  
21 States' establishment of a Northwestern Hawaiian Islands Marine National Monument. I think  
22 it's nice that a marine national park is described as a monument but we'll pass that. When the  
23 United States established this protected area, it did so by means of a Proclamation accompanied

---

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> UKR, 3.15; Transcript, Day 1, p. 48, lines 16-17.

1 by detailed regulations.<sup>18</sup> It supplemented those regulations with a substantial and carefully–  
2 considered long-term management plan.<sup>19</sup> The contrast is striking.

3 25. Over four years have passed since the “MPA” was proclaimed, yet no detailed  
4 regulations have been delivered. Now we're told they're forthcoming, and it's comforting to  
5 know that they're forthcoming, but they've been forthcoming for a long time. The United  
6 Kingdom is unable to offer any concrete information regarding the steps that the UK has taken to  
7 this end and incapable of providing us with any information on timetables. This is the  
8 declaration of an MPA without a real MPA; to use an Australian phrase: It's a Claytons' MPA,  
9 the MPA you're having when you are not having an MPA!

10 26. I notice that four Members of the Tribunal are baffled. Claytons was a short-lived  
11 non-alcoholic beverage brewed. Some said it was like beer and some said it was like whiskey.  
12 It was like neither. It was absolutely dreadful. It's advertised in Australia as ‘the drink you  
13 have when you're not having a drink’.<sup>20</sup> The “MPA” is an unregulated MPA; it's a Claytons'  
14 MPA. It's no more an MPA than beer without alcohol can be described as beer! And I should  
15 say in relation to Claytons' MPA, there is a Web reference for those of you who would like to  
16 pursue the subject.

17 27. Third reason. Just as the UK has failed in regulation, so it has failed in financing. It  
18 has failed to appropriate a budget that bears any relationship to the proclaimed environmental  
19 objectives of what is supposed to be one of the largest marine protected areas in the world.  
20 This is a paper MPA unsupported by funds. The experience again with the Northwestern  
21 Hawaiian Islands Marine National Monument in the United States indicates that projects of this  
22 magnitude, if they are not to be pure pieces of public relations, require substantial expenditures –

---

<sup>18</sup> Establishment of the Northwestern Hawaiian Islands Marine National Monument, United States  
Presidential Proclamation 8031 of June 15, 2006. F.R. Vol. 71, No. 122, p. 36433.

<sup>19</sup> Papahānaumokuākea Marine National Monument, Monument Management Plan (December  
2008), located at [http://www.papahanaumokuakea.gov/management/mp/vol1\\_mmp08.pdf](http://www.papahanaumokuakea.gov/management/mp/vol1_mmp08.pdf)

<sup>20</sup> See <http://en.wikipedia.org/wiki/Claytons>.

1 in the tune of hundreds of millions of dollars. The best our opponents could do was to inform  
2 your Tribunal that the “MPA” will be funded by a public-private enterprise – a phrase that has  
3 fallen into disrepute in the United Kingdom as a general matter – a public-private enterprise  
4 between the “BIOT” Administration and private sector NGOs,<sup>21</sup> but then again, they are not in a  
5 position to provide any information about the size of the budget or the effectiveness, perhaps by  
6 way of exception, of this public-private partnership.

7 28. Fourth, there is the question of enforcement. To guarantee that the ban on all fishing is  
8 enforced in an area of 640,000 square kilometres, the UK relies on a single vessel. That is what  
9 Henry Bellingham, then Under Secretary of State at the FCO, told MP Andrew Rosindell on 16  
10 May 2011, as stated in the transcript which is Annex 171 of our Memorial.<sup>22</sup> When Mauritius  
11 made this point, the United Kingdom replied, in the vaguest of terms and again without  
12 providing any evidence, that ‘[t]he prohibition on fishing without a license in BIOT waters is  
13 enforced by the BIOT patrol vessel and protection officers’<sup>23</sup>

14 29. For one single vessel to police an area the size of France would be really  
15 something! If you turn back to the comments of the environmental consultants on page  
16 246 of the Folder, at Tab 5.25 [MR Annex 137], in the second paragraph of Section 3  
17 they say, and I quote:

18 in the absence of the opportunity to fish legally, the incentive to fish illegally is  
19 increased, particularly if the perceived risk of detection is considered to be low. This  
20 implies the need for greater and faster patrolling capacity (more patrol vessels to cover  
21 the entire zone, faster to match the speed of tuna vessels).<sup>24</sup>

---

<sup>21</sup> UKCM, 8.63(b).

<sup>22</sup> Hansard, House of Commons Written Answers, 16 May 2011: Annex 171.

<sup>23</sup> UKCM 8.63(c).

<sup>24</sup> Email dated 9 July 2009 from Development Director of MRAG to Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office, & “MRAG Comments on the proposal to designate the BIOT FCMZ as a marine reserve”: MR, Annex 137 (emphasis added).

1 30. By imposing prohibitions without doing anything to establish the necessary enforcement  
2 mechanism, it makes it difficult to claim that the “MPA” is capable of meeting its stated  
3 purposes. Perhaps the protection officers wearing wetsuits could fan out from the protection  
4 vessel – they may be good swimmers – to at least the scope of it!

5 31. Fifth reason. The “MPA” is subject to an ‘exclusion zone covering Diego Garcia and its  
6 territorial waters’, where recreational fisheries are permitted and where considerable pollution is  
7 taking place.<sup>25</sup> In 2010, recreational fishing in this – you might call it the “black hole” –  
8 amounted to ‘28.4 tonnes of tuna and tuna-like species’.<sup>26</sup> There seem to be an inherent  
9 contradiction in establishing a ‘no-catch’ conservation zone and then permitting the fishing of  
10 dozens of tonnes of protected fish stock within a sizeable enclave inside the zone. This tension  
11 was acknowledged by Ms. Yeadon, the Head of the “BIOT” Section at the FCO, when she  
12 stated, on 14 July 2009, and I quote, ‘it would be difficult to impose any kind of no-take zone in  
13 the rest of BIOT waters but permit’ recreational fishing ‘to carry on’ in Diego Garcia.<sup>27</sup>

14 32. Then there is the Sheppard Report to which you have already been taken. The Report  
15 reveals that the US Navy – and even the patrol vessel – have been polluting the pristine waters of  
16 the Chagos Archipelago. And I refer again to the email exchange at Tab 6.4 [MR Annex 135]  
17 page 291 of your Folder, where a British official writing to Joanne Yeadon, said, ‘as a complete  
18 novice’: ‘doesn’t a marine park enjoy some sort of environmental protections’, ‘would be some  
19 inconsistency in saying that military vessels can trundle in and out (presumably polluting as they  
20 go)?’<sup>28</sup> Well, that novice asked an expert question: now that it has been confirmed that the  
21 military presence in Diego Garcia has been responsible for causing considerable pollution,  
22 perhaps ‘the novice’ should become an expert!

---

<sup>25</sup> See MM 4.84; UK (British Indian Ocean Territory) National Report to the Scientific Committee of the Indian Ocean Tuna Commission, 2011 (Received 25 November 2011), IOTC-2011-SC14-NR28, p. 3.

<sup>26</sup> Ibid.

<sup>27</sup> Email exchange between Colin Roberts, Director, Overseas Territories Directorate, and Joanne Yeadon, Head of “Biot” & Pitcairn Section, UK Foreign and Commonwealth Office, 13-14 July 2009; RM, Annex 138.

<sup>28</sup> MR, Annex 135.

1 33. In short, the “MPA” is not only scientifically debatable; it is deprived of the regulations,  
2 funding and enforcement mechanisms necessary to make it effective; and plagued by the  
3 loophole presented by the exclusion of Diego Garcia from the non-fishing zone. In light of the  
4 extraneous political considerations that motivated its proclamation – and we say with respect –  
5 the Tribunal should conclude that it was not designed and is not adapted for ensuring the  
6 conservation of the marine environment of the Archipelago.

7 Mr. President, Members of the Tribunal:

8 34. On Tuesday the Attorney-General – thankfully preserved from shark attack – said he  
9 would say very little about the merits of Mauritius’s case, and he was true to his word. But he  
10 did spend quite some time reading an extended passage on improper purpose from the English  
11 judicial review proceedings – and he asked rhetorically how the Article 300 claim could survive  
12 that judgment? Well, there are five points to make by way of response.

13 (1) First, as the Attorney quite properly noted, the decision is subject to appeal—the Court  
14 of Appeal judgment is pending but previous Chagos cases have gone to the Supreme Court, and I  
15 suppose this one might too.

16 (2) Second, the issue before you is different: it is not about the right of return under English  
17 law, a right that was already precluded by the 3-2 decision of the House of Lords in 2008. It is  
18 about what we say was a deliberate decision to ignore Mauritius’ international legal rights by  
19 proclaiming the “MPA”, and doing so without any consultation. The English Court made it  
20 clear that it was not deciding the issues before your Tribunal: see paragraph 153 of the Judgment.  
21 Indeed it was inclined to think – and I think, probably correctly – that the issues before you are  
22 non-justiciable before an English court, and I quote from the judgment: “The question whether,  
23 as a matter of international law, Mauritius enjoys fishing rights in BIOT waters is not one that we  
24 consider appropriate for determination in these proceedings.”

25 That's the issue that you've got to face. It's non-justiciable.

1 (3) Third, the English Court did not have before it relevant materials, including for example  
2 Mauritius' notes of the January 2009 bilateral discussions. In the event it did not even have the  
3 Wikileaks document properly before it because it held it was protected by the diplomatic immunity  
4 of archives. You have a much more substantial record before you, and no claim of archival  
5 immunity.

6 (4) Fourthly, and perhaps for that reason, the English Court seriously misapprehended  
7 Mauritius' position in respect of its rights over the Archipelago, which it thought were limited to  
8 a sovereignty claim: I refer to paragraph 156 of the judgment, which is at Tab 11.2 [UKCM  
9 Legal Authority 43] of your Folders, on page 446. I won't read paragraph 156, which you can  
10 read for yourself. But, with respect, it completely misapprehends Mauritius' position. The  
11 case illustrates a maxim which might be drawn from Wittgenstein's more famous remarks, a  
12 maxim which national courts could do well to heed in cases which they hold are non-justiciable.  
13 Whereof (because of non-justiciability) one may not speak, thereof one must be silent!<sup>29</sup> To  
14 hold that something is just non-justiciable and then to make a seriously defective assessment of  
15 what the non-justiciable position is a mistake.

16 (5) And fifth, this is an interstate proceeding before an international tribunal. You have  
17 your own function and mandate. You are not bound by what a national court applying a different  
18 law and process and answering a different question might have decided. In January 2008, there  
19 were bilateral consultations between the UK and Mauritius on fisheries around the Archipelago,  
20 but the UK concealed the fact that the "MPA" was under active consideration. Its policy  
21 vis-à-vis Mauritius, as compared with sundry anonymous stakeholders, was 'proclaim first,  
22 consult afterwards' – or indeed not at all. Was that consistent with the cooperation the

---

<sup>29</sup> L Wittgenstein, *Tractatus Logico-Philosophicus* (1921) Proposition 7 (in the original; 'Wovon man nicht sprechen kann, darüber muss man schweigen.')

1 International Court spoke of as flowing from good faith in paragraph 145 of the *Pulp Mills*  
2 judgment?<sup>30</sup> It was not.

3 Mr. President, Members of the Tribunal:

4 35. Finally I should say a word about the UK's change of position with respect to outer  
5 continental shelf determination. Earlier colleagues have discussed the facts in some detail, in  
6 particular, Mr. Loewenstein. The logic of argument in a contentious case can lead to positions  
7 being taken, and provided – if they're positions on the law, we're not talking about the  
8 non-disclosure of evidence – it is for the tribunal itself to decide on their merits. That's the  
9 point of making legal submissions. But if the United Kingdom were to object to our full  
10 submission on the outer continental shelf and thereby prevent consideration of it by the CLCS,  
11 after encouraging the filing of the preliminary information and offering support in the filing of  
12 the full submission, that would be wantonly to impair the reversionary interest of Mauritius in  
13 the resources of the Archipelago. It would be conduct with no conceivable benefit to the  
14 United Kingdom, which never had any intention of making, and by its delay has now disabled  
15 itself from making, such a submission. Such conduct, if it had occurred, could only be  
16 considered as in bad faith. It would be a bit like a temporary freeholder destroying the resource  
17 which only the reversioner could enjoy. Yet the United Kingdom states in paragraph 8.39 of  
18 the Rejoinder that we have no entitlement to file that document, paving the way to an objection  
19 when we do so. That is why Mauritius will be asking for an order from this Tribunal that the  
20 United Kingdom not object to the full submission by virtue of Article 300.

---

<sup>30</sup> *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, I.C.J. Reports 2010, p. 14, at 67 (para. 145).



1           **E. Conclusion**

2           Mr. President, Members of the Tribunal:

3 36. For the reasons given, the Tribunal is respectfully and understatedly asked to adjudge and  
4 declare that the UK has abused its rights under the Convention, in particular Article 56, and thus  
5 is in breach of the general obligation in Article 300.

6           Mr. President, Members of the Tribunal, this brings to an end – perhaps rather  
7 belatedly because we had hoped to do so yesterday – Mauritius' submission on the merits of the  
8 dispute in the first round of oral argument. We now turn to questions of jurisdiction.

9           Mr. President, Members of the Tribunal, if there are no questions, thank you for  
10 your attention.

11           PRESIDENT SHEARER: Thank you very much, Professor Crawford.

12           Are there any questions?

13           Professor Crawford, did I understand that you were going to continue now with  
14 jurisdiction?

15           PROFESSOR CRAWFORD: No, jurisdiction is being dealt with by others.

16           PRESIDENT SHEARER: Okay.

17           PROFESSOR CRAWFORD: I didn't get that joy.

18           PRESIDENT SHEARER: Thank you. So, is Ms. Macdonald next, is it? Yes.  
19 Thank you very much.

20           (Pause.)

21           MS. MACDONALD: Mr. President, Members of the Tribunal, before I start  
22 Mauritius' submissions on jurisdiction, there were a few outstanding matters from Wednesday  
23 morning and from my submissions on the history, the background history, of the Archipelago, and,  
24 in particular, there were outstanding questions from Judges Wolfrum and Greenwood as to voting  
25 and citizenship rights. So, if it's convenient, I would propose, I have, unfortunately, detailed

1 answers to those slightly complex questions and that might take us up conveniently to the first  
2 morning break after which I could start our submissions on jurisdiction.

3           In response, first, to Judge Greenwood's question, it was in two parts, and the first  
4 was, if I could paraphrase, whether or not at the time of the Lancaster House Conference, the  
5 inhabitants of Rodrigues had the right to vote and whether this was also the case for the Chagos  
6 Archipelago.

7           As you pointed out, Judge Greenwood, at the time of the Lancaster House  
8 Conference, the inhabitants of the Chagos Archipelago did not have the right to vote in the  
9 elections for the Mauritius Legislative Assembly, and this was the same for Rodrigues. This is  
10 because Section 36(1) of the 1964 Constitution of Mauritius, set out in the Mauritius Constitution  
11 Order of the same year, provides that, I quote, "for the purpose of electing members of the  
12 Legislative Assembly, the island of Mauritius shall be divided into 40 electoral districts, each of  
13 which shall return one member." And at Section 90(1), it goes on to provide that "the Island of  
14 Mauritius," as referred to in Section 36(1), which I just quoted, "includes the small islands  
15 adjacent thereto but does not include the Dependencies of Mauritius." Therefore, the  
16 constitutional framework in place at the time of the Lancaster House Conference in 1965 was that  
17 none of Mauritius' Dependencies were included within an electoral district and, therefore, that the  
18 residents of those Dependencies couldn't vote.

19           After the Lancaster House Conference, the right to vote was extended to the  
20 inhabitants of Rodrigues, and we understand that they voted for the first time in 1967. But by the  
21 time that Rodrigues became an electoral constituency, the Chagos Archipelago had, of course,  
22 been excised from Mauritius.

23           The second part of Judge Greenwood's question was how many of the population in  
24 the islands in the period from 1965 to 1968 had links with Seychelles rather than with Mauritius.  
25 There is, indeed, as you point out, Sir, a disparity in the figures provided in the various documents

1 which we have in the annexes to the case. Mauritius considers that the most reliable source of  
2 information in this regard is to consider to which country the inhabitants went upon their forcible  
3 removal. Now, a recent general publication in the journal *Population Space and Place* provides  
4 these figures based on a comparison of the best available contemporary records and Government  
5 archives, and the authors of that article considered that between 1,328 and 1,522 inhabitants of the  
6 Chagos Archipelago were removed to Mauritius whereas 232 went to Seychelles. This  
7 publication is available online, and we've provided a Web link for the transcript,<sup>31</sup> and we can  
8 provide hard copies, of course, if the Tribunal so wishes.

9           There was also a question primarily from Judge Wolfrum on citizenship. When  
10 Mauritius was a British colony, people born there or otherwise qualifying, for example, by  
11 naturalization, were categorized as citizens of the United Kingdom and Colonies as defined in the  
12 British Nationality Act 1948. On the excision of the Chagos Archipelago in 1965, and the  
13 creation of the so-called "BIOT", those born in or with another relevant connection to the  
14 Archipelago retained their citizenship of the United Kingdom and Colonies. Then in 1968, on the  
15 independence of Mauritius, its new Constitution enacted by the UK in the Mauritius Independence  
16 Order 1968, provided that any person born in Mauritius who was on the 11th of March 1968, the  
17 day before independence, a citizen of the United Kingdom and Colonies became a citizen of  
18 Mauritius. And the effect of another provision in the Constitution, Section 20(4), was that  
19 persons who were born in the Chagos Archipelago were regarded as having been born in Mauritius  
20 for the purpose of the nationality provision, even though, according to the UK, the Chagos  
21 Archipelago had been part of the so-called "BIOT" for the previous three years. There was no  
22 reference to persons born in Rodrigues. Since the island was a part of Mauritius, even to UK  
23 eyes, there was no need for legislation to refer to it separately.

24           Following its normal practice for its former colonies emerging to independence, the

---

<sup>31</sup> <http://onlinelibrary.wiley.com/doi/10.1002/psp.1754/full>

1 UK provided by legislation in the Mauritius Independence Act 1968, part of UK law, that new  
2 citizens of Mauritius would not retain their citizenship of the United Kingdom and Colonies, but  
3 the same legislation provided that persons with the connection by birth or descent to any UK  
4 colony, which would have included under UK law the "BIOT", did not lose their citizenship of the  
5 UK and colonies. Under the law of the UK, therefore, from the date of independence, persons  
6 born in the Chagos Archipelago were citizens of Mauritius without distinction as to their origins in  
7 the Chagos Archipelago, and they were also classed by the UK as citizens of the UK and Colonies.  
8 The latter status did not carry a right of abode in the UK.

9           And just to bring the store up to date, the category of citizenship of the United  
10 Kingdom and Colonies was replaced under the British Nationality Act 1981 by a number of  
11 different categories of citizenship. Citizens of the UK and Colonies became what was termed  
12 "British Dependent Territories Citizens." And following litigation by former residents of the  
13 Chagos Archipelago in the English courts, the UK passed the British Overseas Territory Act 2002.  
14 This renamed British Dependent Territories Citizens as British Overseas Territory Citizens, and,  
15 for the first time, conferred full British citizenship on persons who were British Dependent  
16 Territories Citizens by virtue of a connection with the so-called "BIOT", and that brought with it a  
17 right of abode in the UK.

18           I apologize for the length, but it is a slightly detailed issue, and it's important to get  
19 it absolutely right. I hope that that answers the questions that the Members of the Tribunal had on  
20 those issues.

21           ARBITRATOR GREENWOOD: Ms. Macdonald, I am very grateful to you both  
22 for your answer to Judge Wolfrum's question, which I found very enlightening as well, and for the  
23 answers to my questions.

24           May I just put two points to you?

25           The first is, unless I misheard you, I think you said that Rodrigues was also a

1 Dependency of Mauritius in the period of the Lancaster House Conference. Was that right?  
2 Was that what you said?

3 MS. MACDONALD: Yes, and we have seen it under the Treaty of Paris. It was  
4 ceded from France to – Article 8 – the Treaty of Paris ceded it from France to the UK and  
5 categorized it as a Dependency.

6 ARBITRATOR GREENWOOD: Thank you. Yes, I'm not quite so concerned  
7 with the position in 1814.

8 MS. MACDONALD: Yes.

9 ARBITRATOR GREENWOOD: I just want to be clear that, in 1965, on the eve  
10 of excision, as it were, Rodrigues was a Dependency with the same status that the Chagos  
11 Archipelago had as a matter of UK colonial law.

12 MS. MACDONALD: Yes.

13 ARBITRATOR GREENWOOD: Right. Thank you.

14 And the second point is really more to give advanced notice of something I want to  
15 hear the United Kingdom talk about next week. The figures you have just given, which are really  
16 very interesting – I'm most grateful to you for that – they are quite radically at odds with the picture  
17 given from the figures of Seychellois and Mauritian origin inhabitants of the Chagos islands. And  
18 I think it's the Stevens report, which is the prelude to excision. And that breaks the figures down  
19 island by island, but it gave me the impression that many more people were destined for the  
20 Seychelles than the figures you've just given, and I would be grateful if the United Kingdom would  
21 comment on that.

22 MS. MACDONALD: It may be of assistance to have a look – as I say, we can  
23 provide hard copies as well. There is an extremely, in my submission, helpful and detailed article  
24 that was what we considered to be the best source of these figures, and which carried out a very  
25 thorough review. The problem was that many different people visited the islands and took

1 numbers for different purposes, those extremely shifting data figures, and the authors of that  
2 article, it certainly is the most thoroughly analysis that I have seen of all the various reports, all the  
3 various British officials and others who visited the islands and considered the numbers for their  
4 various purposes. It collates those, it assesses them, and it attempts on the basis of that very  
5 comprehensive – the most comprehensive that I have seen – review of the evidence, it attempts to  
6 come up with the best definitive figures that one can get. So, that's the analysis that we have  
7 there, and we invite the Tribunal to look at that. But, of course, the United Kingdom may have  
8 different views as to the numbers.

9 ARBITRATOR GREENWOOD: Ms. Macdonald, thank you. I certainly would  
10 like to see a copy. I can't obviously speak for my colleagues. But quite, without any prejudice to  
11 the question of what impact this has on any of the legal issues, and it may have none at all, I think  
12 that the Tribunal and both Parties would want any account of the facts in our award to be as  
13 accurate on this particular issue as possible because much of what was written in the past was so  
14 very inaccurate.

15 MS. MACDONALD: Absolutely.

16 PRESIDENT SHEARER: Good. Is this the appropriate time to take the morning  
17 break, Ms. Macdonald?

18 MS. MACDONALD: Yes.

19 PRESIDENT SHEARER: Well, in that case, I think we will break, and we will  
20 continue at 10:45. Thank you.

21 (Brief recess.)

22 PRESIDENT SHEARER: Ms. Macdonald.

23 MS. MACDONALD: Mr. President, we made copies of that Article available,  
24 which I hope are sitting in front of each of you. We also made a copy available to the United  
25 Kingdom.

1 **Mauritius v United Kingdom**

2 **SPEECH 9**

3 **Jurisdiction 1:**

4 **The Exchanges of the Parties and Article 283(1)**

5 **Alison Macdonald**

6 1. Mr. President, Members of the Tribunal, as the first part of Mauritius' submissions on  
7 jurisdiction I shall address you, I hope fairly succinctly, on the requirements of Article 283 of  
8 the Convention, and demonstrate that there exists a dispute between the Parties, and that  
9 there has been the necessary exchange of views.

10 2. The UK's argument to the contrary is based on two related assertions:

11 (1) Firstly, the UK argues that there is no "dispute between the Parties concerning the  
12 interpretation or application of the Convention." This is said to be because Mauritius did not  
13 refer expressly to the provisions of the Convention in its bilateral communications with the  
14 UK.

15 (2) Secondly, the UK claims that, because Mauritius failed to raise a dispute with regard to the  
16 interpretation or application of the Convention, one consequence of this is that it did not  
17 engage in the necessary exchange of views before bringing this claim.

18 3. Now, we say that both of these arguments are wrong, and that they are not supported by the  
19 factual record. The UK says in the Counter-Memorial that it "had no idea what the  
20 subject-matter of the dispute was until it received Mauritius' Notification and Statement of  
21 Claim."<sup>32</sup> It complains that "Mauritius did not refer to UNCLOS and the substantive  
22 provisions of UNCLOS, either expressly or with sufficient clarity so that the United  
23 Kingdom could understand (i) that a dispute was being raised, (ii) what it was, (iii) that it was  
24 under UNCLOS and (iv) that an "exchange of views regarding its settlement by negotiation

---

<sup>32</sup> UKCM, para. 5.49.

1 or other peaceful means” was being sought.” That’s at Paragraph 6.21 of the Rejoinder.  
2 [UKR 6.21]

3 4. But as I will show you, there is indeed a dispute between the Parties, on all aspects of which  
4 there has been a lengthy and a robust exchange of views. The subject matter of the dispute –  
5 including historic fishing rights; rights to an EEZ and Extended Continental Shelf; and the  
6 right to be consulted – has been raised regularly by Mauritius over several decades, in  
7 bilateral and multilateral contexts, intertwined, of course, with the continuous assertion of its  
8 sovereignty over the Chagos Archipelago.

9 5. By the time it announced the “MPA” in the spring of 2010, the UK was well aware of the  
10 possibility of international proceedings being brought by Mauritius. The UK knew very well  
11 that Mauritius would object to the legal status of the “MPA”, and UK officials even  
12 anticipated some of the legal bases for Mauritius’ objections. To take one example, nineteen  
13 months before Mauritius learned of the proposal for the MPA (when it was first reported in  
14 the press), the UK official responsible for the “BIOT” advised that “a no fishing zone” faced  
15 “obstacles,” the “first being Mauritius” because “Mauritius did have some rights” to  
16 “fishing” in the Chagos Archipelago.<sup>33</sup> And I should just say here for clarity that I will take  
17 the evidence and the law fairly briefly. In this presentation, there are detailed footnotes which  
18 will appear on the transcript, so everything that I quote from will be referenced for you when  
19 you get the transcript. So, hopefully that will save some note taking as well. [UKCM Annex  
20 87]

21 6. The UK also knew that the dispute over the “MPA” was of such seriousness that it risked  
22 causing Mauritius to commence legal proceedings. Just a day before the “MPA” was  
23 declared, as I showed you yesterday, the British High Commissioner in Port Louis warned of

---

<sup>33</sup> Email from Joanne Yeadon, Head of “BIOT” and Pitcairn Section, to Andrew Allen, 22 April 2008, UKCM, Annex 87.



1 Mauritius “taking legal action to challenge the establishment of the MPA.”<sup>34</sup> He was not the  
2 only British official to give this warning. The same day, the Administrator of the so-called  
3 “BIOT”, Ms. Yeadon cautioned about an impending “threat of legal action.”<sup>35</sup> I will return  
4 to the factual record after a brief overview of the law.

### 5 **The Requirements of Article 283(1)**

6 7. In deciding whether there is a “dispute” there are, in our submission, four key propositions, and  
7 these are, of course, well-rehearsed in the case law, so I would take them briefly:

8 (1) Firstly, the Parties agree that, for the purposes of Article 283(1), a dispute is, as the Permanent  
9 Court put it in their much-cited words from the *Mavrommatis Palestine Concessions* case, “a  
10 disagreement on a point of law or fact, a conflict of legal views or of interests between two  
11 persons.”<sup>36</sup>

12 (2) Secondly, as the International Court put it in the *South West Africa* case, whether there exists  
13 an international dispute has to be decided objectively, and cannot be judged with reference to  
14 the subjective views of the Parties.<sup>37</sup>

15 (3) Thirdly, whether there is a dispute is a question of substance, not form.<sup>38</sup>

16 (4) Fourthly, in deciding whether there is a dispute, an international tribunal should consider “not  
17 only” the Application and the final submissions, but also “diplomatic exchanges, public

---

<sup>34</sup>Email dated 31 March 2010 from John Murton, British High Commissioner to Mauritius, to Colin Roberts, Director, Overseas Territories Directorate and Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office: Annex 156.

<sup>35</sup>Email dated 31 March 2010 from John Murton, British High Commissioner to Mauritius, to Colin Roberts, Director, Overseas Territories Directorate and Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office: Annex 156.

<sup>36</sup> *Mavrommatis Palestine Concessions*, 1924 P.C.I.J. (ser. A), Judgment No. 2, p. 11.

<sup>37</sup> *South West Africa Cases (Ethiopia v South Africa; Liberia v South Africa)*, Preliminary Objections, Judgment of 21 December 1962: ICJ Reports 1962, p. 319, at p. 328:

“[I]t is not sufficient for one party to a contentious case to assert that a dispute exists with the other party. A mere assertion is not sufficient to prove the existence of a dispute any more than a mere denial of the existence of the dispute proves its non-existence.” See also *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, ICJ Reports 1950, at p. 74: “The mere denial of the existence of a dispute does not prove its non-existence.”

<sup>38</sup> *Georgia v Russian Federation*, para. 30. UKCM, Legal Authority 37.

1 statements and other pertinent evidence,” as well as the conduct of the Parties both prior to and  
2 after the commencement of legal proceedings.<sup>39</sup>

3 8. What, then, of the requirement to exchange views about the dispute? Here, the jurisprudence  
4 deals firstly with what an exchange of views is to contain and secondly with the circumstances  
5 in which such an exchange may be brought to an end. And, again, I say the key principles can  
6 be boiled-down to some core propositions:

7 (1) Firstly, there is the important general proposition that the requirement to engage in an  
8 “exchange of views” is not an onerous burden. International courts and tribunals have long  
9 recognised, again in the words of the *Mavrommatis Palestine Concessions* decision, in that  
10 case considering the slightly different concept of negotiation, that “[n]egotiations do not of  
11 necessity always presuppose a more or less lengthy series of notes and dispatches; it may  
12 suffice that a discussion should have commenced, and this discussion may have been very  
13 short.”<sup>40</sup> But as we will see in this case, we do actually have a lengthy series of notes and  
14 dispatches, but my general point here is that the bar is not set high in terms of what the  
15 exchange must contain.

16 (2) Secondly, as the Court put it in *Georgia v Russia*, “it is not necessary that a State must  
17 expressly refer to a specific treaty in its exchanges with the other State to be able later to invoke  
18 that instrument before the Court.”<sup>41</sup> It follows from this, of course, that a State need not refer  
19 to specific articles of a treaty either. Rather, as the Court put it, “the exchanges must refer to the  
20 subject-matter of the treaty with sufficient clarity to enable the State against which a claim is  
21 made to identify that there is, or may be, a dispute with regard to that subject-matter.”<sup>42</sup>

---

<sup>39</sup> *Fisheries Jurisdiction (Spain v Canada)*, Jurisdiction of the Court, Judgment, ICJ Reports 1998, p. 432, para. 31; *Nuclear Tests (Australia v France)*, Judgment, ICJ Reports 1974, p. 253, paras. 29-31.

<sup>40</sup> *Mavrommatis Palestine Concessions*, at p. 13.

<sup>41</sup> *Georgia v Russia*, para. 30. UKCM, Authority 37.

<sup>42</sup> *Georgia v Russia*, para. 30. UKCM, Authority 37.

1 This approach can also be seen in the decision of the Annex VII Tribunal in *Guyana v Suriname*, in  
2 which of course the Tribunal rejected, again, the argument that specific treaty provisions must be  
3 cited in order to satisfy the requirements of Article 283.<sup>43</sup> And, of course, the International  
4 Tribunal on the Law of the Sea took the same approach to Article 283(1) in the *Land Reclamation*  
5 case, where it held that Malaysia was not required to invoke the Convention at all, much less its  
6 specific provisions. It was enough for Malaysia to have “informed Singapore of its concerns about  
7 Singapore’s land reclamation in the Straits of Johor.” The fact that Malaysia had not “detailed its  
8 specific concerns” until the institution of proceedings was not considered to be an obstacle to the  
9 exercise of jurisdiction.<sup>44</sup>

10 And in the *Louisa* case, the Tribunal considered that there was no reason to decline jurisdiction for  
11 failure to comply with Article 283(1), simply because Saint Vincent and the Grenadines, again,  
12 had not referred to the specific Convention provisions which underpinned its claims.

13 (3) As a third proposition, courts and tribunals will accord considerable respect to a State’s  
14 judgment as to when to terminate the exchange of views. Again, in the words of *Mavrommatis*,  
15 States themselves are “in the best position to judge as to political reasons which may prevent  
16 the settlement of a given dispute by diplomatic negotiations.”<sup>45</sup>

17 Again, these principles have been applied in relation to Article 283(1). In the *Land Reclamation*  
18 case, the International Tribunal on the Law of the Sea held that Malaysia was “not obliged to  
19 continue with an exchange of views when it conclude[d] that the possibilities of reaching  
20 agreement [had] been exhausted.”<sup>46</sup> Mr. President, this will be a particularly pertinent observation  
21 when we turn to look at the factual record. As you have already heard, Mauritius only initiated  
22 proceedings after a clear and specific promise made at the highest level of government had been  
23 broken.

---

<sup>43</sup> *Guyana v Suriname*, paras. 408-410.

<sup>44</sup> *Land Reclamation (2003)*, paras. 39, 41.

<sup>45</sup> *Mavrommatis Palestine Concessions*, at p. 15.

<sup>46</sup> *Land Reclamation*, para. 44.

1 9. What this brief summary shows, I would suggest, is that the requirements of Article 283 are not  
2 particularly onerous. They form a threshold jurisdictional requirement to ensure that parties are  
3 not taken by surprise by the initiation of proceedings, but they do not require lengthy  
4 exchanges, they do not require reference to specific treaties or provisions, and the State's  
5 judgment as to when to terminate exchanges will be accorded considerable respect. This is an  
6 area where the law is concerned with substance, not with form.

7 10. Mr. President, we submit that Mauritius' claims very comfortably satisfy this test. It has raised,  
8 on many occasions, over many years, the subjects which form the basis of this dispute. I now  
9 turn to look at the factual record. It has been analyzed in detail in the pleadings, and I do not  
10 propose to take you through all the documents, simply to highlight what we say are the main  
11 points for you to consider. For a fuller analysis of the many years of exchanges, we would  
12 direct you, in particular, to chapter 4 of Mauritius' Reply.

13 **Mauritius' claim that the UK is not the coastal state**

14 11. I will first deal with the dispute about whether the UK is the coastal State entitled to declare  
15 maritime zones.

16 12. Here, there has been an interesting change of position on the UK's part. Originally, it did not  
17 dispute that Mauritius had met the requirements of Article 283 in respect of this part of the  
18 claim. You will recall that, in its Preliminary Objections to Jurisdiction filed in October 2012,  
19 it expressly accepted that Article 283 had been complied with in respect of what it termed  
20 Mauritius' 'sovereignty claim'.

21 13. This was not entirely surprising. It would be impossible to claim that Mauritius has, over the  
22 years, left the UK in any doubt about its view that Mauritius, rather than the UK, enjoys  
23 sovereignty over the Chagos Archipelago.

24 14. But despite these decades of very clear communications on the point, the UK has now reversed  
25 its position. And it now argues that Article 283 has not been satisfied, because Mauritius did

1 not frame those communications in terms of the Convention itself. In other words, as we  
2 understand the point, the argument is that although Mauritius said to the UK on countless  
3 occasions ‘You do not have sovereignty over the Chagos Archipelago’, it did not go on to say  
4 ‘and therefore you are not the coastal State for the purposes of the Convention’, and the  
5 argument is that because of that we cannot bring this part of the claim before you.

6 15. We say this argument is wrong as a matter of law and as a matter of fact. As a matter of law, as  
7 I have indicated, it is quite clear that there is no requirement for a State to refer to a specific  
8 Convention or its provisions. The question is whether the State has raised the subject-matter of  
9 the dispute. So when the UK complains that the dispute over sovereignty was never expressed  
10 in terms of the Convention [UKCM 5.20], this is something which Mauritius was simply under  
11 no obligation to do. And as I’ve already noted, and the record shows over many decades,  
12 Mauritius has repeatedly expressed its view that the UK lacks sovereignty over the Chagos  
13 Archipelago. And we say this necessarily entails that the UK lacks all the rights enjoyed by a  
14 sovereign State, which of course includes the right to declare maritime zones. Test that this  
15 way: the UK could not possibly have been left in the position of thinking that Mauritius  
16 considered that it, the UK, had the right to declare the “MPA”, or any other maritime zone. It’s  
17 just a conclusion which cannot follow from Mauritius’ continuous assertion of sovereignty.

18 16. Now as well as being wrong in law, as I said, the UK’s submission is wrong in fact. Although  
19 it was not under any obligation to do so, Mauritius has in fact formulated the dispute in terms  
20 of the entitlement of a “coastal State” to declare maritime zones in the waters of the Chagos  
21 Archipelago.

22 17. We see this in the Parties’ diplomatic correspondence relating to their declarations of maritime  
23 zones and related deposits of charts and coordinates with the UN. On 13 August 2003, the UK  
24 informed Mauritius of its intention to declare an Environmental (Protection and Preservation)

1 Zone within 200 nautical miles of the Archipelago, as you've seen.<sup>47</sup> The UK cited the  
2 Convention as authority for this measure, and specifically those provisions which, as it  
3 described it, entitle "States to establish an exclusive economic zone (EEZ), extending 200  
4 nautical miles from the territorial sea baselines, within which they may exercise certain  
5 sovereign rights and jurisdiction." Further, confirming that it was exercising its purported  
6 entitlement under the Convention as a coastal State, the UK stated that it would deposit the  
7 relevant Proclamation and charts and co-ordinates with the UN "under Article 75 of  
8 UNCLOS."

9 Mauritius' Minister of Foreign Affairs objected to this development in a letter addressed to the UK  
10 Foreign Secretary dated 7 November 2003.<sup>48</sup> After recalling its often-repeated "position regarding  
11 our sovereignty or territorial and maritime jurisdiction over the Chagos Archipelago and its  
12 surrounding waters," the Foreign Minister went on to say the following: "In view of the above, I  
13 earnestly request the UK Government not to proceed with the issue of a Proclamation establishing  
14 an Environmental (Protection and Preservation) Zone around the Chagos Archipelago and not to  
15 deposit a copy thereof together with copies of the relevant charts and coordinates with the UN  
16 under Article 75 of UNCLOS. As you are aware, Article 75 falls under Part V of UNCLOS which  
17 deals solely with EEZs. Depositing copies of relevant charts and coordinates with the UN under  
18 Article 75 of UNCLOS would in effect amount to a declaration of an EEZ around the Chagos  
19 Archipelago, something the UK undertook not to do in the letter of 1 July 1992..."

20 18. Despite this, the UK went on to declare the EPPZ, by Proclamation which it deposited with the  
21 UN, along with the relevant charts and co-ordinates, pursuant to Article 75. And this led to  
22 protest from Mauritius. In a diplomatic note addressed to the UN Secretary-General, Mauritius  
23 was explicit that its objection was founded on the fact that the UK is not a coastal State in

---

<sup>47</sup> Letter dated 13 August 2003 from the Director of Overseas Territories Department, UK Foreign and Commonwealth Office, to the Mauritius High Commissioner, London, MM, Annex 120.

<sup>48</sup> Letter dated 7 November 2003 from the Minister of Foreign Affairs and Regional Cooperation, Mauritius to the UK Secretary of State for Foreign and Commonwealth Affairs, MM, Annex 122.

1 regard to the Chagos Archipelago, and as such is not entitled to declare an EEZ.<sup>49</sup> And  
2 Mauritius made the same point in a diplomatic note from its High Commission in London to  
3 the Foreign and Commonwealth Office in the, dated 20 April 2004.<sup>50</sup>

4 19. And similar exchanges took place following the UK's deposit with the UN of geographical  
5 coordinates on 26 July 2006.<sup>51</sup>

6 20. In summary on this point, then, the UK is wrong to suggest that Mauritius was obliged to make  
7 the obvious point that, if the UK lacks sovereignty over the Chagos Archipelago, it necessarily  
8 lacks the right to declare maritime zones. This is inherent, we say, in Mauritius' continuous  
9 assertions of sovereignty over the Chagos Archipelago. Moreover, the EPPZ is the area within  
10 which the limits of the "MPA" are established. There was absolutely no need, we say, for  
11 Mauritius to go any further in its communications or, indeed, legally, as I've said, to go as far  
12 as it did.

13 21. But in any event, every time the UK did declare a maritime zone, Mauritius protested,  
14 including on the basis that the UK was not the State entitled to do so. When the UK built on  
15 these previous maritime zones by declaring the MPA in 2010, it can have been in no doubt, we  
16 say, about Mauritius' view that it was not entitled to do so. The exchange of views on this  
17 subject, we say, amply meets the requirements of Article 283. And the position which the UK  
18 initially adopted in this case, we say, is the correct one.

19 **The compatibility of the "MPA" with UNCLOS**

20 22. I now turn to the other part of Mauritius' claim, relating to the compatibility of the "MPA" with  
21 the other provisions of the Convention. My submissions on this point also tie in with

---

<sup>49</sup> Note Verbale dated 14 April 2004 from the Permanent Mission of the Republic of Mauritius to the United Nations, New York, to the Secretary General of the United Nations, No. 4780/04 (NY/UN/562), MM, Annex 126, and Extract from Law of the Sea Bulletin No. 54, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations, 2004: Annex 108.

<sup>50</sup> Note Verbale dated 20 April 2004 from the Mauritius High Commission, London to the UK Foreign and Commonwealth Office, Ref. MHCL 886/1/03, MM, Annex 127.

<sup>51</sup> Note Verbale dated 19 March 2009 from the United Kingdom Mission to the United Nations, New York to the Secretary General of the United Nations, No. 26/09, MM, Annex 141.

1 Mauritius' factual submissions about its historic fishing rights, dealt with by Mr. Reichler, and  
2 with my previous submissions on the facts relating to the creation of the "MPA", so I hope you  
3 will forgive me if I do not review the evidence in detail at this stage, but simply build on what  
4 has gone before, again with the benefit of footnotes for the transcript.

5 23. The exchanges on this subject can conveniently be divided into two categories. The first is  
6 exchanges which show Mauritius asserting its rights in the Archipelago before the MPA  
7 proposal came into existence. These form an important part of the background because they  
8 show Mauritius continuously asserting its rights over the Archipelago, including the fishing  
9 rights which would be brought to an end by the decision to impose a no-take MPA. The second  
10 is exchanges between the Parties after the MPA proposal emerged. Again, the record shows  
11 that Mauritius made it quite clear that it did not consider the "MPA" to be compatible with its  
12 rights, thus giving rise to a difference of views, of course, about Mauritius' rights and  
13 entitlements, and thus crystallizing the dispute under the Convention.

14 Exchanges before the MPA proposal emerged

15 24. Now in relation to the first category, the lengthy record, as I said, is set out in Mauritius'  
16 pleadings. Focusing on the few years before the MPA proposal emerged, I would simply draw  
17 attention to some exchanges which took place at the highest possible level. This is in addition,  
18 of course, to our written and oral submissions on the huge number of occasions on which  
19 Mauritius asserted its specific rights in the Archipelago, at all levels and in a range of  
20 circumstances.

21 25. On 1 December 2005, the Prime Minister of Mauritius wrote to his British counterpart, Mr.  
22 Blair, emphasizing the importance of Mauritian rights in the waters of the Chagos  
23 Archipelago. And he said in that letter "I look forward to discussing with you in the near future  
24 the important issue of fishing rights of Mauritius in the Chagos waters."<sup>52</sup> And this elicited the

---

<sup>52</sup> Letter dated 1 December 2005 from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom, MM, Annex 132.



1 response from Prime Minister Blair, in a letter of 4 January 2006, that “[t]he question of fishing  
2 rights in the Archipelago and its implications needs to be talked through.”<sup>53</sup>

3 26. Mauritius took up its rights in the Archipelago again to the Prime Minister in a meeting with  
4 Prime Minister Gordon Brown on 24 November 2007: so a couple of years before the meeting  
5 dealt with in Prime Minister Ramgoolam’s witness statement. The notes of that meeting record  
6 that two “main subjects” were discussed: “Mauritian Sovereignty over the Chagos  
7 Archipelago,” and separately, “Mauritian fishing rights over the Chagos Archipelago islands.”  
8 These are, of course, the twin elements of the claim now brought by Mauritius. With regard to  
9 the latter subject, the Mauritian Prime Minister “brought up the question of the exercise of our  
10 fishing rights over the Chagos waters (i.e. the Chagos Archipelago), excluding Diego Garcia  
11 where there is an American presence. This will enable Mauritius to contribute meaningfully in  
12 the conservation of fish stocks and the exchange of commercial fisheries data.”<sup>54</sup>

13 27. Following up on their discussions, on 13 December 2007, the Prime Minister of Mauritius sent  
14 a letter to the British Prime Minister raising “the question of our fishing rights in the waters of  
15 Chagos Archipelago excluding of course the immediate vicinity of Diego Garcia for obvious  
16 security reasons.”<sup>55</sup> The Mauritian Prime Minister expressly stated that “Mauritius had  
17 historically exercised such rights over the waters of the Chagos Archipelago.”<sup>56</sup> And in the  
18 UK’s response of 7 February 2008, Prime Minister Brown acknowledged that “fishing” was  
19 among the “issues relating to the British Indian Ocean Territory that we can discuss.”<sup>57</sup>

---

<sup>53</sup> Letter dated 4 January 2006 from the Prime Minister of the United Kingdom to the Prime Minister of Mauritius, MM, Annex 133.

<sup>54</sup> Extract of Information Paper CAB (2007) 814 – Commonwealth Heads of Government Meeting, 29 November 2007: Annex 115.

<sup>55</sup> Letter dated 13 December 2007 from Prime Minister of Mauritius to Prime Minister of the United Kingdom, MM, Annex 135.

<sup>56</sup> Letter dated 13 December 2007 from Prime Minister of Mauritius to Prime Minister of the United Kingdom, MM, Annex 135.

<sup>57</sup> Letter dated 7 February 2008 from the UK Prime Minister to the Prime Minister of Mauritius: Annex 118.

1 28. And UK officials, as you've seen, were well aware of the fact that Mauritius had raised these  
2 specific rights in the Archipelago. In my factual submissions on the creation of the "MPA", I  
3 have shown you the internal Foreign Office communications from late 2008 and early 2009,  
4 planning for the January 2009 talks. It is clear that the officials concerned were fully aware that  
5 Mauritius would expect fishing rights to be on the agenda, and indeed they were then discussed  
6 in detail at the January talks, as you have seen.

7 Exchanges after the MPA proposal emerged

8 29. Looking now to events after the MPA proposal came to Mauritius' attention, I have already  
9 shown you how Mauritius only learned of the proposal through articles in the press in February  
10 2009. This discovery came as a surprise to it, of course, given the UK's failure to mention it at  
11 the first round of talks just a month before and Mauritius promptly made a diplomatic protest.<sup>58</sup>

12 30. In the period between the first and second round of talks, again as we saw yesterday, internal  
13 Foreign Office discussion shows clear awareness of Mauritius' position regarding its rights in  
14 the waters of the Chagos Archipelago. And the evidence was reviewed in some detail by Mr.  
15 Reichler in his submissions. For present purposes, the relevance of this material, I suggest, is to  
16 undermine the UK's claim to have been kept in the dark about the subject matter of the dispute.

17 31. And against this backdrop, the second round of bilateral talks was held in July 2009 at the  
18 Prime Minister's Office in Port Louis. Again, I have dealt with those talks previously, so I can  
19 take them briefly here. Mauritius proposed the agenda, and the UK agreed to it.<sup>59</sup> So, to use the  
20 words from the agenda, "access to natural resources of the maritime zone / fishing",

---

<sup>58</sup> Note Verbale dated 5 March 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 2009 (1197/28) MM Annex 139.

<sup>59</sup> Note Verbale dated 20 July 2009 from the British High Commission, Port Louis to the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius, No. 37/2009: MR Annex 140.

1 environmental issues, and ‘EEZ Delimitation and Extended Continental Shelf’ were all on the  
2 agenda.<sup>60</sup>

3 32. The UK tries to present these talks out of context. It seems to be saying that they are evidence  
4 that those on the Mauritian delegation did not consider that Mauritius had fishing rights, or  
5 perhaps that they considered those rights so trivial that they did not need to be mentioned. The  
6 UK says at Paragraph 3.6 of the Rejoinder that ‘the obvious inference remains that Mauritius  
7 did not then consider that these were material considerations in discussions then underway.’  
8 [UKR 3.6] But in fact, as the UK officials had expected, the Mauritian delegation made it quite  
9 clear that the proposed MPA would have to accommodate its rights in the Chagos Archipelago.  
10 The fact that Mauritius’ rights would have to be reconciled with any MPA was plain from the  
11 Joint Communiqué, which the parties prepared after the talks which records that the agreed  
12 joint examination of the proposal “would also have to include consideration of the implications  
13 of the proposed Marine Protected Area.”<sup>61</sup> The Joint Communiqué also records discussion of  
14 the “Extended Continental Shelf,” as well as Mauritius’ insistence that consideration of the  
15 MPA proposal include ongoing bilateral consultations between the technical experts.

16 33. None of this could have come as a surprise to the UK. Because as we have already seen among  
17 many other communications at the previous round of bilateral talks a few months before,  
18 Mauritius had set out its rights in the Chagos Archipelago in detail, and it had argued  
19 vigorously that the UK was violating those rights by requiring Mauritians to apply to the  
20 authorities of the so-called “BIOT” for fishing licences. Now, if Mauritius considered that a  
21 *pro forma* licensing regime violated its rights, then how much more serious would it be to ban  
22 Mauritius from fishing in the Archipelago at all? But this was exactly what was involved in the  
23 MPA plan. Can the UK seriously suggest that, only a few months after those discussions in

---

<sup>60</sup> Note Verbale dated 16 July 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 29/2009 (1197/28/4): MR Annex 139.

<sup>61</sup> Joint Communiqué of meeting on 21 July 2009, UKCM Annex 100.

1 January, it had no idea that Mauritius' objections to the MPA would include the fact that it  
2 would cut across Mauritius' historic fishing rights? This appears to be what the UK is saying,  
3 but as you can see, that is just not supported when you look at the evidence.

4 34. Now, the Joint Communiqué does not pick out any specific rights which, in Mauritius' view,  
5 the MPA proposal would violate, precisely because at that stage it was – or at least it appeared  
6 to be, as Mauritius was told by the UK – nothing more than a proposal which needed to be  
7 worked up. As far as Mauritius was concerned, this was merely the start of a process of joint  
8 scientific work and further bilateral discussion. Of course, as you have heard, the plans for the  
9 MPA by that point seemed to have been far more advanced than Mauritius was told. But is  
10 there anything in the record of the talks which diminishes the clarity of Mauritius' position on  
11 its rights over the Archipelago? No, we say.

12 35. Following the July talks, Mauritius continued to make clear its opposition to the MPA, and to  
13 the UK's unilateral approach. This was made clear at the meeting between Prime Minister  
14 Ramgoolam and the British High Commissioner in Port Louis on 22 October 2009. And  
15 Mauritius continued to raise its dispute with the UK over the following months: see for  
16 example Mauritius' Note Verbale of 10 November 2009,<sup>62</sup> the note of the 10 November 2009  
17 telephone conversation between the UK Foreign Secretary and the Prime Minister of  
18 Mauritius<sup>63</sup>, and Mauritius' Note Verbale of 23 November 2009, which we will look at in a  
19 moment.<sup>64</sup>

20 **The meeting between the Mauritius and UK Prime Ministers on 27 November 2009**

---

<sup>62</sup> Note Verbale dated 10 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/10, MM, Annex 151.

<sup>63</sup> Record of telephone call between Foreign Secretary and Mauritian Prime Minister, 10 November 2009, UKCM Annex 106.

<sup>64</sup> Note Verbale dated 23 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/10 MM, Annex 155.

1 36. Then on 27 November 2009, as you've already heard, Prime Minister Ramgoolam and Prime  
2 Minister Brown had the meeting which is detailed in the Prime Minister's witness statement.  
3 As you have seen, Mr. Brown promised that he would put the "MPA" on hold, and that the  
4 subject would only be discussed within the bilateral talks. As I showed you yesterday, this  
5 discussion was recorded by Prime Minister Ramgoolam in his statement to the National  
6 Assembly, as you have seen, and the Foreign Office was clearly aware of his view that such a  
7 commitment had been given.

8 37. This exchange of views took place at the highest level of Government. A clear commitment  
9 was made by the UK and it was then broken. Against this background, and all that came before,  
10 we consider that there is no serious argument that the requirements of Article 283 have not  
11 been met. And we say that the breaking of this commitment is particularly important when we  
12 come to the question of whether Mauritius was entitled to terminate the exchange of views  
13 when it did.

14 **Further exchanges in 2009**

15 38. Following the chronology onwards, and again, it's a brisk pace, in a Note Verbale of 23  
16 November 2009,<sup>65</sup> which it followed up on 30 December<sup>66</sup>, Mauritius made clear that, this is  
17 from the Ministry of Foreign Affairs, "The Ministry of Foreign Affairs Regional Integration  
18 and International Trade would like to state that since there was an ongoing bilateral  
19 Mauritius-UK mechanism for talks and consultations on issues relating to the Chagos  
20 Archipelago and a third round of talks is envisaged next year, the Government of the  
21 Republic of Mauritius believed that it is inappropriate for the consultation on the proposed  
22 Marine Protected Area, as far as Mauritius is concerned, to take place outside this bilateral

---

<sup>65</sup> Note Verbale dated 23 November 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/10, MM Annex 155.

<sup>66</sup> Note Verbale dated 30 December 2009 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the UK Foreign and Commonwealth Office, No. 1197/28/4, MM, Annex 158.

1 framework. The Government of Mauritius considers that an MPA project in the Chagos  
2 Archipelago should not be incompatible with the sovereignty of the Republic of Mauritius  
3 over the Chagos Archipelago and should address the issues of resettlement, access to the  
4 fisheries resources and the economic development of the islands in a matter which would not  
5 prejudice an eventual enjoyment of sovereignty. A total ban on fisheries exploitation and  
6 omission of those issues from any MPA project, would not be compatible with the long-term  
7 resolution of our progress in the talks on the sovereignty issue.”

8 All that the UK has to say about this document in its Rejoinder is that ‘By this time the public  
9 consultation has been underway for nearly two weeks.’ [3.13] It is not clear to us what  
10 significance this has. Mauritius, as a responsible State seeking to negotiate in good faith, was not  
11 simply going to rule out the possibility of a third round of talks the moment the consultation  
12 document was published. It spent several weeks, as you’ve seen, trying to persuade the UK that  
13 bilateral talks were the appropriate way of consulting on the issue, but in vain. It is hard to  
14 imagine how Mauritius could have expressed itself more clearly or indeed done more to keep the  
15 talks on the road.

#### 16 **Exchanges in 2010 up to the announcement of the “MPA”**

17 39. Continuing the story, we now move into 2010, and to the period leading up to the  
18 announcement of the “MPA” on 1 April.

19 40. On 19 February 2010, we can see Mauritius again raising the disputes over its package of  
20 rights in the Chagos Archipelago and the UK’s failure to consult. In a diplomatic note  
21 addressed to the British High Commissioner in Port Louis, Mauritius emphasised that the  
22 MPA denied “access by Mauritians to fisheries resources in that area.” Mauritius also said that  
23 the UK had failed to consult adequately, criticising what it called the UK’s “unilateral”  
24 approach, which it said was “prejudicial to the interests of Mauritius.”<sup>67</sup> [MM Annex 162]

---

<sup>67</sup> Letter dated 19 February 2010 from the Secretary to Cabinet and Head of the Civil Service, Mauritius to the British High Commissioner, Port Louis, MM, Annex 162.

1 Mauritius stressed that it was “keen to resume the bilateral talks on the premises outlined  
2 above.” Again, we say that this is yet another example of Mauritius raising both its procedural  
3 rights – the right to be consulted – and its substantive rights – including in particular its historic  
4 right to fish in the waters of the Archipelago.

5 41. The fact that this message got through to the UK at the time is clear from, among other things,  
6 a memorandum by Ms. Yeadon at the Foreign Office dated 30 March 2010, in which she states  
7 that: “The Mauritian Government accepts the underlying objective of strengthening  
8 environmental stewardship in the region but they remain unhappy with what they see as the  
9 unilateral FCO consultation...”<sup>68</sup>

10 42. And the following day – the day before the “MPA” was declared – the UK was in no doubt that  
11 Mauritius thought that the MPA violated its legal rights. In an email marked as “high  
12 importance”, Ms. Yeadon “stress[ed] that we are also concerned about ... [the] threat of legal  
13 action.”<sup>69</sup> This was repeated the same day, as you saw yesterday, by the UK’s High  
14 Commissioner in Port Louis, who advised against declaring the “MPA” since it could force  
15 Mauritius “to commit to taking legal action to challenge the establishment of the MPA.”<sup>70</sup> It’s  
16 very difficult in light of communications like that, we say, to say that there was no dispute  
17 between the Parties at the relevant time or that they had not exchanged views on the subject.

18 **Mauritius’ reaction to the announcement of the “MPA”**

19 43. But as we have seen, the UK disregarded the warnings of its officials, as well as Mr. Brown’s  
20 commitment, and declared the MPA the following day.

---

<sup>68</sup> Submission dated 30 March 2010 from Joanne Yeadon, Head of “BIOT” & Pitcairn Section, to Colin Roberts, Director, Overseas Territories Directorate, the Private Secretary to Parliamentary Under Secretary Chris Bryant and the Private Secretary to the Foreign Secretary, “British Indian Ocean Territory (BIOT): Proposed Marine Protected Area (MPA): Next Steps”: Annex 152.

<sup>69</sup> Email dated 31 March 2010 from John Murton, British High Commissioner to Mauritius, to Colin Roberts, Director, Overseas Territories Directorate and Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office: Annex 156.

<sup>70</sup> Email dated 31 March 2010 from John Murton, British High Commissioner to Mauritius, to Colin Roberts, Director, Overseas Territories Directorate and Joanne Yeadon, Head of “BIOT” & Pitcairn Section, UK Foreign and Commonwealth Office: Annex 156.

1 44. The UK Foreign Secretary phoned the Prime Minister of Mauritius on 1 April to inform him of  
2 that decision. I have already shown you Prime Minister Ramgoolam's witness statement,  
3 where he records what took place. We can also look at the UK's own record of the  
4 conversation, this states that Prime Minister Ramgoolam reacted by denouncing the UK's  
5 failure to engage in adequate consultations. Mr. Ramgoolam "said that he was disappointed  
6 that there had not been bilateral discussions."<sup>71</sup> The UK Foreign Secretary's response to this is  
7 significant, as it acknowledges that the Parties were in a dispute regarding the adequacy of  
8 their consultations: "While recognising the disagreement with the Mauritius Government on  
9 the process leading up to the establishment of the MPA, he hoped that this could bring the two  
10 governments closer together to work in the best interests of the environment." [UKCM Annex  
11 114]

12 45. Mauritius raised the dispute again the following day, in a Note Verbale which "conveyed its  
13 strong opposition to such a project," and which referred back to the Note Verbales of 23  
14 November and 30 December 2009. The 2 April 2010 Note again underlined the UK's failure to  
15 consult, condemning the "MPA" for having been "undertaken without consultation with ... the  
16 Government of the Republic of Mauritius."<sup>72</sup> Mauritius informed the UK that it "will look into  
17 legal and other options that are now open to it."<sup>73</sup> Again, this could not have come as a surprise  
18 to the UK, given the internal documents in which officials recognised the very real risk of a  
19 legal challenge to the "MPA".

---

<sup>71</sup> Notes of telephone call from Foreign Secretary to Mauritius' Prime Minister of 1 April 2010 in email of 1 April 2010 from Global Response Centre: UKCM, Annex 114.

<sup>72</sup> Note Verbale dated 2 April 2010 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 11/2010 (1197/28/10), MM, Annex 167.

<sup>73</sup> Note Verbale dated 2 April 2010 from the Ministry of Foreign Affairs, Regional Integration and International Trade, Mauritius to the British High Commission, Port Louis, No. 11/2010 (1197/28/10), MM, Annex 167. See also Letter dated 8 April 2010 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to Hon. Edward Davey MP: Annex 159; Letter dated 8 April 2010 from the Minister of Foreign Affairs, Regional Integration and International Trade, Mauritius to Rt. Hon. William Hague MP: Annex 160.



1 Mauritius’ dispute with the UK was raised by its Prime Minister again on 3 June 2010 in a meeting  
2 with the UK Foreign Secretary. Notes of the meeting record that the Mauritian Prime Minister:  
3 “expressed concern over the decision of the former UK Government to proceed with the  
4 establishment of a Marine Protected Area around the Chagos Archipelago despite the undertaking  
5 given by the then British Prime Minister that the project would be put on hold and brought up for  
6 consideration under the bilateral talks between the UK and Mauritius on the Chagos issue.”<sup>74</sup>

7 46. The fact that Mauritius and the UK were in dispute was made clear again by Prime Minister  
8 Ramgoolam on 27 July 2010, when he addressed the National Assembly of Mauritius,<sup>75</sup> to  
9 whom he made similar observations on 9 November 2010.<sup>76</sup>

10 47. And then, as you know, Mauritius commenced these proceedings on 20 December 2010.

### 11 **Conclusion**

12 48. By that point, the “MPA” had been imposed on Mauritius, in violation of a commitment given  
13 at Prime Ministerial level. Mauritius had made it clear that, in its view, the UK lacked any  
14 sovereign rights over the Chagos Archipelago, including the right to declare maritime zones. It  
15 had made it clear that, in its view, such a measure would violate its substantive and procedural  
16 rights – rights which Mauritius had asserted for many years, of which the UK was fully aware,  
17 and which in many cases were self-evidently incompatible with a no-take MPA. Given the  
18 broken promise at the highest level of government, Mauritius judged that further diplomatic  
19 exchanges stood no chance of resolving the issue – a judgment which, I suggest, was entirely  
20 reasonable in the circumstances. There is a dispute, there has been an exchange of views, and  
21 Article 283, we say, provides no obstacle to your exercise of jurisdiction, and to your ability to  
22 resolve this long-running dispute.

23 And, Mr. President, that concludes what I have to say on the subject.

---

<sup>74</sup> Extract of Information Paper CAB (2010) 295 – Official Mission to France and the United Kingdom, 9 June 2010: Annex 161.

<sup>75</sup> National Assembly of Mauritius, 27 July 2010, Reply to PQ No. 1B/324: Annex 163.

<sup>76</sup> National Assembly of Mauritius, 9 November 2010, Reply to PQ No. 1B/540: Annex 165.

1 Do Members of the Tribunal have questions?

2 PRESIDENT SHEARER: Yes. Judge Wolfrum.

3 ARBITRATOR WOLFRUM: Thank you, Ms. Macdonald, for your very detailed  
4 analysis of Article 283 from the factual and the legal point of view. I have a particular interest in  
5 this particular provision of the Law of the Sea Convention, and therefore I'm very grateful for your  
6 analysis.

7 But your presentation brings me to a question which is – has a bearing on Article  
8 283, but also on the case as such perhaps but perhaps mostly on 283. If I understood the  
9 arguments put forward by Mauritius so far, they are based on three strands, I may say. First, the  
10 UK is not a coastal State, and, therefore, this is for various reasons and, therefore, cannot declare  
11 an MPA.

12 Secondly, by declaring an MPA, the UK has violated several articles on the  
13 Convention such as Article 2(3), 56 and others.

14 And, thirdly, the last point you referred to, there is a violation of what you referred  
15 to as undertakings, and the UK occasionally refers to as understandings.

16 What is the relationship between these three strands of arguments? What I mean,  
17 if the UK, as you put it, is not a coastal State, how can it then violate Article 2(3), for 2(3) is  
18 referring to the coastal State? I won't go any further in that respect, perhaps you see my point.  
19 This has to be also reflected in the reasoning on Article 283. You don't have to respond right  
20 away. I believe it's a more fundamental issue. We can come back to that later.

21 Thank you.

22 MS. MACDONALD: I'm very tempted to respond straight away because it's an  
23 interesting issue and it's one which, of course, we have considered. But I think that the wiser  
24 course of action would be to – is really an invitation for us to draw together the strands of our case  
25 and indicate how they fit together, and I think the wiser course of action would be for us to consult

1 and to revert to you on that in due course. But we fully understand the question, and we'll give a  
2 detailed answer. I will just restrain myself from doing so at the moment.

3 PRESIDENT SHEARER: Very well, Ms. Macdonald. I thank you very much for  
4 your presentation, and I now call upon Professor Sands.

5 Professor Sands, I note that we will in about 15 minutes or so approach the time for  
6 our next break. I leave it to you to indicate to the Tribunal what would be a convenient moment at  
7 or about that time for us to take the break and for you to resume here.

8 PROFESSOR SANDS: I'm very grateful, Mr. President. In fact, what I am  
9 proposing to do is first I'm also tempted to answer Judge Wolfrum's questions, but I'm going to  
10 restrain myself like Ms. Macdonald. But I am going to answer some other questions that he asked  
11 yesterday or the day before and begin with that. That will take about ten minutes. I could either  
12 then begin my lengthier submissions on jurisdiction over the coastal State issue or take the break  
13 then and then run through in full and then in time to finish hopefully for lunch, but I'm in your  
14 hands as to that. I may run over lunch a little in any event, so whatever is more convenient for the  
15 Tribunal.

16 PRESIDENT SHEARER: I leave it to you, Mr. Sands.

17 PROFESSOR SANDS: So, if I can just begin by responding on behalf of Mauritius  
18 to the written questions that came, I think, on Day 1 from Judge Wolfrum, we understand, of  
19 course, that Questions 1 to 8 were addressed to the United Kingdom, so we offer these initial  
20 responses to those questions by way of observation as we have some information on them.

21 **Mauritius v United Kingdom**

22 **Mauritius' Response to the Written Questions from Judge Wolfrum**

23 **Introduction**

1 1. We understand, of course, that questions 1-8 were addressed to the United Kingdom, so we  
2 offer these initial responses to those questions by way of observation as we have some  
3 information on them.

4 **Question 1: was on the effect of construction activities**

5 2. We understand, but we do not know the details, that there has been massive coastal blasting  
6 and dredging operations carried out in the Diego Garcia lagoon since 1973, and this is in order  
7 to provide landfill material for construction and a turning basin for naval vessels. Having  
8 regard to the nature of those activities, and the very strict environmental regulations that are  
9 applied to them under English law in the metropolitan United Kingdom, we believe it has to be  
10 assumed that they are to be treated as having serious environmental consequences and as  
11 having caused significant harm to the marine environment of Diego Garcia, and that of the  
12 Chagos Archipelago more widely, but we look forward to hearing what the United Kingdom  
13 has to say about that.

14 **Questions 2-4: Pollutant Discharges**

15 3. With regard to questions 2, 3 and 4, we note that according—which relates to pollution  
16 discharges—we note paragraph 4 of the United Kingdom-United States Supplementary  
17 Arrangements on Diego Garcia, which were adopted on the (13<sup>th</sup> of December 1982), “there  
18 will be no dumping of vehicles, machinery, equipment or other non-natural waste in the  
19 territory of the Chagos Archipelago without the prior approval of the British Government  
20 Representative.”<sup>77</sup> This provision applies to the whole of the Chagos Archipelago, not just to  
21 the Diego Garcia lagoon. And so, we look forward to being provided with copies of the  
22 approvals that have been given by the British Government since 1973.

23 4. The harmful environmental impacts of the discharge of untreated sewage and of hydro-blast  
24 sludge from vessels in the Diego Garcia lagoon are described, at least en passant, in Professor

---

<sup>77</sup> 2001 U.N.T.S. 397.

1 Sheppard's March 2013 report to the "BIOT" Commissioner, and that was at Tab 2.12, on  
2 pages 74 and 75 of your Judges' folders. The report does also outline harmful environmental  
3 effects of a different kind; namely, the introduction of alien invasive plant species that may  
4 result from submarine topside-cleaning in the lagoon, and from the importation of  
5 dirt-contaminated rocks for shoreline hardening. Again, we look forward to receiving all the  
6 information on this material in detail.

7 **Question 5: Application of Biodiversity Convention to Diego Garcia**

8 Turning to question 5, the Application of the Biodiversity Convention to Diego Garcia, we  
9 can go a little further on this because we can refer you, the Tribunal, to a very recent report of the  
10 House of Commons Environmental Audit Committee in London, which is dated the (14th of  
11 January 2014), and we will make a copy of that available to the Tribunal and to the United  
12 Kingdom, (although we assume that they are familiar with it) but chose not to make it part of their  
13 pleadings. That states, in relevant part, you'll find that in the text, and I quote:<sup>78</sup>"During our  
14 inquiry, the UK Government expressed general but unspecified aspirations to 'cherish' the  
15 environment in the Overseas Territories, but it was unwilling to acknowledge or to address its  
16 responsibilities under United Nations treaties. This was disappointing, because the environment in  
17 the Overseas Territories is globally significant and comprises 90% of the biodiversity for which  
18 the United Kingdom has responsibility. And then the Committee proceeds.

19 We found that the Government has failed to negotiate the extension of the Convention on  
20 Biological Diversity – the flagship United Nations policy on biodiversity protection – to the  
21 Overseas Territories. In addition, the Government has not ensured the accurate monitoring of  
22 biodiversity in the Overseas Territories. Taken together, the Government is unclear on what it is

---

<sup>78</sup> Tenth Report of Session 2013-14, vol I, HC 332, 16 January 2014, available at:  
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmenvaud/332/332.pdf>

1 responsible for and why it is responsible for it. In environmental terms, the 2012 Overseas  
2 Territories White Paper<sup>79</sup> was a missed opportunity.” (All of that is at p. 3)

3           And then if you turn to the recommendations at page 27 and recommendation number 10, it  
4 says as follows: “The UK must fulfil its core environmental obligations to the UN under the  
5 CBD, Convention on Biological Diversity, in order to maintain its international reputation as an  
6 environmentally responsible nation state. The FCO must agree a timetable to extend ratifications  
7 of the CBD with all uninhabited UKOTs [United Kingdom Overseas Territories] where this has  
8 not yet taken place. That may entail preparations in the UKOTs, which must be clearly timetabled.  
9 The FCO must immediately extend ratification of the CBD to all uninhabited UKOTs.”  
10 (Recommendation 10, p. 27)

11           The FCO then provided response in March of this year as follows:<sup>80</sup>“The Government is  
12 commissioning a new feasibility study on the resettlement of the Territory which will consider all  
13 the Islands including Diego Garcia. It will look at a range of options, associated costs and risks.  
14 Once the outcome of the study has been received, Ministers will determine the future resettlement  
15 policy for the Territory. No decision on the extension of international conventions to BIOT will be  
16 made until after the future resettlement policy has been determined.” (p. 6) So we look forward to  
17 hearing more about that, I think, in yes, minister parlance, that is termed as a long-grass exercise.

#### 18 **Question 7: Recreational Fishing in Diego Garcia**

19 5. Mauritius summarised in our pleadings and submissions the information which was provided  
20 by the UK to the Indian Ocean Tuna Commission about recreational fishing in Diego Garcia.  
21 That’s paragraph 4.84 of our Memorial. In 2010 the “recreational fishing” at Diego Garcia  
22 accounted for 28.4 tonnes of tuna and tuna-like species.

---

<sup>79</sup> Foreign and Commonwealth Office, June 2012: *The Overseas Territories: Security, Success and Sustainability* (Cm 8374). [Footnote not in original text]

<sup>80</sup> Eighth Special Report of Session 2013-14, Appendix, HC 1167, 24 March 2014, available at:  
<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmenvaud/1167/1167.pdf>

1 **Question 9: Position of Mauritius concerning the protection of the marine environment, and**  
2 **measures undertaken with a view to implement the Biodiversity Convention.**

3 I now move on to question 9 which was addressed only to Mauritius, and that's in two parts on the  
4 protection of the marine environment firstly, and then on measures undertaken with the future  
5 implementing the Biodiversity Convention:

6 a. **On the position of Mauritius concerning the protection of the marine environment:** On  
7 the protection of the marine environment, this is something that Mauritius is deeply committed  
8 to protecting and preserving and takes it very seriously its obligations under its national  
9 environmental law. Mauritius is a party to many international environmental agreements,  
10 including the Convention on Biological Diversity; the Convention on International Trade in  
11 Endangered Species; the Convention on Wetlands of International Importance; the RAMSAR  
12 Convention; the Convention on the Conservation of Migratory Species of Wild Animals; the  
13 Memorandum of Understanding on the Conservation and Management of Marine Turtles and  
14 Their Habitats of the Indian Ocean and South-East Asia; and the Straddling Stocks Agreement  
15 as well as the Convention on the Law of the Sea.<sup>81</sup>

16 The National Report of Mauritius for the Third International Conference on Small Island  
17 Developing States is available to you at (Annex 177 of our Reply) and that provides an up-to-date  
18 summary of measures taken by Mauritius on environmental protection and sustainable  
19 development. We take the opportunity to draw your attention to the Mauritius Environment  
20 Outlook Report of 2011, and chapter 6 of that report, which is specifically dedicated to coastal and  
21 marine resources. That is available on the website of the Mauritian Ministry of Environment and  
22 Sustainable Development. There is a footnote that the web-link of these comments which will be

---

<sup>81</sup> MR, para. 3.3.

1 in this transcript,<sup>82</sup> and we will provide a hard-copy of that Report to the Tribunal, the Registry  
2 and, of course, to the United Kingdom.

3 **b. In relation to measures taken with a view to implement the Biodiversity Convention:** As a  
4 general matter in the law of Mauritius, all treaties and conventions to which Mauritius is a  
5 party invariably apply to the entire territory of the Republic of Mauritius. Under section  
6 111(1) of the Constitution of Mauritius, “Mauritius” includes the Islands of Mauritius,  
7 Rodrigues, Agalega, Tromelin, Cargados Carajos and the Chagos Archipelago, including all of  
8 Diego Garcia and any other island comprised in the State of Mauritius. The position with  
9 regard to the Convention on Biological Diversity is no different; it applies to the entire territory  
10 of the Republic of Mauritius, including the Chagos Archipelago.

11 Mauritius submitted its Fourth National Report on the Convention on Biological Diversity in  
12 August 2010. The Report notes that, “Marine Protected Areas for mainland Mauritius cover an  
13 extent of 7,190 hectares, including six fishing reserves and two marine parks.”<sup>83</sup> It also refers to  
14 the setting up of an MPA in Rodrigues which covers an area of 43 square km<sup>2</sup>. Although the  
15 Convention on Biological Diversity applies to the whole of the Republic of Mauritius, including  
16 the Chagos Archipelago, Mauritius’ Fourth National Report for obvious reasons only covers the  
17 area over which Mauritius exercises effective control. That Report is also available online, and a  
18 Web link can be provided in the transcript and we can make a copy of that also available to you.<sup>84</sup>

19 I come to the final, Question II, the status of Diego Garcia and the other islands of archipelago  
20 under the Law of the Sea, a most interesting question, if I may say on behalf of my colleagues.

21 **Question II: the status of Diego Garcia and the other islands of archipelago under the law of**  
22 **the sea**

---

<sup>82</sup><http://environment.gov.mu/English//DOCUMENTS/MAURITIUS%20ENVIRONMENT%20OUTLOOK%20REPORT.PDF>

<sup>83</sup> *Ibid*, see p. 26 of the Report.

<sup>84</sup> <https://www.cbd.int/doc/world/mu/mu-nr-04-en.pdf>



- 1 6. It was addressed to both parties, and it relates to the status, of course, of Diego Garcia and other  
2 islands in the Chagos Archipelago.
- 3 7. Mauritius is a party to the 1982 Convention, and the Convention applies to the Chagos  
4 Archipelago we say by virtue of our ratification. As set out in Chapter 4 of the Memorial, by  
5 Mauritius' Maritime Zones Act of 1977, Mauritius declared, around all of its territory  
6 (including the Chagos Archipelago) a 12 nautical mile territorial sea, a 200 nautical mile EEZ  
7 and a continental shelf to the outer edge of the continental margin (or 200 nautical miles) from  
8 its baselines.<sup>85</sup>
- 9 8. By the Maritime Zones Act 2005, Mauritius reaffirmed its territorial sea, EEZ and continental  
10 shelf.<sup>86</sup> Regulations were then made under the Maritime Zones Act which set out the precise  
11 geographical coordinates of the base points and outer limits of the various maritime zones of  
12 Mauritius, including the Exclusive Economic Zone of the Chagos Archipelago.<sup>87</sup> I could  
13 spend the next hour reading them out to you. I won't do that. We've brought them here.  
14 We'll make a copy available to the United Kingdom and to the Tribunal. The basepoints, as  
15 you will see from those regulations, were generated from various islands of the Archipelago,  
16 including Diego Garcia. And you'll find a map depicting the EEZ of Mauritius in that area at  
17 Figure 7 in Volume 4 of the Memorial. The coordinates of the basepoints have also been  
18 deposited with the Secretary-General of the United Nations under Articles 16 and 47 of the  
19 Convention. And if it will be helpful, we can make that submission filing also available to the  
20 Tribunal. It's publicly available anyway.
- 21 9. The point in a sense is this. A number of the islands in the Chagos Archipelago are plainly  
22 capable of sustaining human habitation. We note that before the forced expulsion of the  
23 inhabitants of the Chagos Archipelago carried out by the United Kingdom, the larger islands,

---

<sup>85</sup> MM, para. 4.2.

<sup>86</sup> MM, para. 4.29 and MM Annex 131.

<sup>87</sup> Maritime Zones (Baselines and Delineating Lines) Regulations 2005 – GN 126 of 2005 and Maritime Zones (EEZ Outer Limit Lines) Regulations 2008 – GN 220 and 282 of 2008).

1 including but not limited to Diego Garcia, were inhabited for many, many decades and were  
2 sufficiently economically productive and sufficiently so to sustain human habitation on a  
3 significant scale.

4 10. We've noted your reference, Judge Wolfrum, to the 2002 report of Posford Haskoning which  
5 was commissioned by the Foreign and Commonwealth Office and which concluded that  
6 resettlement of the Chagossians would not be possible. Now, it cannot be said of these larger  
7 islands of the Chagos Archipelago that they are "rocks" or that they "cannot sustain human  
8 habitation or economic life of their own," and accordingly in our submission there's no  
9 question but that they are entitled to an exclusive economic zones and continental shelf. As  
10 regards the issue of resettlement, which the United Kingdom says is not possible, Mauritius  
11 takes the view that its citizens should be able to reside in all parts of the territory, including the  
12 Chagos Archipelago, and it has long supported the right of return of anyone who wishes to  
13 return. Mauritius has long taken issue with the United Kingdom that resettlement is not  
14 possible, and we look forward with interest to hearing how the United Kingdom is able to  
15 reconcile that position on non-resettlement with the claim to an exclusive economic zone and  
16 continental shelf for all of the islands.

17 I think that covers all of the questions from Judge Wolfrum. It may be that we return to them in  
18 due course now, I note the time, Mr. President. It's quarter to. Perhaps that is a good moment to  
19 pause for the second coffee break.

20 PRESIDENT SHEARER: Yes. Thank you, Mr. Sands. The Tribunal will  
21 return at 12 noon. Thank you.

22 (Brief recess.)

23 **ARBITRATION UNDER ANNEX VII TO 1982 UNCLOS**

24 *Republic of Mauritius v. United Kingdom*

25 **Professor Philippe Sands QC**

1 **Friday 25 April 2014**

2 **Speech 13: Jurisdiction over dispute that the UK is not “the coastal state”**

3 **I. Introduction**

4 Thank you, Mr. President, Members of the Tribunal:

- 5 1. You’ve heard Ms. Macdonald address you on the obligation to exchange views, and we turn  
6 now to the other issues raised by the United Kingdom in relation to the jurisdiction of this  
7 Tribunal. Just to give you a roadmap ahead, I will go through until one o’clock, and then I  
8 will continue briefly after lunch, and I will then be followed by Mr. Loewenstein and Mr.  
9 Reichler, and that will then wrap things up. We hope to finish before 5:30 today so that you  
10 can have a slightly longer weekend. It’s customary in my experience, and I think that of  
11 anyone who’s been involved in these Part XV cases, for any Respondent in such a case to  
12 argue rather vigorously that the Tribunal has no jurisdiction, either entirely or in part.
- 13 2. You, Mr. President, will recall the hearings of nearly ten years ago when we sat in a room in  
14 The Hague in the Peace Palace in the summer of 2005. I think it was before Judge  
15 Greenwood had been in the proceedings brought by Guyana versus Suriname. There was an  
16 early tip—one might call it an interlocutory stage of the proceedings, when Suriname during  
17 a preliminary hearing set out its jurisdictional objections, and Suriname wanted the  
18 jurisdictional objections to be decided first. And if you recall, Professor Rosenne appeared on  
19 behalf of Suriname, and it was a great honour, I think, for all of us to be in that room with  
20 him. I think it may have been his last outing as counsel. And I remember him, and I went  
21 back to check what he said, one of his early Part XV cases: “There must be a hearing on  
22 Suriname's preliminary objections,” he said, and then he said this, and I quote, and I  
23 remember him saying it: “I am not aware of a single case in which an international court or  
24 tribunal exercising jurisdiction on a compulsory basis, as is this one, has decided on the

1 disposal of preliminary objections to its jurisdiction without a hearing.”<sup>88</sup> And I remember as  
2 he said that thinking, huh, can that be right? Then doing a little research, finding out that it  
3 probably was right and thinking, well, there’s always got to be a first time. And if it hadn’t  
4 happened before, that case, as you know, was the first time because, despite that powerful  
5 argument, the Tribunal ruled there would be no such hearing, and the issues would be joined.  
6 The skies did not fall after that happened.

7 3. Professor Rosenne on that same hearing then went out to set out the jurisdictional objections  
8 of Suriname. And I wanted to remind myself of what he said, and I’ve taken the trouble of  
9 putting it in at Tab 13.1. We are now back to purple. It’s almost the end of the folders I’m  
10 very glad to let you know we have managed to squeeze everything into one folder, so you  
11 will get no more folders from us, anyway, in the first round. Second round, who knows?  
12 At 30.1 you’ll see it’s a copy of the transcript. Again, this is obviously publicly available.  
13 And if you go to page 447, which is the last page, all the way down to line 19 on the  
14 left-hand side, this is what Professor Rosenne said [TAB 13.1] [folder page 447]:

15 “the preliminary objections that Suriname has filed in this case show that there are very  
16 serious doubts – very serious doubts – as to the jurisdiction of this tribunal ...that is more than  
17 could be required. The land terminus for the delimitation of the territorial sea is unsettled and no  
18 court or tribunal exercising jurisdiction under the Law of the Sea Convention has jurisdiction  
19 over a dispute relating to land boundaries. It is sufficient for me to record that between the  
20 adjacent states the maritime boundary starts from the land boundary terminus. As long as there is  
21 no agreement on the location of the land boundary terminus, the maritime boundary cannot be  
22 limited. Accordingly the preliminary objections are legitimate and substantial.”<sup>89</sup>

23 That was 2005. The Tribunal proceeded with the case, it exercised jurisdiction, and eventually it

---

<sup>88</sup>*Guyana v Suriname*, *Guyana v Suriname*, Hearing of 8 July 2005, transcript, Day 2, p. 6, lines 16-23 (Professor Rosenne) available at: [http://www.pca-cpa.org/showpage.asp?pag\\_id=1268](http://www.pca-cpa.org/showpage.asp?pag_id=1268)

<sup>89</sup> *Guyana v Suriname*, 8 July 2005, transcript, p. 8, lines 19-32 (Professor Rosenne) available at: [http://www.pca-cpa.org/showpage.asp?pag\\_id=1268](http://www.pca-cpa.org/showpage.asp?pag_id=1268)

1 did determine the location of the land boundary terminus. Of course, by then Suriname had  
2 changed its position, as the Tribunal notes in paragraph 308 of its judgment, and so the  
3 jurisdictional objection fell away.<sup>90</sup> But the skies did not fall, another step forward was made.  
4 The Tribunal took into account in looking at coastal lengths, that part claimed by Venezuela.  
5 The skies did not fall away. There was not opprobrium as to the award of the Tribunal. And  
6 for those of us who were recently in that same building, oddly in the case of *Bangladesh versus*  
7 *India*, we are aware that, I wouldn't put it higher than this, the issue of whether an Annex VII  
8 Tribunal has jurisdiction to deal with the land boundary terminus has in reality melted away.  
9 I recall too, the more recent approach of ITLOS, faced with the request by Bangladesh to delimit  
10 the area of the outer continental shelf beyond 200 miles. This had never happened before.  
11 Myanmar took strong exception to the possibility. The Tribunal for the Law of the Sea could go  
12 down that road. And you can see what it said in its Counter-Memorial which was filed on the  
13 1st of December 2010. I haven't put it in. It's publicly available. Right at the beginning of  
14 that document in the opening chapter, it signalled its attachment to the argument, strongly put,  
15 some of you will recall it very well, that ITLOS could not exercise jurisdiction beyond 200  
16 miles. And this is what it said, and I want to quote what it said: "III. The Extent of the  
17 Jurisdiction of the Tribunal  
18 [..]  
19 1.12. ..., it must be further specified that in the present case, and contrary to what Bangladesh  
20 asserts, the Tribunal cannot exercise jurisdiction to delimit hypothetical areas of continental shelf  
21 beyond 200 miles from the baselines from which the territorial sea is measured. We then jump  
22 to paragraph 1.16.[...]  
23 1.16. Even if the Tribunal were to decide that there could be a single maritime boundary beyond  
24 200 miles (quod non), the Tribunal would still not have jurisdiction to determine this line

---

<sup>90</sup>*Maritime Delimitation (Guyana v. Suriname)*, Jurisdiction and Merits, Award of 17 September 2007 (2008) 47 ILM 166, at para. 308.

1 because any judicial pronouncement on these issues might prejudice the rights of third parties  
2 and also those relating to the international seabed area (the area beyond the limits of national  
3 jurisdiction).”<sup>91</sup>

4 ITLOS exercised jurisdiction. It delimited beyond 200 miles. The skies did not fall. It has  
5 transformed the vista.

6 4. The point I’m making is a simple one: with the passage of time, as dispute settlement under  
7 the 1982 Convention and Part XV has become increasingly established and settled, as the  
8 International Tribunal for the Law of the Sea and Annex VII Tribunals have been confronted  
9 with a range of issues and questions that may not have been at the forefront of the minds of  
10 the drafters of the Convention, or indeed in their minds at all, sensible solutions have been  
11 found, and the law has evolved. Those solutions have been practical and they have been  
12 effective. It is true that they may have taken the interpretation of the Convention to a place  
13 where some of the early writings that the United Kingdom likes to rely upon may not have  
14 foreseen and may not like. But it cannot be said that disaster has followed. Quite the  
15 contrary: over the past ten years a number of important disputes have been resolved, some  
16 dating back many years, in the case of Guyana versus Suriname seven decades after that  
17 Award came down, what happened. The parties went jointly for filing of their submissions  
18 on the outer continental shelf. What better example of the successful working of Part XI.  
19 Relations have been repaired in these cases. To exercise jurisdiction is to assist the parties.  
20 To not exercise jurisdiction is to undermine the purposes of the Convention.

21 5. So, my submissions this afternoon, I’m going to address the question of whether the Tribunal  
22 has jurisdiction over the dispute that the United Kingdom is not the coastal State entitled to

---

<sup>91</sup> *Bangladesh v Myanmar*, Counter-Memorial of Myanmar, 1 December 2010, available  
at: [http://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no\\_16/Counter\\_Memorial\\_Myanmar.p  
df](http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_16/Counter_Memorial_Myanmar.pdf)

1 declare an “MPA”. Messrs. Loewenstein and Reichler will follow on the remaining  
2 jurisdictional objections of the United Kingdom.

3 *a. The UK is not the coastal State*

4 6. So, let’s begin at the beginning. There are, we say, three questions which have to be  
5 answered by the Tribunal in deciding whether it has jurisdiction over the dispute that the  
6 United Kingdom is not a coastal State:

- 7 • First, is this a dispute concerning the interpretation or application of the Convention  
8 (288(1))?
- 9 • Second, if so, is it excluded from jurisdiction by virtue of one of the exception clauses in the  
10 Convention?
- 11 • We say that those two questions are sufficient to dispose of the matter, but the United  
12 Kingdom has introduced a third question, and it is this: is there implicit in the Convention an  
13 unwritten exclusion of disputes that touch on questions of sovereignty over territory or on  
14 who is a coastal State?

15 7. Now, in response to all three of those questions, Mauritius says that all aspects of the dispute,  
16 all aspects of this dispute, are firmly within the jurisdiction of the Tribunal. Before turning to  
17 these three questions, which I will do in turn, please allow me to make a number of  
18 preliminary observations of a more general nature, which arise in view of the significance the  
19 United Kingdom seeks to place on the fact that the parties dispute sovereignty over the  
20 Chagos Archipelago, and the purported implications of that fact both for the jurisdiction of  
21 this Tribunal and the future of the UNCLOS dispute settlement system in Part XV.

22 8. The argument of the United Kingdom on jurisdiction on this point accuses Mauritius of  
23 attempting to ‘shoehorn [the sovereignty dispute] as it likes to call it, a means of dispute as to  
24 mean of the words coastal State, into the framework of UNCLOS’<sup>92</sup> Mauritius does nothing

---

<sup>92</sup> UKR, para. 4.2.

1 of the sort: we're inviting the Tribunal to determine whether or not the UK is a "coastal  
2 State" within the meaning of the Convention, so that it is entitled to create the "MPA" it has  
3 purported to establish. The United Kingdom seeks to persuade the Tribunal that a dispute as  
4 to the meaning of the words "coastal State" – what it calls the sovereignty dispute – either  
5 does not fall within Part XV of the Convention at all, or only does so in the case of what it  
6 calls a "mixed dispute" that concerns maritime boundary delimitations. And it further argues  
7 that even if Part XV covers "mixed disputes" more generally, this is not such a dispute.

8 9. At the heart of its pleadings, the UK contends that Mauritius had raised the question of which  
9 State should be treated as the coastal State under the Convention only as a stalking horse for  
10 the sovereignty issue. On Tuesday afternoon the Attorney General for England and Wales  
11 had very little to say on the merits – although he did find time to describe the pleasures of  
12 diving in the Maldives – and rather more to say on jurisdiction. Back off, he told you, rather  
13 like Professor Rosenne in The Hague on behalf of Suriname, and rather like Myanmar more  
14 recently in Hamburg. But with great respect, his argument is not persuasive. In our view, the  
15 reality is the very opposite of what the United Kingdom argues: far from undermining the  
16 whole Convention, if you take jurisdiction over this case, you will strengthen the dispute  
17 settlement structure of the Convention; to decline jurisdiction will be to exacerbate the  
18 dispute, to prolong it unnecessarily, and to signal that Part XV serves to perpetuate a colonial  
19 era dispute such as this one. You do not have to go down that route, and we say you cannot  
20 go down that route. You are not permitted to go down that route, because you have  
21 jurisdiction over every aspect of the claim put by Mauritius.

22 10. The United Kingdom once again is playing a frightening game. Back in 1965 it was  
23 Mauritius. Today it's the Tribunal, with the prospect that if you so much touch on the  
24 forbidden area, a Pandora's box of territorial disputes over islands will suddenly bloom, and  
25 you will be inundated. There is, they say, no such thing as a *sui generis* dispute: admit one



1 and you admit them all.<sup>93</sup> Of course, the difficulty for the United Kingdom is that it has  
2 already admitted a great deal that goes against its own case and which points to Mauritius  
3 with a special interest, as the Attorney General put it, being the “coastal State” under this  
4 Convention. The dispute has a number of unique characteristics. *At the very least*, the  
5 United Kingdom has expressly admitted in respect of the Chagos Archipelago that Mauritius  
6 has certain attributes of a coastal state, in relation to fishing rights, which were extended as  
7 though it were a coastal state, from 12 to 200 miles, in relation to oil and mineral rights,  
8 which the United Kingdom has said it will not touch, they all belong to Mauritius, or in  
9 relation to the right to file preliminary information in respect of the continental shelf, which it  
10 had not protested until last month for obvious reasons, and I’ll come back to that.

11 11. Let me deal with those first. The United Kingdom has consistently described Mauritius as  
12 having rights in reversion of the islands.<sup>94</sup> It has described itself as a mere “temporary  
13 freeholder.” This fact alone places this dispute in a category of one. No other case like it  
14 anywhere, and the United Kingdom has not been able to find one for us. Where else in the  
15 world, in a dispute concerning an island, has the present occupant described another State as  
16 holding rights in reversion? We submit there is no such case. If there is one, we look forward  
17 to hearing about it.

18 12. Second, the United Kingdom has acknowledged the fishing rights of Mauritius in the  
19 territorial sea in the period 1965-72<sup>95</sup> and then subsequently extended that acknowledgement  
20 up to a 200 nautical mile limit during 1991 and 1992.<sup>96</sup> Now, that is a strange thing to do if  
21 the intention was only ever to acknowledge traditional or artisanal fishing practice. Indeed, in  
22 expanding its recognition of Mauritian rights up to a 200 nautical mile limit, the UK  
23 expressly referred to, “the special position of Mauritius and its long-term interest in the

---

<sup>93</sup> UKR, p. 76, footnote 356.

<sup>94</sup> MM, para. 6.40.

<sup>95</sup> MM, paras. 3.87-3.97.

<sup>96</sup> MM, paras. 3.100-3.102.

1 future of the British Indian Ocean Territory”.<sup>97</sup> I mentioned the Attorney also referred to the  
2 “special interest”.<sup>98</sup> The “special position” being acknowledged goes way beyond simple  
3 traditional inshore fishing rights, historically exercised only close to shore and only using  
4 hand-held lines.<sup>99</sup> It is an acknowledgement that only one State is truly entitled to the  
5 economic benefit of the living marine resources appertaining to the Chagos archipelago, and  
6 that State is Mauritius, not the United Kingdom.

7 13. Third, the United Kingdom has made commitments regarding the offshore mineral resources  
8 of the Chagos archipelago. You are very familiar now with the 1965 undertakings at  
9 Lancaster House that “the benefit of any minerals, any minerals or oil discovered in or near  
10 the Chagos Archipelago should revert to the Mauritius Government”<sup>100</sup> and the UK Foreign  
11 Minister affirmed in 1997, “this Government has no intention of permitting prospecting for  
12 oil and minerals while the territory remains British, and acknowledges that any oil and  
13 mineral rights will revert to Mauritius.”<sup>101</sup> That is ownership of mineral and oil rights.  
14 Really if there were an ICSID arbitration Tribunal and someone interfered with them, they  
15 would be Mauritius’ rights to protect, Mauritius’ property claim. Has such a concession been  
16 made in any other maritime dispute, that any value, any value, extracted from seabed oil or  
17 minerals automatically reverts to another State?

18 14. So, the question one might ask, having regard to the language of Article 56(1)(a) of the  
19 Convention is this: in this case, where lie the underlying “sovereign rights for the purpose of  
20 exploring and exploiting, conserving and managing the natural resources, whether living or  
21 non-living”? Who is the ultimate owner? Who has the underlying rights? It is very clear from  
22 the United Kingdom’s own statements and its conduct, they lie with Mauritius. Mauritius has

---

<sup>97</sup> MM, para. 3.102.

<sup>98</sup> Day 1 Transcript, p. 51, lines 12-13 (Grieve).

<sup>99</sup> MM, para 3.89.

<sup>100</sup> MM, para. 3.3.

<sup>101</sup> MM, para. 3.109.

1 never conceded that those rights passed from it and has frequently reminded the United  
2 Kingdom of its undertakings to respect them, and until this dispute arose the United  
3 Kingdom had respected them. Then it extinguished Mauritius' fishing rights, and now it says  
4 Mauritius has no right to make a filing with the Commission on the Limits of the Continental  
5 Shelf ("CLCS"). You can see where this goes and how this will go in the future if  
6 something is not done to stop the direction of this most unhappy dispute.

7 15. In this respect, we note the United Kingdom has not only *not* protested the filing by  
8 Mauritius to the CLCS, but actively *encouraged* the submission. I will not take you back to  
9 the materials. That earlier stance cannot but be understood as a recognition of Mauritius'  
10 rights in the continental shelf – the rights of a "coastal State," which the United Kingdom  
11 does not wish to exercise itself, but it now cannot exercise, and that it was content (until it  
12 filed its Rejoinder) should be safeguarded for Mauritius.

13 16. In all these respects, the United Kingdom has clearly acknowledged the rights – the  
14 sovereign rights – of Mauritius, as a "coastal State." And it is these rights that single out this  
15 case from other disputes which raise what the United Kingdom calls the sovereignty issues.  
16 In this respect this dispute is unique, and we invite the Tribunal to have in mind that fact, for  
17 that is what it is, as we look at the arguments on jurisdiction.

18 ***b. What the Tribunal is not being asking to decide***

19 17. Against this background, Mauritius wishes to stress three points which the Tribunal is not  
20 being asked to decide in considering the question of jurisdiction.

21 18. First, the Tribunal has been asked to consider questions about *applicable law* – about  
22 whether the international instruments referred to in Mauritius' pleadings should be  
23 considered and applied by the Tribunal. Mauritius maintains that the Tribunal will indeed  
24 have to rule on instruments in addition to the Convention – that it is able to do so by  
25 operation of Article 293, if not Article 2(3) or other provisions. But that issue, the applicable

1 law issue, is distinct from the question of jurisdiction. Mauritius is not asking this Tribunal to  
2 extend its jurisdiction by reference to rules of international law other than the Convention.  
3 And I'll return in due course to the relevance of Article 293.

4 19. Second, Mauritius is not asking the Tribunal to widen or to extend its jurisdiction by looking  
5 at matters other than those 'concerning the interpretation and application of the Convention'  
6 under Article 288(1). Merely because the dispute with the UK has aspects other than those  
7 put before the Tribunal does not mean that the dispute before the Tribunal is not one  
8 'concerning the interpretation and application of the Convention'.

9 20. And third, the interpretation of Article 288(2) is simply not relevant to the question of  
10 jurisdiction in this case. The United Kingdom has referred to it in its pleadings. It concerns  
11 other agreements conferring jurisdiction on Convention tribunals: it has no relevance, we say,  
12 to the question of jurisdiction in this case (perhaps beyond the Straddling Stocks Agreement,  
13 (which will be addressed by Mr. Loewenstein); jurisdiction depends expressly and solely on  
14 the wording of the Convention itself, not on any ability or need to find jurisdiction in other  
15 agreements. We are not asking you to go there in any way at all.

16 **II. The Tribunal has jurisdiction over the claim that the UK was not entitled to create the**  
17 **“MPA”: Articles 288(1) and (2) and 293**

18 21. So we turn to the first question before the Tribunal: is this a dispute concerning the  
19 interpretation or application of the Convention?

20 22. On its face, it is – because Mauritius argues the United Kingdom is not 'the coastal state' for  
21 the purposes of the provisions of the Convention and this the United Kingdom denies. Yes,  
22 you are; no, we're not; no, we are; yes, you are, that's a dispute about the meaning of the  
23 words coastal State. Whether or not the UK has the right to declare a new jurisdictional zone  
24 around the Chagos Archipelago, a right which the UK asserts is permitted under UNCLOS, is  
25 a dispute which concerns the interpretation *and then the application* of the Convention. There

1 is, we say, rather obviously a dispute about the meaning of the words “coastal State.” So,  
2 we say it is for the United Kingdom to show – if it can – that what looks like a dispute under  
3 the Convention, subject to the Convention’s dispute settlement provisions, is not such a  
4 dispute. We say they haven’t been able to do that, and they cannot do that.

5 23. Which State is to be treated as the coastal State under the Convention cannot simply be a  
6 question of fact or effectiveness. To paraphrase my colleague and dear friend Professor  
7 Crawford: a coastal state is not a fact in the sense that a table is a fact – “*ceci n’est pas une*  
8 *table*”, the artist René Magritte might have printed. Whether a state qualifies as “the coastal  
9 state” under the Convention (or “a coastal state,” and we note the Convention uses both  
10 formulations) in respect of a particular state of affairs is a question arising under the  
11 Convention, and it can only be resolved by reference to the Convention itself and by general  
12 international law applicable in accordance with the Convention. As Professor Boyle writing  
13 (in his academic capacity) has put it quite rightly: “even in compulsory jurisdiction cases, the  
14 Tribunal may have to decide matters of general international law that are not part of the law  
15 of the sea, and Article 293(1) allows for this.”<sup>102</sup> That’s got to be right. And I’m going to  
16 return to Article 293 in due course.

17 24. Which entity is the “coastal State” in respect of the Chagos Archipelago is a legal question,  
18 and it’s one which arises obviously under the Convention. And we say it is for you, this  
19 Tribunal, to resolve that question. We also say that the United Kingdom’s repeated  
20 concessions as to the rights of Mauritius, both at present and in reversion in the future raise  
21 another question. Here we’ve got a raft of repeated undertakings, before and after the entry  
22 into force for both parties of the Convention, made by the United Kingdom about how it will  
23 and will not exercise its powers under the Convention. There can be no reason, we say, why

---

<sup>102</sup> MR Annex 103, at p. 49.

1 the dispute about how the Convention can be applied in the light of those rights and those  
2 undertakings should be excluded from your jurisdiction.

3 25. Let me give you a very practical and concrete example of how this dispute concerns the  
4 interpretation and application of the Convention. In my introductory remarks on Tuesday and  
5 subsequently my colleagues', have touched on the submission on preliminary information.  
6 Mr. Loewenstein dealt with this in detail yesterday, and I don't propose to go over it again in  
7 such detail. You know by now the story and the abrupt change of position. The United  
8 Kingdom has no standing. The United Kingdom now argues that Mauritius has no standing  
9 in relation to that filing. Well, the UK contention that Mauritius lacks standing means that  
10 the UK objects to Mauritius having any right to place preliminary information before the  
11 CLCS. It thus acknowledges the existence of a dispute as to which state is entitled to  
12 submit particulars and whether Mauritius had a right to make a filing to stop the clock in the  
13 manner contemplated by SPLOS/183. So, there's rather obviously before the Tribunal what  
14 we might call a delineation dispute. What's the difference between a delineation dispute  
15 and a delimitation dispute for the purposes of jurisdiction? I will return to the effect of this  
16 in a moment. To the extent, however, that such a delineation dispute might be thought to  
17 share many essential features with a maritime boundary dispute, there is, of course, the  
18 obvious point. The United Kingdom has made no declaration under Article 298(1)(a)(i) to  
19 exclude such disputes from the jurisdiction of this Tribunal.

20 26. The question here – as with all aspects of our case – is not, as the United Kingdom would  
21 seek to make it, whether an Annex VII Tribunal has the power to decide sovereignty issues.  
22 The question is more nuanced and should be presented more finely. It is which aspects of  
23 this present dispute between two parties to the Convention fall within Part XV. And here is a  
24 concrete example of an aspect of which the UK would like to call a sovereignty dispute  
25 which quite clearly comes within the jurisdiction of the Tribunal, in interpreting and applying

1 Part VI of the Convention. What is the Commission on the Limits of the Continental Shelf  
2 to do faced with that situation? The United Kingdom says they can't do anything, and you  
3 can't decide. In fact, no one can decide. That's the conclusion the United Kingdom  
4 wishes to give effect to, and we say that gums up the operation of the Convention. It is  
5 impractical.

6 ***a. Applicable law***

7 27. So there is one thing the UK claims this Tribunal may never rule upon – the one thing so  
8 forbidden that the UK alleges it is fatal to Mauritius' entire case: the question of sovereignty  
9 or any part of. In this context in dealing with applicable law, we have to consider the  
10 significance of Article 293 of the Convention, the very provision Professor Boyle has written  
11 to say that a Tribunal such as this, “may if necessary deal with both the land and the  
12 maritime” questions in a dispute.<sup>103</sup> We consider this provision, Article 293 – which  
13 concerns applicable law, not jurisdiction, a cardinal distinction which we have recognised  
14 from the outset – because the United Kingdom seeks to persuade this tribunal that UNCLOS  
15 tribunals have no more than the most limited capacity to look at general questions of  
16 international law. The ICJ can look at it, but only if it's not acting under Part XV. It did so  
17 recently in the case brought by Peru against Chile, a case that the Court has given the name  
18 “Maritime Dispute” (if we go the Judgment of the 27<sup>th</sup> of January 2014, paragraphs  
19 152-176), and I appreciate Judge Greenwood did not sit in that case. And you will see after  
20 24 paragraphs they deal on a maritime dispute with a land boundary terminus, and they  
21 resolve the matter wasn't under Part XV. But no says the United Kingdom. You can't  
22 look at it. No Annex VII Tribunal can look at it, and ITLOS can't look at it under any  
23 circumstances. Never, ever, ever. Judge Greenwood can look it when he's sitting at the ICJ,  
24 but not under a Part XV case, but Judge Hoffmann can't, Judge Kateka can't and Judge

---

<sup>103</sup> MR Annex 103, at p. 49.

1        Wolfrum can't, when they're sitting on this Tribunal or at ITLOS. Never, ever are you  
2        allowed to touch on those matters, and we say that cannot be right.<sup>104</sup>

3        28. This is not the approach that the Convention directs us to take. There is nothing in the text of  
4        the Convention – in its plain meaning – that requires or even directs towards that conclusion.  
5        The approach of the United Kingdom is a policy-driven approach. We are not sitting in  
6        Newhaven. We are sitting in Istanbul applying the plain meaning of the Convention. We  
7        have to look at what the Convention says, not what the United Kingdom tells us would be the  
8        policy consequences of sitting that way or to have been another way. All the Convention asks  
9        us to consider first is whether there's a dispute falling within the interpretation and  
10       application of the Convention (Article 288) and it then directs, if you're satisfied that that is  
11       the case, you, "*shall* apply this Convention and other rules of international law not  
12       incompatible with this Convention" (Article 293). Those are the words of the Convention,  
13       shall apply this Convention. They admit, we say, of no difficulty. The question that arises is  
14       what other questions of public international law may be sufficiently closely connected to that  
15       dispute that they are questions the Tribunal can *and must* consider. ITLOS and Annex VII  
16       Tribunals have, on numerous occasions, indicated where other rules of international law are  
17       to be applied. You did that yourself, Mr. President, when you were sitting with four other  
18       arbitrators in the case of *Guyana v Suriname*, in relation to the rules governing the use of  
19       force.<sup>105</sup>

20       29. The United Kingdom prefers a different approach. It prefers to posit a domain of issues that  
21       are wholly outside the Convention, which by virtue of the simple fact can never be brought  
22       within its compass. The first and most obvious such argument made by the United Kingdom  
23       is in respect of any issue of sovereignty over territory. It does so not on the basis of what the

---

<sup>104</sup> UKCM, para. 4.30; UKR, para. 4.25.

<sup>105</sup> *Guyana v. Suriname*, Award of 17 September 2007, paras. 425 *et seq.*



1 Convention says, it can point to no provision, but supports that conclusion. It does so on the  
2 basis of Newhaven style policy considerations.

3 30. The United Kingdom asserts that rules of public international law such as the law of  
4 self-determination have no bearing on the question of the rights pertaining to a coastal state  
5 under the Convention – because they are of the realm of general international law. The same  
6 *a priori* reasoning was raised by counsel with respect to the issues and governing the use of  
7 force under the UN Charter in *Guyana v Suriname*. It was rejected by the arbitral Tribunal in  
8 that case, just as it was rejected by ITLOS in the *Saiga* case.

9 31. Indeed, we say the UK’s line of argument could have disturbing implications for the  
10 correctness of some of the recent decisions made by the International Tribunal for the Law of  
11 the Sea. Let’s take an example, the *Arctic Sunrise* dispute between the Netherlands and the  
12 Russian Federation. There, in assessing questions of urgency and irreparable harm in respect  
13 of a request for provisional measures, did the Tribunal ignore the human rights dimension of  
14 the detained crew? No, it did not. It recited in its Order, with apparent approval, the  
15 submissions of the Netherlands on that point. Does the Convention on the Law of the Sea  
16 refer to international human rights law? No, it does not. On the United Kingdom’s narrow  
17 view of when general public international law might be relevant to a dispute arising under the  
18 Convention, such recourse was either improper, or would only have been relevant in cases  
19 where detention was expressly provided for under the Convention, as for example in the case  
20 of certain fisheries and pollution violations. But that was not the approach taken by the  
21 Hamburg Tribunal, and we say rightly so.

22 32. One of the academic commentators relied upon by the United Kingdom is Professor Talmon.  
23 Mauritius submits that Professor Talmon is correct in part in his writing. He explains, quite  
24 simply, that issues of general customary international law may be adjudicated by a Part XV  
25 Tribunal where there is what he calls a “genuine link” to a case falling within the Tribunal’s

1 jurisdiction. So, too, Professor Boyle – in his 1997 article – where he wrote of “necessary”  
2 questions of general international law arising under Article 293. And similarly, Judge Rao of  
3 the International Tribunal for the Law of the Sea has written of a “necessary connection.”<sup>106</sup>

4 We have no difficulty with any of these qualifiers. The test articulated by Professor Talmon  
5 is that public international law issues must have a “genuine link” with a Convention dispute  
6 falling within Part XV. We support that view. We do not depart from that view in any way,  
7 although we do disagree with some of his other conclusions, Professor Talmon’s conclusions.

8 33. And this is precisely why the International Tribunal for the Law of the Sea was able to  
9 make general rulings on public international law, the use of force by law enforcement  
10 authorities in *MV Saiga No 2*, an issue not addressed by a Convention. It’s why the Tribunal  
11 in *Guyana v Suriname* was able to interpret and then apply provisions of the United Nations  
12 Charter, despite the objections of counsel that such a course of action was never  
13 contemplated by the drafters of UNCLOS. Again, the skies have not fallen. This is why the  
14 very same Arbitral Tribunal was not frightened off from finding jurisdiction by the strongly  
15 argued initial assertions of *Suriname* that the dispute involved questions touching on  
16 territorial sovereignty, namely the location of the land boundary terminus. This is why the  
17 International Tribunal for the Law of the Sea was able to properly consider questions of the  
18 human rights of the detained persons in its Order for provisional measures in the *Arctic*  
19 *Sunrise*. The claims by the United Kingdom in its Rejoinder (4.26 to 4.29) that these  
20 authorities are not analogous are misconceived and miss the point. In all three cases the  
21 international rules in question were to be found elsewhere than in the Convention, were  
22 found to be sufficiently linked to the relevant dispute under the Convention to come within  
23 the scope of Article 293, and they were applied by the Part XV Tribunal.

---

<sup>106</sup> MM, paras. 5.27-5.27; P. Chandrasekhara Rao, “Delimitation Disputes under the United Nations Convention on the Law of the Sea: Settlement Procedures”, in T. M. Ndiaye and R. Wolfrum (eds.), *Law of the Sea, Environmental Law and Settlement of Disputes: Liber Amicorum Judge Thomas A. Mensah*, p. 877, at p. 892 (MR Annex 114); Arbitrators’ Folder Tab 13.4.

1 34. The UK has made one concession: it now accepts that Mauritius is not seeking to *expand* the  
2 jurisdiction of the Tribunal by reference to the applicable law provisions of Article 293, and  
3 we're grateful for that concession. We will take them where occasionally they arise. But  
4 the effect of the UK's argument, conversely, is to *reduce* the jurisdiction by reference to an  
5 impermissibly narrow interpretation of that Article. The only question, we say, governing the  
6 incidental jurisdiction of this tribunal is whether a genuine link exists between a dispute  
7 arising under the Convention and other matters governed by public international law or a  
8 necessary connection, and we say plainly there is in the interpretation and application of the  
9 meaning of the words coastal State.

10 **b. Exclusions under Article 297 and 298**

11 35. So, I turn to the exclusions under Articles 297 and 298. We submit that all aspects of this  
12 dispute before this Tribunal concern the interpretation or application of the Convention, the  
13 first question to be considered. So, let's now turn to the second question, namely whether the  
14 dispute as to whether the United Kingdom is a "coastal State" entitled to proclaim an MPA,  
15 or an EPPZ, or an EEZ or whatever it wants to call it – is excluded by any of the limitations  
16 and exceptions to jurisdiction set out in Articles 297 and 298. On its face it is not excluded,  
17 as the UK is bound to recognise. Compulsory procedures entailing binding decisions are  
18 available in every dispute concerning the interpretation or application of the Convention,  
19 unless an exception applies. The exceptions to this general principle are clearly stated.  
20 They're formulated in Part XV, section 3 of the Convention, as being either of general,  
21 automatic application—we call the automatic exceptions under (Article 297) or optional  
22 application where a State party has filed a declaration (Article 298), optional exceptions.  
23 None of the exceptions apply to address the question of whether the United Kingdom is a  
24 "coastal State." The United Kingdom is not able to argue otherwise.

1 36. These provisions do not refer to questions of entitlement or sovereignty, except in paragraph  
2 1(a)(i) of Article 298, to which I will turn shortly. As I have already noted, Article 298 offers  
3 no direct assistance to the United Kingdom, because it's not made a declaration in respect of  
4 para 1(a)(i). The UK's attempt, therefore, is to rely indirectly on that provision to support its  
5 argument, and I'm going to return to that.

6 37. In any event the limitations in 297 and 298 concern the *exercise* of sovereignty in certain  
7 respects – with regard to fisheries for example. They do not address the entitlement to act as  
8 a coastal State (except perhaps in relation to 1(a)(i) of 298). But the United Kingdom is out  
9 of that.

10 38. So, again, it's for the UK to show that there is some limitation or exclusion that applies to  
11 this dispute. And it's our contention that they are unable to do so.

12 **c. Jurisdiction over issues of sovereignty under Part XV/Article 298(1)(a)**

13 39. By showing the dispute is one 'concerning the interpretation or application' of the  
14 Convention, and not excluded 297 or 298, we arrive at the conclusion that the dispute is  
15 indeed within the jurisdiction of the Tribunal. But I need now to return to the argument of the  
16 United Kingdom, perhaps their central argument, that any dispute which may be construed as  
17 necessarily involving a question of sovereignty is *inherently* beyond the jurisdiction of a Part  
18 XV Tribunal despite the fact that there is nothing in the Convention that says that.

19 40. The argument put by the United Kingdom before this Tribunal has also been made in various  
20 other cases. And as things stand in Bangladesh versus India, it is not one that appears to  
21 have found general currency. The *Guyana/Suriname* case eventually ended in a satisfactory  
22 outcome, apparently, for both states and a co-filing of a joint submission. I would note the  
23 same positive outcome in the case between Argentina versus Ghana, which was resolved  
24 very expeditiously and to the satisfaction of both States because of the intervention of  
25 International Tribunal for the Law of the Sea. That intervention was made in the face of a

1 rather determined argument on the part of Ghana that the Tribunal did not have jurisdiction.  
2 And, of course, those are arguments with which I have a certain familiarity. The reality is  
3 that when the Convention and Part XV are wisely and pragmatically interpreted, the system  
4 can be made to work as it did in the Argentina/Ghana case. The further reality is that whether  
5 an Annex VII Tribunal can make determinations on certain issues of sovereignty is not really  
6 an issue as such any more. The UK appears to be a holdout, although one rather suspects  
7 that this more for presentational purposes in this case, the issue of the jurisdiction, as I've  
8 mentioned, not even argued in *India versus Bangladesh*, as many of us in this room know.  
9 And one assumes that the Tribunal will proceed to exercise jurisdiction to decide the location  
10 of the land boundary terminus in the Hariabangha River, and sovereignty over land on either  
11 side.

12 41. So, how did we arrive at this position? The only reference to sovereignty disputes in the  
13 dispute settlement provisions of the Convention is found in Article 298(1)(a)(i). The  
14 President of the Third Conference on the Law of the Sea stressed that this article contained as  
15 he put it “delicate compromises that had been very carefully negotiated”.<sup>107</sup> The text should  
16 thus be approached on the basis that it is the authoritative expression of the parties’ will, and  
17 can be interpreted without recourse to extra-textual presumptions as to the intentions of the  
18 negotiators.

19 42. That provision, 298(1)(a)(i) makes provision for two situations:

- 20 • first, delimitation or historic bay disputes that arose before UNCLOS entered into force, they  
21 may be totally exempted from the Convention’s third-party dispute settlement procedures;
- 22 • and secondly, disputes arising after the Convention enters into force are subject to  
23 compulsory conciliation, but there is an exception if such a dispute necessarily involves the  
24 concurrent consideration of sovereignty over territory.

---

<sup>107</sup> MR, Annex 81, para 7.

1 43. The reference to sovereignty-related claims acts only as a limitation upon an exceptional  
2 conciliation procedure, which in turn applies only if a declaration has been made 298(1)(a).

3 We say the result of this drafting is plain: to the extent that a dispute concerning the  
4 interpretation and application of the Convention is not excluded from the jurisdiction of the  
5 dispute settlement system it is necessarily covered. Professor Boyle has put it in these terms in  
6 his 1997 article. I'm not going to take you to it, but it is Tab 2.15, folder page 94, and I'll just  
7 read it out. This is what he wrote in 1997: [Tab 2.15] [folder page 94] "In some cases the  
8 delimitation of a maritime boundary may necessarily require a decision concerning disputed  
9 sovereignty over land, for example where an island is used as a basepoint for an EEZ or  
10 continental shelf claim. While parties to the Convention do have the option of excluding such  
11 disputes from compulsory jurisdiction under Article 298(1), the implication must be that, where  
12 this option is not exercised, a tribunal, including the ITLOS, may if necessary deal with both the  
13 land and the maritime dispute."<sup>108</sup>

14 44. Professor Boyle was entirely prescient, insofar as the practice and conduct of the  
15 *Guyana/Suriname* case and Bangladesh/India cases is anything to judge by.

16 45. Judge Rao, of the International Tribunal for the Law of the Sea, has concluded, where not  
17 excluded under 298(1)(a)(i) "a mixed dispute, whether it arose before or after the entry into  
18 force of the Convention, falls within the jurisdiction of a compulsory procedure," under Part  
19 XV.<sup>109</sup>

20 Now, this argument was put at more length by President Wolfrum as he then was in his speech  
21 before the United Nations in 2006, and I put that in at Tab 13.2, and I wonder if I could take you  
22 to that. I should say I hesitated slightly about putting this in. There is a sort of unwritten  
23 convention that one does not put the writings, the academic writings of arbitrators or judges

---

<sup>108</sup> MR Annex 103, Boyle, A.E., "Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction" (1997) 46 *International and Comparative Law Quarterly*, p. 49.

<sup>109</sup> MM, para. 5.27.

1 before whom one appears into the Folder. But this was not such a writing. This was a  
2 statement made, as you see on the front page, page 448 by Judge Wolfrum in his capacity as  
3 President of the International Tribunal for the Law of the Sea to the informal meeting of legal  
4 advisers in New York in October 2006. If I could just take you into that to page 453 of the text.  
5 And we accept entire that this conversation, these words are related to maritime boundary issues.  
6 That's what it says in the second paragraph down. It is apparent that maritime boundaries  
7 cannot be determined in isolation without reference territory, and then he goes on. Moreover,  
8 sea boundaries are associated with sovereignty, such as the determination of entitlements over  
9 maritime area, the treatment of islands, the identification of the relevant basepoints, whether they  
10 are located at sea, in river mouths, or on terra firma or the fixing of baselines, including  
11 archipelagic baselines. And then if we go to the next paragraph, I'd like to read that one out in  
12 full. [Tab 13.2] [folder page 453]: "Issues of sovereignty or other rights over continental or  
13 insular land territory, which are closely linked or ancillary to maritime delimitation, concern the  
14 interpretation or application of the Convention and therefore fall within its scope. This may be  
15 evidenced by a reading a contrario of Article 298, paragraph 1(a), namely, in the absence of a  
16 declaration under Article 298, paragraph 1(a), a maritime delimitation dispute including the  
17 necessarily concurrent consideration of any unsettled dispute concerning sovereignty or other  
18 rights over continental or insular land territory is subject to the compulsory jurisdiction of the  
19 Tribunal, or any other court or tribunal." Now, we accept entirely from the previous paragraph  
20 that related to maritime boundaries, but, of course, we do now have a situation of maritime  
21 boundaries in this case because the delineation issue, we say, is a maritime boundary issue. But  
22 even going beyond that, there is nothing in this text that says it is only limited to those kinds of  
23 situations, so say this is an entirely correct way of approaching the issue, and we're not alone in  
24 that view, as we will see.

1 46. Jurisdiction does not arise because of the *a contrario* reading; the *a contrario* reading merely  
2 confirms the point made by Article 293 that issues “closely linked or ancillary” to questions  
3 arising directly under the Convention are also questions “concern[ing] the interpretation or  
4 application of the Convention.”

5 Now, we noted in our Memorial that Professor Treves agrees that this logical *a contrario*  
6 argument from Article 298(1)(a)(i) prevents – prevents any sweeping assertion that a mixed  
7 dispute per se does not fall within Part XV. His position is that whether a particular mixed  
8 dispute falls within the Convention is to be assessed on a case by case basis [Tab 13.3] [Folder  
9 page 457; UK Authority 104] and we emphasize that. That is a hugely important point for our  
10 case. We are only inviting you to resolve the dispute you have before you. We are not  
11 inviting ex cathedra general statements that fall outside the particular factual and historical  
12 context of this case. If I can take you to the next tab, Tab 13.3, you will see an extract from  
13 Professor Treves’s article, if I could take you on to the second page of the excerpt, at page 457.  
14 It’s the central paragraph. I just want to take you to the last line of that at the bottom of that  
15 main paragraph under (e) compulsory jurisdiction on mixed land sovereignty and maritime  
16 boundary disputes, right at the bottom he writes: “the argument *a contrario sensu* here  
17 considered seems sufficient to discard the view that whenever a case presents a land aspect,  
18 compulsory jurisdiction of the courts and tribunals competent under the Convention should  
19 automatically be excluded.” And we say that applies equally in this case.

20 Judge Rao also makes the important point that the *a contrario* argument does not result in a Part  
21 XV Tribunal having competence, “to deal with land territory issues *per se*” as he puts it.<sup>110</sup>  
22 You’ll have this at Tab 13.4. I’m not going to go into it now. We’ve put a much longer  
23 extraction in the article, and we invite you to read the totality of that article. But his point is a  
24 really important one. He says there has to be a “necessary connection” to the dispute. That’s

---

<sup>110</sup> MR, Annex 114, bottom of p. 890.



1 at page 892 of the text of that article. [*Ibid*, p. 892.] In Judge Rao’s view you cannot hive off  
2 territorial issues: [Tab 13.4] [Folder page 473; MR Annex 114] And what he writes—well,  
3 since you’ve got it open, let’s go to it. It’s at page 473 of the text. I didn’t intend to detain  
4 you further, but it’s at the top of page 473.

5 ARBITRATOR GREENWOOD: Professor Sands, my copy has got what looks  
6 like some highlighting down the side of certain pages. Are those passages –

7 PROFESSOR SANDS: It doesn't, actually. I noticed that. It's not my  
8 highlighting.

9 ARBITRATOR GREENWOOD: We just ignore it?

10 PROFESSOR SANDS: It's not my highlighting.

11 The bit I want to take you to is at page 473, top of the page, first line after the Footnote  
12 58: “Maritime rights derive from the coastal state sovereignty over the land. The terrestrial  
13 territorial situation thus constitutes the starting point for the determination of the maritime rights  
14 of a coastal state.” [*Ibid*, p. 892] Islands, too, enjoy the same status, and therefore generate the  
15 same maritime rights as other land territory. And then he says, “There may be a number of  
16 situations in which the determination of entitlements over land is a must before disputes  
17 concerning sea boundary delimitations are resolved.” Again, he’s writing about sea boundary  
18 delimitations, but there’s no reason in principle why that cannot apply more broadly and why it  
19 would not apply to a sea boundary delineation as we have in this case or, indeed, more generally.

20 47. We would submit that the approach adopted by Judge Rao is an entirely correct statement of  
21 the law. Moreover, we say it is not one that on its face is limited to maritime delimitation  
22 questions. Now, I’m going to move on to that, but I notice the time, President Shearer, and  
23 I wonder whether this is a convenient moment to stop for lunch.

24 PRESIDENT SHEARER: Yes, I think it would be, Professor Sands, so we’ll  
25 adjourn until 2:30.

1

(Whereupon. at 1:01 p.m., the Hearing was adjourned until 2:30 p.m., the same

2

day.)



1 point about the distinction between delimitation and delineation, and we can't see any reason  
2 of principle why they would be treated differently. Delimitation is simply the most obvious  
3 case in which they could arise. But as we've seen with the little anecdotes I gave at the  
4 outset, the law evolves at the time new issues emerge. The UK makes the obvious point in  
5 its Rejoinder at paragraph 4.34 (UKR, para. 4.34) that the Article 298(1)(a)(i) provision deals  
6 solely with disputes regarding sea boundary delimitation and historic bays or titles. But  
7 Mauritius isn't arguing that this dispute falls within that provision as such since it refers to  
8 Article 1574 and 83. Rather, the provision illustrates the very point made by Mauritius – that  
9 there is no *exclusion* in the Convention of jurisdiction over mixed disputes either in the  
10 narrow sense of those arising in maritime delimitation cases or the broader sense of questions  
11 of public international law over which a Part XV Tribunal may properly exercise incidental  
12 or ancillary jurisdiction. Even Professor Talmon – one of the authorities upon which the  
13 United Kingdom relies – concedes that the Convention is silent as to mixed disputes.<sup>111</sup>

14 50. The result of a proper *a contrario* understanding of Article 298(1)(a)(i) is not that all  
15 sovereignty disputes are automatically included under the Convention, it is that such disputes  
16 *are not automatically excluded*. Not every question relating to land will fall within the  
17 Convention, only those which must necessarily be dealt with in order to resolve a dispute that  
18 is within the Convention. The question is, as Professor Treves has put it, “whether the  
19 dispute, as a whole, as a whole, can be seen as being about the interpretation or application of  
20 the Convention.”<sup>112</sup> And we have to say we would find it extraordinary that the Tribunal  
21 could conclude the dispute as a whole is not about the interpretation or application of the  
22 Convention.

23 51. If, indeed, mixed disputes were not otherwise covered by the Convention's jurisdiction, there  
24 would have been no need for the specific exclusion in the last clause of Article 298(1)(a)(i) –

---

<sup>111</sup> UK Authority 39, page 34.

<sup>112</sup> UK Authority 104, 77.

1 and that's precisely the point noted by the powerful troika of Professor Boyle and Treves  
2 and Judge Rao.

3 52. To counter this obvious point, the United Kingdom repeatedly asserts that it is  
4 'inconceivable' that States would have agreed to the determination of matters of territorial  
5 sovereignty without an opt-out provision which went wider than 298(1)(a)(i).<sup>113</sup> But why is  
6 it inconceivable? Is the UK contending that there was a clear consensus view at the law of  
7 the sea negotiations that any *aspects of a maritime dispute* involving questions of sovereignty  
8 could never *under any circumstances* fall within jurisdiction under Part XV? That view is not  
9 supported by the negotiating history, as I'm about to show. Or does the United Kingdom  
10 contend in the alternative that a particular group of States advocated for the complete  
11 exclusion of questions of sovereignty or determination of who is a coastal State under Part  
12 XV and won on this issue – and the text of the Convention somehow reflects their will? That  
13 can't be right because there is no express exclusion in the Convention.

14 53. So, let's look at the real history of what happened. We say, of course, as a starting point you  
15 don't need to look at this history because the text is clear, and you are not required to go the  
16 travaux préparatoires. But if you do want to go to the travaux préparatoires, it supports  
17 Mauritius' contentions. Some States, it is plain, and possibly a majority on the basis of the  
18 record, favoured a dispute settlement system with no exceptions at all – even in the case of  
19 territorial questions. And I'm going to return to this in a moment. Other delegations argued  
20 against either a compulsory dispute settlement system or its ability to touch on questions of  
21 sovereignty, or both.

22 54. Andrew Adede has written on this, and as he puts it, numerous States during the negotiations  
23 of the Convention feared that the automatic exclusion from Part XV of any dispute involving  
24 a "claim to sovereignty" "would be used as a pretext for completely excluding from

---

<sup>113</sup> UKCM, para. 4.48; UKR, para. 4.36.

1 compulsory procedures all legitimate delimitation disputes.”<sup>114</sup> And here, of course, we face  
2 a parallel situation. The United Kingdom seeks to exclude the entirety of Mauritius’s case  
3 because it says there’s a long dispute between the parties in relation to the Chagos  
4 Archipelago. But it is plain that the sweeping exclusion of sovereignty disputes for which the  
5 United Kingdom advocates would not have attracted general support in the negotiations, and  
6 it did not. Numerous disputes, especially those concerning maritime delimitation, but not  
7 exclusively, could simply be knocked out by a respondent State asserting that the case  
8 involved an underlying dispute as to sovereignty. So there was no consensus on a blanket  
9 exclusion, and there was no provision.

10 55. Indeed, as you will be aware, I’m sure, such an express exclusion was proposed and it was  
11 rejected during the Third Conference. The President of the Conference specifically referred  
12 in his report of the 23<sup>rd</sup> of August 1980 to a proposal that, “past or existing delimitation  
13 disputes *as well as disputes relating to sovereignty over land or insular territories*” should be  
14 placed within the automatic exceptions to the compulsory dispute settlement system.<sup>115</sup>

15 56. As the editors of the Virginia Commentary put it, the President of the Conference held that  
16 such, “proposals to transfer, as general exclusions, the exclusions relating to past disputes or  
17 existing disputes *and to disputes relating to sovereignty over land or insular territories*, from  
18 Article 298, paragraph 1(a), *to Article 297, could not be accepted.*”<sup>116</sup>

19 57. The United Kingdom faced with this troublesome conclusion suggests that the reaction of the  
20 President can be discounted. Why? It merely reflects the pressures of time and the need not  
21 to upset a delicate compromise already reached. Well, there is no evidence in what the  
22 President said in his report that time was the deciding factor. We’re in agreement with the  
23 United Kingdom that the reason this proposed amendment was refused was because the text

---

<sup>114</sup> MR Annex 93, 175.

<sup>115</sup> MR, Annex 81

<sup>116</sup> MR, Annex 94, p. 192.

1 of the Article we are now discussing was indeed a carefully negotiated and delicate  
2 compromise.

3 58. Why was it such a delicate matter? The UK contends the delicacy was in the phrasing of  
4 Article 298(1)(a)(i) but it was nonetheless generally understood that sovereignty disputes  
5 were excluded from Part XV. We say it's difficult, with the greatest respect, to make sense of  
6 this argument. Assuming the UK to be correct, how would copying the agreed language to be  
7 found already in 298(1)(a)(i) and adding it to the automatic exclusion in Article 297 (merely  
8 to reflect a limitation on dispute settlement which was already universally agreed) have upset  
9 any delicate balance? The answer is that it would not.

10 59. The only way transferring the language automatically excluding sovereignty disputes to  
11 Article 297 could have upset a delicate compromise was if no consensus had been reached in  
12 support of such an automatic, general exclusion. This would only follow if there was a  
13 dispute between those who wished cases involving a claim to sovereignty to be automatically  
14 excluded from the Convention and those who did not. If the question was as plain and  
15 obvious as the UK now puts it and the agreement so overwhelming, then the amendment to  
16 what is now Article 297 would presumably have passed. It is fatal to the United Kingdom's  
17 line of argument that it did not.

18 60. It should not be necessary to detain the Tribunal further on this point, but the UK raises a  
19 number of further objections to a plain language reading of the Convention. First it contends  
20 that none of the negotiators had in mind the question of sovereignty disputes outside cases  
21 involving maritime delimitation.<sup>117</sup> Looking into the minds of so large a number of  
22 individuals who negotiated over so lengthy a period of time is always likely to be an exercise  
23 that is fraught with difficulty. But there is evidence available, and that evidence shows  
24 clearly that this was not the case.

---

<sup>117</sup> UKR, para. 4.43.

1 61. We have shown that in Chile's view, for example, there was an 'ample majority' supporting  
2 a compulsory dispute settlement system which: (a) did not allow for the optional exclusion of  
3 maritime delimitation disputes; and (b) did cover questions of sovereignty over territory.  
4 Similar views were expressed by many other states, including Peru, Malta and Greece – and  
5 Pakistan in particular, which endorsed Chile's position.<sup>118</sup> So, it simply cannot be contended  
6 that the issue was: (a) not in the mind of negotiators or (b), if so, it only arose in connection  
7 with delimitation disputes. Again, the United Kingdom's contention that the historical record  
8 demonstrates these issues were either not considered, or if they were, they were considered  
9 only in the context of delimitation disputes, withers on first scrutiny.

10 62. The UK's response on this point is – somewhat cryptically it has to be said – to suggest that  
11 whatever the Chilean delegation may have appreciated the situation to be, its 'ample  
12 majority' view did not prevail. Certainly, it's obvious from looking at the text that the  
13 Convention permits, contrary to Chile's position in negotiations, 'the optional exclusion of  
14 maritime delimitation disputes', but it does not go any further than that.

15 63. But the reason that Mauritius mentions the remarks of the delegation of Chile is simple for  
16 another reason. There was a genuine debate over the extent to which sovereignty matters and  
17 whether or not a state is a coastal state should fall within Part XV. The UK's argument there  
18 was a universal understanding that sovereignty disputes were excluded is not only not  
19 established, it is wholly untenable. The lack of consensus is what made the wording of  
20 Article 298(1)(a)(i) a delicately crafted compromise capable of disruption by the  
21 transposition of some or any of its language into Article 297.

22 64. The correct conclusion from this history, we say, is this: the position of the words providing  
23 for the exclusion of territorial disputes from the scope of Part XV among the *optional*

---

<sup>118</sup> MR, p. 205, footnote 759.



1        *exceptions* to jurisdiction was deliberate. Attempts to move such wording to the provisions  
2        dealing with *automatic exclusions* from jurisdiction were made and were rejected.

3        65. Nonetheless, the United Kingdom seeks to lead the Tribunal to a different conclusion by  
4        quoting academic commentators – some of whom they say were present as part of national  
5        delegations at the Third Conference and some of whom were not. The United Kingdom has  
6        provided a list of 16 relevant commentators and has suggested that Mauritius has been  
7        unduly dismissive in its approach to them. We have not. We have read every single thing  
8        that has been put in.

9        66. To be plain, we invite you to put to one side those commentators who either provide *no*  
10        *reasoned justification* for their interpretation of the Convention, or those who assert *without*  
11        *reference to the historical record* that the Convention must be interpreted against the  
12        background of certain assumptions. Mauritius would further point out that most of these  
13        commentators did not have the benefit of the case law of Part XV tribunals when they wrote.

14        67. Several commentators, a number of them quite eminent, simply quote the text of 298(1)(a)(i)  
15        and then assert without any intermediate reasoning, indeed without any reasoning, that it  
16        excludes all sovereignty disputes from the scope of Part XV.

17        68. Let's look at the UK 16.<sup>119</sup> We've given them very close attention and suggest the Tribunal  
18        if interested in this point may wish to do the same. Of those 16:

- 19        • two were writing before the Convention was concluded in 1982;
- 20        • a further 5 were writing before it came into force in 1994;
- 21        • another 6 were writing before the case-law and practise of Annex VII arbitral tribunals on  
22        delimitation matters got under way, including, as well as ITLOS practice, including the  
23        issues that were raised in some of the cases that I've mentioned were not raised and not  
24        argued, for example, in *Bangladesh v Suriname*.

---

<sup>119</sup> UKR, para. 4.42.

1 69. So, of the 16, you are left with three commentators: Messrs Torres Bernárdez, Yee and  
2 Talmon. Mr. Torres Bernárdez does no more than express an extremely preliminary view that  
3 Article 298(1)(a)(i) is not consistent with Part XV giving jurisdiction over sovereignty. He  
4 says no more than that. Yee relies on a remark reportedly made by the President of the Third  
5 Conference in 1977. And Talmon makes an argument that we actually find rather helpful.

6 70. Put another way, we've taken pains in reviewing these 16 authors. Many, we think it's at  
7 least eight, merely assert that Part XV cannot cover issues of territorial sovereignty: they  
8 offer no footnote and no explanation and no reasoning, beyond – at most – a bald reference to  
9 the words of Article 298(1)(a)(i), unaccompanied by any further textual analysis. We put  
10 Professor Sohn in this category and note the posthumous co-authors of his *Law of the Sea in*  
11 *a Nutshell* did not agree with him when the time came to revise his work.<sup>120</sup> Another three  
12 attempt some explanation of their views but offer no reasoning at all beyond a sentence or  
13 two (that is Churchill, Oxman and Thomas). Closely read, at least two of the authors cited do  
14 not actually seem to rule out the possibility of jurisdiction in at least some sovereignty  
15 disputes (Torres Bernárdez and Smith). In fact quite a few of the authors cited use language  
16 along the lines of the Convention *seeming*, or *appearing* to, or *probably*, excluding such  
17 disputes, but they don't actually offer a firm conclusion. One author (Adede) makes the  
18 historical point that the President of the Conference in 1977 said, *in his view*, territorial  
19 disputes would not fall within Part XV and another, Yee, simply repeats that observation. So,  
20 in terms of substantive reasoned argument, we were just left with Professor Talmon, and no  
21 doubt that is why the United Kingdom has embraced him.

22 71. He does make arguments proceeding from the text. He observes that on its face, for example,  
23 the Convention does not regulate questions of title to territory and that such questions would  
24 ordinarily be left to general public international law. From this Professor Talmon appears to

---

<sup>120</sup> MR, para. 7.45.

1 suggest that questions of sovereignty could only ever give rise to a parallel dispute; that is,  
2 maritime questions result in a dispute capable of being dealt with by the Convention while  
3 sovereignty questions are left to general international law.

4 72. But, even Professor Talmon acknowledges that first:

- 5 • where there is a well-founded dispute under the Convention, Article 293 allows the Tribunal  
6 to consider and apply rules of general international law having a “genuine link” to the dispute  
7 under the Convention; and second, that
- 8 • the Convention is on its face silent as to the question of mixed dispute.

9 73. With respect, Professor Talmon’s argument does not sustain his apparent conclusion that  
10 sovereignty disputes can never fall within Part XV. Rather, we say that his arguments lead to  
11 a conclusion that only such sovereignty disputes as have a “genuine link” to a maritime  
12 dispute under the Convention fall within Part XV. And this, once more, is nothing more than  
13 that which Mauritius has argued from the very outset of this case.

14 74. Against this rather solitary figure referred to rather summarily with his 15 colleagues by the  
15 United Kingdom – and I would just pause here to note that you will observe the striking  
16 difference that is placed on the significance of the views of these lawyers and international  
17 lawyers rather than those (on another matter, it must be said) expressed by its own legal  
18 advisers, including the youthful Mr. Aust and the not so youthful Messrs. Steel and Watts –  
19 there are, of course, alongside all these matters a myriad of other views. I’ve already taken  
20 you to some of them. I suppose we could play the numbers game. I’m not sure that’s very  
21 helpful. I’ve taken you to the views of present or former judges of ITLOS, of Annex VII  
22 arbitrators, and of other commentators. We have already taken you to the academic article  
23 written by Professor Boyle in 1997, which we inserted at Tab 2.15. This is, as is all of his  
24 work, a fully reasoned and properly researched academic article, scholarship at the genuine  
25 level.

1           So, let's return to Professor Boyle, also in his academic capacity. What did the United  
2 Kingdom have to say about that article written in 1997? At paragraph 4.9 of its Rejoinder, the  
3 United Kingdom says that the passage that we refer to from his 1997 article has become "a  
4 mainstay" of this part of Mauritius's case. We'll allow the exaggeration. It's not a mainstay.  
5 Let's just say it's a source of inspiration. The United Kingdom made some effort in its Rejoinder  
6 to show that the paper by Professor Boyle does not support Mauritius' argument, and that there  
7 cannot be Part XV jurisdiction. What do they say? Professor Boyle, says the United Kingdom,  
8 was referring only to issues such as whether or not a territory was a rock or not within Article  
9 121(3), not to questions of sovereignty over territory more generally. I have argued on the first  
10 day that if you read that article, that conclusion is not justified by the words that are actually to  
11 be found on the printed page, but words that are found on the printed page appear to be of little  
12 importance on occasion to the United Kingdom. Let's put aside that debate on what Professor  
13 Boyle did or did not intend back in 1997. Let's look instead at a more recent article written by  
14 Professor Boyle which settles the matter conclusively and which confirms our interpretation and  
15 our approach both of what he said in 1997 and what is the correct approach today. At Tab 13.5,  
16 and we've put it in in full in fairness to Professor Boyle, you will find an article that was  
17 published in 2007. At page 481 of our folder, you will see the heading is 'Forum Shopping for  
18 UNCLOS Disputes Relating to Marine Scientific Research.' The article is concerned with Part  
19 XIII of the Convention. It has no intention to deal with delimitation or boundary issues. In  
20 the article Professor Boyle offers a detailed example about a sovereignty dispute. It, in fact,  
21 concerned with a rock, but it could quite equally be an island. Please turn to page 490 in the  
22 bottom of Mauritius folder page 490. If I could take you to the bottom of that page, and I'm  
23 going to take it slowly and read you through. Towards the bottom you see a sentence beginning  
24 "However." If I could just direct you to that point, "However, Article 298 allows states to make  
25 a declaration opting out of one or more of the four compulsory procedures with respect to

1 disputes which concern delimitation of the territorial sea, EEZ or continental shelf or which  
2 involve historic bays or title. When this right to opt out is exercised, an obligation arises to  
3 submit the dispute to non-binding conciliation unless it necessarily involved disputed  
4 sovereignty over islands or land territory when no compulsory process of any kind is required.”

5 And we move on to the next page, page 491 of the Judges’ Folder.

6 “Now suppose that we have a research ship undertaking marine scientific research in  
7 continental shelf waters near Atlantis, a pinnacle of rock claimed by Gormenghast and Ruritania.  
8 If the ship is British, and is arrested by either Gormenghast or Ruritania, we will simply have a  
9 dispute about whether the ship is engaged in High Seas research or continental shelf or EEZ  
10 research. The entitlement of rocks such as Atlantis to an appurtenant shelf or EEZ may be an  
11 issue, and the interpretation and application of Part 13 will be an issue, but the competing  
12 territorial claims of Ruritania or Gormenghast to sovereignty over Atlantis need not be, and it  
13 would serve no purpose for the UK to try to make them an issue. There would appear to be  
14 compulsory jurisdiction in this case: It remains a dispute about marine scientific research.”

15 “Then suppose that the ship is Ruritanian, and is arrested at sea by Gormenghast, resulting  
16 in UNCLOS proceedings initiated by Ruritania. Here we inevitably have a territorial sovereignty  
17 dispute. If the Atlantis rock belongs to Ruritania, then Gormenghast has no right to arrest a  
18 Ruritanian vessel for carrying out unauthorized research in the vicinity of Atlantis. Ruritania  
19 cannot easily rely on the rock’s probable non-entitlement to an EEZ or a shelf if that would  
20 contradict its own territorial claim, and it cannot let Gormenghast’s implied territorial claim  
21 succeed by default. It has to argue that the ship was within Ruritanian waters when arrested by  
22 Gormenghast. This is no longer simply a dispute about marine scientific research in the EEZ or  
23 continental shelf, because it necessarily involves disputed sovereignty over territory and sovereign  
24 rights over adjacent maritime areas. A court or tribunal could not easily avoid those questions.  
25 But if Gormenghast has made the appropriate Declaration under Article 298 the dispute as

1 presented would appear no longer subject to compulsory binding settlement under Part XV.”

2 [Folder page 490].

3 76. I note the use of the words “no longer.” This is in relation to Part XIII. It could apply  
4 equally in relation to Part V, Part VI, Part X, Part XII. It’s not about maritime delimitation.  
5 Before the declaration was made under Article 298, assuming it was made, on Professor Boyle’s  
6 clear academic view expressed in 2007, the dispute on sovereignty in relation to a claim under  
7 Part XIII is subject to compulsory dispute settlement under Part XV. Our case is not a dispute  
8 about marine scientific research in the EEZ or continental shelf because Professor Boyle writes,  
9 it necessarily involves disputed sovereignty over territory and sovereign rights over adjacent  
10 maritime areas, a court or tribunal could not easily avoid those questions. This is bang on point.  
11 It is exactly the situation we face in this case. There is no wiggling out of what was written in  
12 that 2007 article. It is absolutely squarely in line with what Mauritius is arguing. Substitute  
13 the right to create a ‘marine protected area’ (under Part V of the Convention, for example) for the  
14 right to authorize or carry out marine scientific research (under Part XIII), and Professor Boyle  
15 offers us and the Tribunal exactly the reasoning that leads to the result we say this Tribunal is  
16 bound to reach in this case.

17 77. Not only has the list of authorities given by the United Kingdom as denying jurisdiction over  
18 sovereignty been shown to be less than convincing, but a member of the United Kingdom’s own  
19 team, admittedly in his academic capacity, has come out clearly in support of the powers of an  
20 UNCLOS tribunal to resolve sovereignty issues where ‘necessary’.

21 ***Conclusions***

22 78. This allows me to come to our conclusions. The UK seeks to persuade the Tribunal that it  
23 must first resolve a contentious question regarding mixed disputes and then, having settled that  
24 issue, place the present dispute within or without that category. The argument is, in effect, that

1 mixed disputes are not covered by Part XV – but even if they were, the sovereignty aspect of  
2 Mauritius’ case would be a creature of a different stripe.

3 79. We say these are the wrong questions to be asking. We have consistently submitted from the  
4 outset that:

- 5 • nothing on the face of the Convention excludes from consideration by a Part XV Tribunal  
6 disputes touching on sovereignty;
- 7 • We say that the first question will always be the existence of a dispute falling within the  
8 Convention (which this very plainly is); and
- 9 • We say relatedly that where such a dispute exists, the Tribunal may – indeed *shall* – apply  
10 other rules of international law which are sufficiently closely connected to the dispute; and
- 11 • We say finally that, it is entitled to rule, this Tribunal, in that regard on the meaning of the  
12 term “coastal State” given the facts of the present dispute and the legal significance of  
13 statements made by the United Kingdom regarding the special situation of Mauritius and its  
14 rights over these islands, a judgement that we accept will necessarily involve questions of  
15 general public international law which you are entitled to visit.

16 80. The United Kingdom has posed this question in its Rejoinder at paragraph 4.11 (UKR, para.  
17 4.11): if Mauritius is correct in its argument on jurisdiction ‘which contested territorial issue  
18 involving some island or mainland with a coastline could not be presented as a claim under  
19 UNCLOS whenever ...a coastal State exercised some form of right falling within one of the  
20 numerous articles of UNCLOS that establish the rights of the coastal State?’

21 81. Mr. President, contrary to the United Kingdom’s contention, to admit one dispute touching  
22 upon such matters is not to admit them all. I’ve shown that there is nothing in the Convention  
23 which in principle excludes a dispute affecting territorial sovereignty from the jurisdiction of a  
24 Part XV Tribunal. But not all such disputes will necessarily come within the jurisdiction of a Part

1 XV court or tribunal. This Tribunal is concerned with the facts of this case and this dispute and  
2 this case and this dispute only and no other. And in that regard:

3 82. The United Kingdom has explicitly acknowledged that:

- 4 • Chagos will be returned (not given) to Mauritius when no longer needed for defence  
5 purposes;
- 6 • that Mauritius has special interests over the long term in these islands; but
- 7 • the UK has made no protest – until these proceedings – with relation to the outer continental  
8 shelf;
- 9 • And the UK has acknowledged that Mauritius holds sovereign rights in reversion relating to  
10 the exploitation of mineral wealth on the continental shelf;
- 11 • And that Mauritius holds fisheries rights out to 200 miles going well beyond the need to  
12 respect the historic rights of artisanal fishing.

13 83. The threads of these acknowledgments may be drawn together into a single overarching  
14 conclusion which ring fences this case: the UK recognises that Mauritius is, for certain purposes,  
15 to be treated as the “coastal State” in relation to the Archipelago. That recognition – affirmed  
16 long ago, repeated on many occasions since – is the key to this case. It allows you to open the  
17 door that leads to the particular facts of this unique dispute, the very “special situation” on which  
18 Mr. Grieve addressed you on Tuesday.

19 84. These acknowledgements by the United Kingdom of the rights of Mauritius put this dispute  
20 in a category of its own. The rights in question are obviously intimately linked with Convention  
21 rights appertaining to the Archipelago. Furthermore, we’d remind the Tribunal of the nature of  
22 the obligations which the United Kingdom has breached in detaching the Chagos Archipelago  
23 from Mauritius. The fact that the United Kingdom is in continuing breach over more than five  
24 decades of so fundamental a principle of international law as the principle of self-determination,



1 the right to self-determination underlines the importance of this case to the Tribunal and to the  
2 international community as a whole, and of its special character.

3 85. We say that Mauritius is a “coastal state”, and we say the United Kingdom has recognised  
4 that it is a coastal state. There is nothing in the text of this Convention that requires you, or even  
5 allows you, to decline jurisdiction on that issue.

6 If I could now turn, having concluded those submissions, the response that we'd like to  
7 make to the question that was put by Judge Wolfrum just before the break, I will then conclude  
8 unless there are any questions from the Tribunal which, of course, I'm very happy to seek to  
9 address. But I wonder if I could just deal with the response first because it may relate.

10 Judge Wolfrum, this morning you asked Mauritius in effect – and we didn't have the  
11 written version of the text, so please forgive us if we haven't got it exactly right – how Mauritius  
12 could maintain a claim for breach of various articles of UNCLOS which are predicated on the  
13 existence or the exercise of the powers of a coastal State when Mauritius' core legal position is  
14 that the United Kingdom is not the coastal State for the purposes of the Convention.  
15 Specifically, you asked, as we understood it, what is the relationship amongst what you referred  
16 to as the three strands of the arguments put by Mauritius. In our Memorial, and I refer you to  
17 Paragraph 1.6, we set out the strands of that argument. In the first place we said, "The UK does  
18 not have sovereignty over the Chagos Archipelago, is not the coastal State for purpose of the  
19 Convention and cannot declare an MPA or other maritime zones in this area." And we went on  
20 to say at further, and I emphasize that word, so this is an additional argument, "the UK has  
21 acknowledged the rights and legitimate interests of Mauritius in relation to the Chagos  
22 Archipelago, such that the UK is not entitled in law under the Convention to impose the  
23 purported “MPA” or establish the maritime zones over the objections of Mauritius."

24 Our Reply also stated, just to be clear, that independently of the question of sovereignty,  
25 the “MPA” is fundamentally incompatible with the rights and obligations provided for by the

1 Convention. We explained in our Reply what we meant by this. Even if the United Kingdom  
2 were entitled in principle to exercise the rights of a coastal State and, of course, we say it is not  
3 in principle or otherwise, the purported establishment of the “MPA” is unlawful under the  
4 Convention.

5 We've had to run two arguments for obvious reasons. We've had to argue the claim of  
6 entitlement, and we've had to argue the Claim of exercise both under the Convention. The  
7 effect of your question, as we understand it, Judge Wolfrum, is this.

8 What is the position if United Kingdom is not the coastal State? Does that dispose of  
9 our arguments under the Convention? The problem we've had to face is that the UK has been  
10 acting on the basis that it has Convention rights in relation to the Chagos Archipelago, and  
11 further that it does, in fact, control the Archipelago and its waters. We've therefore had to argue  
12 under the rubric of the Convention provisions independently of the coastal State argument.

13 So, the issue calls for analysis given the interplay between the issues of jurisdiction and  
14 merits in the case. First, it's necessary to consider your question on the basis that either the  
15 Tribunal has jurisdiction over the entirety of Mauritius' claim or that it does not. By that its  
16 jurisdiction on this alternative argument is limited to claims that are predicated on United  
17 Kingdom status as a coastal State. It is, of course, for this Tribunal to decide as between these  
18 possibilities in the exercise of its *Compétence-Compétence*.

19 So, let's first consider the situation on the basis that the Tribunal were to decide that the  
20 United Kingdom's principal jurisdictional argument is correct and that the Tribunal has no  
21 jurisdiction to deal with issues that touch on sovereignty over land territory, irrespective of  
22 whether the Respondent State has made a declaration under Article 298. Of course, we say  
23 that's wrong, but let's proceed nevertheless on that assumption. On that assumption, the  
24 Tribunal will, we are bound to accept, have to decide on the footing that, for the purposes of this  
25 case and deciding the coastal State issue, the United Kingdom is to be treated as the coastal

1 State. Whether that designation is a valid one in law or not would necessarily have to be set  
2 aside if you don't have jurisdiction. The United Kingdom would have to be treated as  
3 indisputably exercising the powers of a coastal State, and on that assumption, the Tribunal  
4 cannot decide that such exercise is per se unlawful because there is no entitlement.

5 But even on that assumption there are a whole range of issues relating to the "MPA" that  
6 you would have jurisdiction to decide. These include – I just give four examples – first,  
7 whether the Lancaster House commitments, as affirmed and confirmed by senior British officials  
8 since 1968, are binding in international law, or bring legal consequence under international law.

9 Second, you would have to decide, if so, to what extent they're relevant, say, for the  
10 purposes of Article 2(3) and other provisions of UNCLOS to the Declaration and implementation  
11 of the "MPA".

12 Third, you would have to address the question of whether the reversion commitment  
13 places Mauritius in a special position as respects the exercise of the powers of the United  
14 Kingdom as a coastal State.

15 And another example of a question you might have to decide, fourth, is whether the  
16 declaration of the "MPA" contravened other provisions of UNCLOS on which we relied.

17 As to point A, the first one, the Lancaster House commitments, I would simply stress  
18 that, for the reasons we've explained, the Lancaster House commitments are binding on the  
19 United Kingdom whether or not the consent of Mauritius to excision in 1965 was lawfully or  
20 validly obtained. I'm not going to repeat Mauritius' substantive arguments on each of these  
21 points. We've set them out carefully and in full.

22 So, that's hypothesis one, let's call it. What about hypothesis two that you reject, United  
23 Kingdom's principal jurisdictional argument and hold that, as against a State Party which has not  
24 made a Declaration under Article 298(1)(a) and having regard to the acts by the United Kingdom  
25 recognizing that Mauritius has the attributes of a coastal State for some or all purposes, you have

1 jurisdiction to determine who is the coastal State in the context of this dispute over maritime  
2 rights in relation to the declaration of the “MPA”.

3           On that hypothesis, hypothesis two, you then get two possibilities, let's call them (a) and  
4 (b). Hypothesis 2(a) is that you might decide that United Kingdom is, in truth, the coastal State  
5 having regard to your exercise of jurisdiction. On that basis, you would then again come back  
6 to all the issues I have indicated, you would have to decide on hypothesis one. They don't go  
7 away. And then hypothesis 2(b), you might decide that United Kingdom is not the coastal  
8 State. It would follow that the declaration of the “MPA” was simply ultra vires. That would  
9 in itself resolve the dispute, and would give you, no doubt, very much less work in relation to  
10 what Mauritius has brought to the Tribunal, although not, of course, in the way the United  
11 Kingdom would want.

12           On that basis, other issues raised by Mauritius as to the modalities of the exercise of the  
13 powers of a coastal State might fall away, unless the United Kingdom were to argue that there  
14 was some other basis for the exercise of coastal State power, an argument not yet made, and  
15 which, ex hypothesi, you would have jurisdiction to decide, and we will have to see next week  
16 what the United Kingdom has to say and how this case evolves into its third week. And we all,  
17 of course, have experience with these cases that things do take curious turns in the course of the  
18 evolution of a case.

19           Now, you also referred in your question to Article 283 as well as the case as a whole, and  
20 so I just want to finish with something very brief on exchanges of views under Article 283.

21           As Ms. Macdonald mentioned this morning, views were exchanged between the Parties  
22 in regard to all three strands, as you have characterized it, Judge Wolfrum, of Mauritius'  
23 argument. For example, at the bilateral talks held in January and July of 2009. And the  
24 records are very helpful and consistently clear in that regard. We would invite you, when  
25 you're reviewing the contemporaneous records of these meetings, both of those prepared by

1 Mauritius and the United Kingdom to take account of the fact that views were exchanged on  
2 three things, amongst others: One, sovereignty over the Chagos Archipelago and the  
3 consequent matter of which State is the coastal State.

4 Two, whether the United Kingdom's actions, including what was then the plan to  
5 establish an MPA, violated specific provisions of the Convention.

6 And, three, whether these actions and plans violated the specific undertakings given by  
7 the United Kingdom to Mauritius. You can find the records of these meetings at Tabs 8.4, 8.6,  
8 8.10, and 8.11, and we think they are sufficient to dispose of the matter. If for some reason you  
9 think they are not, which we do not think can be the case, the exchanges between Prime Minister  
10 Ramgoolam and Prime Minister Brown, we would say, are finally dispositive of the matter.  
11 The events of November 2009 and subsequently.

12 Mr. President, that concludes our response to Judge Wolfrum's questions, and my  
13 submissions for the afternoon. Unless there are any questions, I would invite you to invite Mr.  
14 Loewenstein to the bar.

15 PRESIDENT SHEARER: Thank you very much, Professor Sands, and I would  
16 call Mr. Loewenstein.

17 Mr. Loewenstein, before you start, I note that we are due to take a break in half an  
18 hour's time, ten to 4:00. I leave it to you to indicate the point at around about that time where  
19 you would find it convenient to pause. Thank you.

20 MR. LOEWENSTEIN: I shall, Mr. President.

21 **Speech No. 14: Jurisdiction**

22 **Andrew Loewenstein**

23 1. Mr. President, members of the Tribunal, good afternoon. My task will be to address  
24 the Tribunal's jurisdiction over the UK's breaches of Parts V, VI and XII of the Convention as well  
25 as Article 7 of the Fish Stocks Agreement.

1           2.           My presentation will be in three parts. I will *first* describe the provisions of the  
2 Convention that are relevant for determining whether you have jurisdiction over these claims. I  
3 will then show that the claims fall within your jurisdiction because they concern the contravention  
4 of specified international rules or standards for the protection and preservation of the marine  
5 environment, matters over which you have jurisdiction under Article 297(1), and that the UK’s  
6 attempt to recharacterize the “MPA” as a fisheries conservation measure does not succeed. I will  
7 show that, even if the UK were correct in characterizing this as a fisheries dispute, you would still  
8 have jurisdiction because the claims would fall within the grant of jurisdiction over fisheries  
9 disputes set out in Article 297(3), and that they do *not* fall within the exception to jurisdiction  
10 relied upon by the United Kingdom.

11           3.           As the Tribunal is aware, the evaluation of jurisdiction under UNCLOS begins with  
12 Articles 286 and 288, which provide that subject to section 3, any dispute concerning the  
13 interpretation or application of the Convention is within the jurisdiction of a Part XV tribunal. In  
14 other words, *all* disputes concerning the interpretation or application of the Convention are subject  
15 to compulsory procedures under Part XV unless an exception found in section 3 applies. Or, if I  
16 may put it this way, all disputes are *within* your jurisdiction, unless an exception rules them *out*.  
17 The only exceptions found in the Convention are located in two places: automatic limitations on  
18 jurisdiction are found in Article 297; and optional exceptions to jurisdiction are found in Article  
19 298. None of the 298 exceptions are relevant to Mauritius’ claims under Parts V, VI or XII, so I  
20 will confine my remarks to 297.

21           4.           Article 297 addresses four categories of disputes. If a dispute falls within any of  
22 these four categories, a tribunal constituted under Part XV will have jurisdiction. The only  
23 exception is for fisheries disputes that fall within the limitation found in 297(3)(a), which applies  
24 to disputes relating to a coastal State’s sovereign rights with respect to the living resources in the  
25 EEZ or their exercise, and for disputes that are subject to conciliation under 297(3)(b). Except for

1 these cases, all disputes addressed by Article 297 are within the jurisdiction of an Annex VII  
2 tribunal.

3 5. Two of the provisions I just mentioned are relevant for these proceedings. They  
4 are: *first*, 297(1)(c), which provides for jurisdiction over disputes where it is alleged that a coastal  
5 State has contravened specified international rules or standards for the protection and preservation  
6 of the marine environment which are applicable to the coastal State and which have been  
7 established by the Convention or through a competent international organization or diplomatic  
8 conference in accordance with the Convention. *Second*, 297(3), which provides for jurisdiction  
9 over disputes concerning the interpretation or application of the Convention with regard to  
10 fisheries.

11 6. 297(1)(c) and 297(3) are both affirmative grants of jurisdiction, though in the case  
12 of 297(3) the grant is limited by an exception. The fact that 297(1)(c) and 297(3) are  
13 *independent* grants of jurisdiction means that an Applicant need only satisfy one of them. It  
14 also means that a dispute that falls within a Tribunal's jurisdiction because it concerns an alleged  
15 contravention of an international rule or standard for the protection or preservation of the marine  
16 environment, *cannot* be excluded from jurisdiction if it may also be said to involve a coastal  
17 State's sovereign rights over the living resources of the EEZ or their exercise. If a dispute falls  
18 within 297(1)(c), jurisdiction is established. The exception contained in 297(3) is irrelevant.

19 7. The Convention is clear about this. The two provisions are independent of one  
20 another; nothing in the text indicates the exception to jurisdiction for fisheries under 297(3)  
21 applies *sub silencio* to disputes under 297(1)(c) as well. Had that been the intention, Article 297  
22 would have been drafted differently.

23 8. This is confirmed by scholarly authority. I would now invite you to turn to Tab  
24 14.1. This is an article by Judge Mensah, and as the title indicates, it concerns "Protection and  
25 Preservation of the Marine Environment and the Dispute Settlement Regime in the United

1 Nations Convention on the Law of the Sea.” The United Kingdom produced this authority as  
2 Authority 74 with the Counter-Memorial. I should note that the UK produced only an excerpt;  
3 Tab 14.1 reproduces the entire article, in case the Tribunal wishes to review it in full.

4 9. If you look at the first paragraph of the article, Judge Mensah writes, after some  
5 introductory remarks about Part XV courts and tribunals, “these courts and tribunals have an  
6 important role in the implementation of the Convention’s provisions, including the provisions  
7 that relate to the protection and preservation of the marine environment. Specifically, the courts  
8 and tribunals may be called upon to settle disputes between States Parties, or involving States  
9 Parties and other entities, regarding the interpretation or application of such provisions. For  
10 example, Article 297 of the Convention provides that a dispute may be submitted to the  
11 competent court or arbitral tribunal by a State Party against another State Party when,” and then  
12 Judge Mensah goes on to quote 297(1)(c).

13 10. He then continues: “The jurisdiction of a court or tribunal in such a case [such a  
14 case meaning a 297(1)(c) case] is *not subject to any of the limitations on jurisdiction specified in*  
15 *Article 297* or the optional exceptions to jurisdiction available under 298. Thus, where all the  
16 States involved in a dispute are subject to the jurisdiction of a particular court or tribunal under  
17 287, that court or tribunal will be competent to deal with such a dispute if it concerns the  
18 interpretation or application of any provisions of the Convention relating to the marine  
19 environment, as provided for in the Convention.”

20 11. In other words, if you have jurisdiction under 297(1)(c), 297(3) is irrelevant.

21 12. This brings me to the *second* part of my speech: your jurisdiction over Mauritius’  
22 claims under 297(1)(c). I will begin by addressing Article 194. This is located in Part XII of the  
23 Convention, which governs “Protection and Preservation of the Marine Environment.” As  
24 Professor Sands has explained, paragraph (1) requires States to “harmonize their policies” in  
25 connection with measures to “prevent, reduce and control pollution of the marine environment



1 from any source.” Paragraph (4) requires States, when “taking measures to prevent, reduce or  
2 control pollution of the marine environment,” to “refrain from unjustifiable interference with  
3 activities carried out by other States in the exercise of their rights and in pursuance of their duties  
4 in conformity with the Convention.”

5 13. These are plainly international rules regarding the protection and preservation of  
6 the marine environment. The United Kingdom all but agrees when it concedes that Article 194  
7 is a provision relevant to the protection and preservation of the marine environment, as it says in  
8 its Counter-Memorial at Paragraph 6.31. Indeed, it is hard to see how the obligation to endeavour  
9 to harmonise policy on the reduction and control of pollution, as stipulated in 194(1), is not a  
10 rule relating to the protection of the environment. It is equally difficult to come to any other  
11 conclusion regarding the obligation set out in Article 194(4), to refrain from unjustifiably  
12 interfering with the rights of other States when a State takes measures to prevent, reduce or  
13 control pollution.

14 14. The United Kingdom tries to avoid the obvious jurisdictional difficulty it faces by  
15 claiming there can be no dispute under Article 194, and thus no jurisdiction, because the “MPA”  
16 does not regulate marine pollution. Or, at least not yet. The UK says that “Article 194 deals  
17 with the regulation of marine pollution, not fishing” and thus “provides no basis on which to  
18 regulate conservation and management of living resources and no basis on which to challenge a  
19 ban on fishing,” as it says in the Rejoinder at Paragraph 7.70. On this basis, the UK maintains  
20 there is no dispute over protection and preservation of the marine environment.

21 15. This attempt to sidestep the tribunal’s jurisdiction does not succeed. As is plain  
22 from the “MPA” proclamation itself, and the many official descriptions of it, the “MPA” is  
23 intended to govern a host of matters relating to the protection and preservation of the marine  
24 environment, and indeed, the terrestrial environment as well. To take but one example,  
25 consider the report entitled “Making British Indian Ocean Territory the World’s Largest Marine

1 Reserve.” It can be found at Annex 133 to the Reply. The report was drafted by the FCO’s  
2 Overseas Territories Directorate and submitted to the Foreign Secretary’s Private Secretary on 5  
3 May 2009. It asks: “What, in a nutshell, is the marine reserve proposal?” The report also  
4 provides the answer: “In practical terms, the *broad concept* would be to declare the entirety of  
5 BIOT’s EEZ a no-take Marine Protected Area (MPA), bring to an end fishing *and legislate for*  
6 *the protection of the seas and atolls.*” Legislation “for the protection of the seas and atolls” is  
7 not a fisheries conservation measure.

8 16. Apparently the referenced laws are coming, although they have been a long time  
9 coming. The UK says in its Counter-Memorial at Paragraph 3.3 that “a new MPA Ordinance  
10 “is in the course of being prepared” which will “replace the existing BIOT legislation protecting  
11 the environment, flora and fauna of the islands and their waters.”<sup>121</sup>It says in the Rejoinder that:  
12 “Inter alia, this will cover marine scientific research, conservation of living resources, the  
13 prohibition of fishing, pollution, and the mooring of vessels within the MPA.” The use of  
14 “inter alia” indicates the list is not exhaustive.

15 17. The UK urges you to ignore these laws because, it says, its “legislation is still in  
16 the process of preparation.” It uses this argument to suggest that disputes over anything other  
17 than fisheries restrictions are, to use its word, “*hypothetical.*” But they are not hypothetical  
18 when the UK says the laws are being prepared and will address inter alia pollution, the protection  
19 of the seas and atolls, and the land and marine flora and fauna. The Tribunal is not so  
20 jurisdictionally hamstrung that it must wait for them to be officially adopted. The UK has cited  
21 no authority to support its view that the lawfulness of a regulation only becomes justiciable once  
22 it formally enters into force. Plainly, the tribunal can exercise jurisdiction in these circumstances.

23 18. This is reinforced by the fact that, as Professor Sands addressed yesterday, the  
24 “MPA” can only be understood as a measure to protect and preserve the environment, a fact

---

<sup>121</sup>UKCM, para 3.3.

1 proven by the Proclamation creating it, which refers to the “MPA” as a zone where the United  
2 Kingdom will “exercise sovereign rights and jurisdiction enjoyed under international law, *with*  
3 *regard to the protection and preservation of the environment.*” It is impossible, based on this  
4 record, we would submit, to characterize the “MPA” any other way. But if more evidence is  
5 needed, it is provided by the fact that the “MPA”’s proclamation links its establishment to the  
6 Environmental Protection and Preservation Zone (EPPZ), which was established by the UK in  
7 2003.

8 19. At Tab 14.2 you will find the proclamation establishing the EPPZ. It uses nearly  
9 identical language as would later be used to establish the “MPA”. It states: “Within the said  
10 environmental zone, Her Majesty will exercise sovereign rights and jurisdiction enjoyed under  
11 international law, including the United Nations Convention on the Law of the Sea, *with regard to*  
12 *the protection and preservation of the marine environment of the zone.*” [MM, Annex 121]  
13 Like the “MPA” Proclamation, it does *not* refer to the zone as a measure for the conservation, or  
14 regulation, or management of living resources.

15 20. These descriptions may be taken to reflect how the UK *itself* conceived of the  
16 zones and how it thought they should be justified under UNCLOS. Among the rights and  
17 jurisdiction of a coastal State in the EEZ that are set out in the Convention are two that are  
18 relevant. Paragraph (1)(b)(iii) of Article 56 refers to a coastal State’s jurisdiction over “the  
19 protection and preservation of the marine environment.” Paragraph (1)(a) of the same article  
20 refers to its “sovereign rights” for, among other things, “conserving and managing” the living  
21 resources of the superjacent waters.

22 21. The UK had a choice: it could justify the “MPA”, and before it the EPPZ, by  
23 reference to either or both provisions, or on some other basis. Each time, the UK justified the  
24 zone as a measure for the “protection and preservation of the marine environment.” Neither  
25 zone was justified as an exercise of the right to regulate the conservation of living resources.

1           22.       This is clear evidence of how, on 1 April 2010, the UK *itself* understood the legal  
2 basis for the “MPA”. It was considered to be a measure for the protection and preservation of  
3 the environment pursuant to Paragraph (1)(b)(iii) of Article 56; it was *not* a measure for fisheries  
4 conservation under Paragraph (1)(a). For these reasons, we say, there is plainly a dispute over  
5 the interpretation or application of Article 194 over which you may exercise jurisdiction.

6           I now turn to Article 56(2). This is another specified international rule or standard for the  
7 protection and preservation of the marine environment. Before explaining why, I will address a  
8 broader issue that divides the Parties. The United Kingdom argues that insofar as any specified  
9 rules or standards for the protection and preservation of the marine environment are found in the  
10 Convention at all, they are located only in Part XII. This is mistaken. Specified rules and  
11 standards for the protection of the marine environment are found in various Parts of the  
12 Convention. And I would ask you to turn back to Judge Mensah’s article at Tab 14.1, which, as  
13 you recall, was produced by the United Kingdom as Authority 74. You will recall that he was  
14 discussing specified international rules and standards for the protection and preservation of the  
15 marine environment, the contravention of which would allow a court or tribunal to exercise  
16 jurisdiction under 297(1)(c). Now, at Page 506 in your folder (which is Page 10 of Judge  
17 Mensah’s article), he writes: “The provisions of the Convention on the marine environment are not  
18 just the articles in Part XII of the Convention, but also include articles in other Parts and Annexes  
19 to the extent they concern activities that have an impact on the quality of the marine environment.  
20 Among these are the articles which give rights and powers to take measures for the prevention and  
21 pollution of the marine environment, or which set conditions and limitations upon the exercise of  
22 such rights and powers.”

23           He then writes: “*Disputes concerning the interpretation or application of any of these*  
24 *provisions may be brought before one or other of the courts or tribunals designated in Article 287*  
25 *of the Convention.*”

1           23.       Now, this brings me back to Article 56, and the question of whether it is a specified  
2 international rule for the prevention and protection of the marine environment. It plainly is. Judge  
3 Mensah addresses this question as well. You can see that he concludes the paragraph we were  
4 just reviewing by stating that “[s]pecial reference may be made” to certain provisions of the  
5 Convention. If you look at the next page (Page 11 of his article), he singles out Article 56.

6           24.       This, we would submit, is clear authority for the fact that Article 56 is a specified  
7 rule “for the protection and prevention of the marine environment.” And the same thing, we would  
8 say, applies to Article 55.

9           25.       Now, moving on to Articles 63 and 64 of UNCLOS and Article 7 of the 1995  
10 Agreement, the UK is mistaken to suggest that Article 282 deprives you of jurisdiction because  
11 the disputes over those articles are committed to the dispute settlement procedures established by  
12 Article XXIII of the Indian Ocean Tuna Commission Agreement. Article XXIII only applies to  
13 disputes concerning the interpretation or application of the *IOTC Agreement*. Mauritius has not  
14 made any claims under the IOTC Agreement; all of its claims are based upon breaches of  
15 UNCLOS or the 1995 Fish Stocks Agreement. Regardless, even if they were based on the  
16 IOTC Agreement, Article 282 would not deny your jurisdiction. Article XXIII of the IOTC  
17 Agreement applies only where the States Parties have agreed that a dispute “*shall*” be submitted  
18 to another procedure for a “*binding decision*.” This does *not* describe what the States Parties to  
19 the IOTC Agreement agreed to do in Article XXIII. That article established a two-step dispute  
20 settlement process. Disputes are initially referred to conciliation, which Article XXIII takes  
21 pains to say is “*not binding in character*.” If conciliation does not settle the dispute, the Parties  
22 “*may*” – but are *not* required to – refer the dispute to the ICJ. This leaves open the possibility,  
23 the option, of utilizing UNCLOS’s Part XV procedures. Article 282’s criteria for the exclusion  
24 from Part XV are thus not fulfilled: there is no mandatory referral to another dispute settlement  
25 procedure for a binding decision.

1           26.       The UK’s reliance on Article 281(1) fares no better.

2           27.       It does not describe Article XXIII of the IOTC Agreement. Now, I would think  
3 that the Tribunal will have its own views on whether the *Southern Bluefin Tuna* case was rightly  
4 decided, the case that the UK relies upon. Mauritius is content, for its part, to endorse a Separate  
5 Opinion of Judge Keith, which stated that “The requirement is that the Parties have agreed to  
6 exclude any further procedure for the settlement of the dispute concerning UNCLOS.... They  
7 require opting out. They do not require that the Parties positively agree to the binding procedure  
8 by opting in.”

9           28.       I now turn to Article 297(3), which as you know grants jurisdiction over fisheries  
10 disputes, unless an exception applies. The exception invoked by the United Kingdom is for  
11 disputes relating to its purported sovereign rights as a coastal State in relation to the living  
12 resources of the EEZ or their exercise.

13          29.       As I mentioned before, 297(1)(c) and 297(3) are independent grounds for  
14 exercising jurisdiction. In Mauritius’s view, the dispute is properly characterized as a dispute  
15 over the UK’s contravention of specified international rules or standards for the protection and  
16 preservation of the marine environment. As such, its claims for breach of these rules fall under  
17 the Tribunal’s jurisdiction.

18          30.       Moreover, even if the UK were correct in characterizing the dispute as a fisheries  
19 dispute, the Tribunal would still have jurisdiction, as I will now explain.

20                   MR. LOEWENSTEIN: Perhaps now is the time to take the break, if it suits the  
21 President and Members of the Tribunal.

22                   PRESIDENT SHEARER: Yes. We will come back. It's a 20-minute break.  
23 Yes, we will come back at ten past 4:00. That's right.

24                   (Brief recess.)

25                   PRESIDENT SHEARER: Yes, Mr. Loewenstein.

1 MR. LOEWENSTEIN: Mr. President, as we were reaching the break, I was just  
2 beginning my explanation for why, even if the UK were correct in characterizing the disputes as  
3 a fisheries dispute, you would still have jurisdiction.

4 31. Article 297(3) has three parts. First, it provides that: “Disputes concerning the  
5 interpretation or application of the provisions of the Convention with regard to fisheries shall be  
6 settled in accordance with section 2” – that is, the part of the Convention concerning compulsory  
7 dispute settlement procedures. The general rule, then, is that fisheries disputes are within a court or  
8 tribunal’s jurisdiction. As Judge Keith observed in his Separate Opinion in the *Southern Bluefin*  
9 *Tuna* case: “the general run of fisheries disputes... is not subject to the limitations and  
10 exceptions” located in 297(3) (He says this at Page 15 of his separate opinion).

11 32. Second, there is an exception to the general grant of jurisdiction. As we have seen,  
12 this exception applies only to disputes concerning a coastal State’s sovereign rights with respect to  
13 the living resources in the EEZ or their exercise.

14 33. And third, certain types of disputes falling within the sovereign rights exception are  
15 subject to compulsory conciliation.

16 34. So, taken as a whole, 297(3) provides that fisheries disputes are within a tribunal’s  
17 jurisdiction unless they fall within the categories of disputes that are excluded. Those exclusions  
18 do not apply here.

19 35. Mauritius’ case is straightforward. The dispute is *not* based on the purported  
20 sovereign rights of the UK as a coastal State in relation to the living resources in the EEZ. That is  
21 not how the dispute should be characterized. As Mauritius has shown in its written pleadings, and  
22 emphasized in these oral pleadings, the dispute concerns the *rights of Mauritius*. This includes *its*  
23 right to fish in the EEZ of the Chagos Archipelago; *its* right to be consulted about matters that can  
24 affect *its* interests; *its* right to have fulfilled the undertaking given by Prime Minister Brown to  
25 Prime Minister Ramgoolam. It is *these* rights – the rights of *Mauritius* – that are at issue. For

1 that reason, even if the dispute were to be characterized as a fishing dispute, it would not fall within  
2 the exception to jurisdiction located in 297(3). That exception, as the text makes unmistakably  
3 clear, pertains only to disputes relating to the rights of a *coastal* State; it does *not* concern disputes  
4 relating to the rights of *other* States in the EEZ arising under rules of international law.

5 36. Nor does the exclusion apply to the procedural obligations that Mauritius has  
6 brought before this Tribunal, including those set out in Article 63, Article 64, or Article 7 of the  
7 1995 Agreement. Procedural obligations of consultation and cooperation under these provisions  
8 fall outside the 297(3) exclusion. I refer again to Judge Keith's Separate Opinion in the *Southern*  
9 *Bluefin Tuna* case, where one of the claims was for breach of Article 64. He made clear that the  
10 claims before the tribunal – including the claim of breach of Article 64 – were within its  
11 jurisdiction because they were not excluded by 297(3). Likewise, in *Barbados v. Trinidad and*  
12 *Tobago*, the Annex VII Tribunal was unconstrained by 297(3) from exercising jurisdiction over  
13 Article 63.

14 37. *Finally*, I shall say a word or two about the dispute under Part VI of the Convention  
15 in relation to the United Kingdom's breach of Article 78. There can be no doubt about the  
16 jurisdiction of this Tribunal. Nothing in Article 297 excludes from your jurisdiction the dispute  
17 over the right to harvest sedentary species on the Continental Shelf. The 297(3) exclusion applies  
18 only to the EEZ, it does not apply to the Continental Shelf.

19 38. Mr. President, members of the Tribunal, this concludes my speech. Thank you  
20 very much for your kind attention.

21 PRESIDENT SHEARER: Thank you very much, Mr. Loewenstein.

22 Is it right that now we have Mr. Reichler?

23 MR. LOEWENSTEIN: That's correct.

24 PRESIDENT SHEARER: Thank you.

25 **THE TRIBUNAL HAS JURISDICTION TO**



1 **INTERPRET AND APPLY**

2 **ARTICLES 2, 76 AND 300**

3 **PAUL S. REICHLER**

4 **25 APRIL 2014**

5 Mr. President, Members of the Tribunal: the end is in sight.

6 I come before you as the last speaker in Mauritius' opening round. On behalf of the Agent  
7 of Mauritius, the Deputy Agent, and the entire Mauritius delegation, I want to express our deepest  
8 gratitude for your kind and patient attention, for your active engagement with our oral pleadings,  
9 for all the hard work you have so obviously put in, during the hearings this week especially, but  
10 also in your preparation for them. After an intensive week like this one, I could not blame you if  
11 you were already looking forward to, and starting to think about, an enjoyable weekend in this  
12 fascinating city.

13 So I will get right to the point, and be brief. Well, brief for *me*, in any event. And I promise:  
14 no more documents or folders. And I can give you even more good news. I intend to speak for  
15 no more than 30 minutes, which means that we can finish, subject to any questions from the  
16 Members of the Tribunal well before 5:00. I say this, I should add not to discourage you from  
17 asking questions. As I would hope you by now appreciate, we have welcomed all of your  
18 questions and done our very best to provide you, as promptly as possible, with complete and  
19 responsive answers.

20 It falls to me, now that my esteemed colleagues have addressed all the other bases for your  
21 exercise of jurisdiction over Mauritius' claims, to discuss those that remain: your jurisdiction in  
22 regard to the aspects of this dispute that require interpretation or application of Article 2, Article  
23 76, and Article 300 of the Convention. Happily for me, I have been assigned three easy arguments  
24 to make. So I will do my best not to complicate them, and will simply show that your jurisdiction  
25 has been properly invoked in regard to each of these Articles.

1 **a. ARTICLE 2**

2 I begin with Article 2. For the reasons Professor Sands explained yesterday, the United  
3 Kingdom has breached Article 2(3) of the Convention, which obligates the UK to exercise its  
4 purported sovereignty over the Territorial Sea in compliance with “other rules of international  
5 law”. As he showed, those “other rules of international law” include, inter alia, the obligation to  
6 respect recognized rights to fish and access to other natural resources; and the obligation to comply  
7 with binding undertakings. These are not only “other rules of international law” under Article 2(3),  
8 there are also other rules of international law not incompatible with the Convention under Article  
9 293(1), which that article says you “shall apply” in resolving the dispute concerning the  
10 interpretation and application of the substantive provisions of the Convention, including, of  
11 course, Article 2(3). A dispute under Article 2(3) is unquestionably, in the language of Article  
12 288(1), “a dispute concerning the interpretation or application of this Convention submitted in  
13 accordance with” Part XV.

14 None of the exclusions from jurisdiction apply to the dispute under Article 2. The  
15 exclusions of Article 297 are not applicable because they do not exclude from jurisdiction disputes  
16 over access to resources in the Territorial Sea. The United Kingdom accepts that questions  
17 relating to the interpretation and application of Article 2 cannot be excluded by Article 297, that  
18 article, by its own terms limits jurisdiction under Part XV only in matters concerning the exercise  
19 of sovereign rights in relation to the management of resources in the exclusive economic zone.  
20 Nonetheless, the UK seeks to divest this Tribunal of jurisdiction over the dispute that has been  
21 raised under Article 2(3). To this end, it makes two arguments, with respect, they are both  
22 misconceived.

23 The UK’s first argument, at Paragraphs 6.60 of the Counter-Memorial and 7.59 of the  
24 Rejoinder, is that this is not a dispute concerning the interpretation or application of Article 2(3),  
25 because whether Mauritius has any rights in the Territorial Sea of the Chagos Archipelago is not a

1 question relating to the interpretation or application of UNCLOS. This argument simply cannot be  
2 right.

3           The dispute Mauritius has brought before this Tribunal raises numerous questions of  
4 interpretation and application of specific articles of the Convention, including the following: Does  
5 Article 2(3) impose upon the UK an obligation to respect “other rules of international law” in  
6 exercising its purported sovereignty over the Territorial Sea around the Chagos Archipelago? Do  
7 those “rules of international law” encompass the obligation to respect, for example, recognized  
8 fishing rights, or the obligation to respect legally binding undertakings? Has the UK breached  
9 Article 2(3) by failing to respect those rules of international law?

10           The answers to these three questions, we submit, are blindingly obvious: Yes, yes and yes.  
11 But, you need not answer them to determine that you have jurisdiction to answer them. All you  
12 have to decide is whether these questions call for the interpretation or application of the  
13 Convention, Article 2(3) in particular. And that is a matter that is even more blindingly obvious.  
14 Of course they raise questions of interpretation and application of Article 2(3)! How can you  
15 determine whether “other rules of international law” have been violated, in respect of access to the  
16 living resources of the Territorial Sea, *without* interpreting or applying Article 2(3)? We say: the  
17 UK has violated Article 2(3) by its unilateral declaration of an MPA abolishing all of Mauritius’  
18 recognized fishing rights in the Territorial Sea of the Chagos Archipelago. The UK says: the  
19 “MPA” does not violate Article 2(3). That is a dispute, plain and simple, over whether Article 2(3)  
20 has been violated, and that dispute cannot be resolved without interpreting and applying Article  
21 2(3).

22           The fact that the rules of international law governing recognized fishing rights and legally  
23 binding undertakings are invoked does not alter the character of the dispute as one essentially  
24 involving the interpretation and application of the Convention, as the UK argues. Not when these  
25 “other rules of international law” are expressly brought into the rubric of the Convention by

1 *Article 2(3)*. What “other rules of international law” are included within Article 2(3)? That is  
2 surely a question that calls upon you to interpret and apply Article 2(3). And interpretation, Mr.  
3 President, of that Article is indisputably a matter over which your Tribunal has jurisdiction under  
4 Article 288(1).

5         The United Kingdom’s argument against jurisdiction in regard to our Article 2(3) claims is  
6 defeated by its own written pleadings. At Paragraph 4.33 of the Counter-Memorial, the UK  
7 recognizes: “other rules of international law may be relevant to the court or tribunal’s decision as  
8 regards a dispute concerning the interpretation or application of UNCLOS where the specific  
9 provisions of UNCLOS that form the basis of the complaint themselves expressly require that  
10 other non-UNCLOS rules of international law be taken into account or applied.” That is precisely  
11 our case, in regard to our claims under the specific provisions of Article 2(3), which, to quote the  
12 Counter-Memorial, “expressly require that other non-UNCLOS rules of international law be taken  
13 into account or applied”. At Paragraph 8.6 of the Counter-Memorial, the UK acknowledges that:  
14 “the reference in 2(3) to “other rules of international law” is correctly interpreted as a reference to  
15 general rules of international law...” But we appreciate that concession. However: the  
16 Counter-Memorial continues, “other rules of general international law do not include specific  
17 bilateral treaty obligations (still less ...alleged undertakings of the type alleged in the current  
18 case).” But to reach that conclusion – with which we, of course, disagree – requires an  
19 interpretation of Article 2(3) to determine what “other rules of international law” it encompasses  
20 and whether or not it includes the rules of international law that we have invoked. The UK has  
21 made our case for jurisdiction under Article 2(3)!

22         The second argument the UK raises to challenge the Tribunal’s jurisdiction over the  
23 dispute concerning interpretation and application of Article 2(3) is that “the Convention reaffirms  
24 the sovereignty of the coastal State over the Territorial Sea and by implication its absolute right to  
25 control fishing in the Territorial Sea”. Of course, we disagree that the Convention implies such an

1 absolute right in regard to the Territorial Sea. But why isn't that a dispute between the Parties  
2 calling for interpretation for Article 2(3)?

3 As Professor Sands demonstrated yesterday, the right to control fishing in the Territorial  
4 Sea is not absolute, but expressly limited by Article 2(3), which obligates a coastal State to comply  
5 with the Convention "and other rules of international law" in exercising its sovereignty over the  
6 Territorial Sea. This is well settled. In *Eritrea/Yemen II*, the tribunal held that the exercise of  
7 sovereignty over the Territorial Sea by each parties was subject to the obligation to respect  
8 traditional fishing rights of the other Party's Nationals, which included not just the right of free  
9 access to fisheries in the Territorial Sea, but also the right of each States' fisherman not to be  
10 subject to unilateral regulation by the other State. As that arbitral tribunal made clear: "Insofar as  
11 environmental considerations may in future require regulation, any administrative measure  
12 impacting upon these traditional rights shall be taken by Yemen only with the agreement of Eritrea  
13 [and] vice versa."

14 Here, as well, having expressly recognized that Mauritius enjoys historic fishing rights in  
15 the waters adjacent to the Chagos Archipelago, and having given Mauritius a legally binding  
16 undertaking to respect those rights, the United Kingdom cannot credibly argue that it has absolute  
17 rights in the Territorial Sea of the Chagos Archipelago; its rights, if it has any, are limited by the  
18 rules of international law. Whether the UK has complied with these rules, as Article 2(3) expressly  
19 mandates, is a question calling for the interpretation and application of Article 2(3), and this  
20 inevitably falls within the jurisdiction of the Tribunal under Article 288(1).

21 The UK argues that, because of its so-called implied absolute right, access to fishing in the  
22 Territorial Sea "*could only be by agreement and Article 288(2) of the Convention would apply*  
23 *where States wished to secure Part XV jurisdiction over such disputes.*" This argument fails for at  
24 least two reasons.

1           *First*, the UK’s argument is circular. It assumes its own conclusion. It assumes that the UK  
2 has an implied absolute right to control access to Territorial Sea fisheries, and that nothing short of  
3 an international agreement could provide the basis for any other State to claim fishing rights in the  
4 Territorial Sea. That assumption is plainly wrong and in any event is disputed by Mauritius, and  
5 that is a dispute calling for interpretation and application of Article 2(3).

6           *Second*, Article 288(2) has no application to this case. Article 288(2) applies only to cases  
7 submitted pursuant to the provisions of a dispute settlement clause of an international agreement  
8 other than the Convention itself. Mauritius’ claims were not submitted in accordance with the  
9 dispute settlement provisions of any other agreement. They were submitted by Mauritius in  
10 accordance with the dispute settlement provisions of Part XV of the Convention itself, invoking  
11 the Tribunal’s jurisdiction expressly under Article 288(1), because they arise directly under  
12 various substantive articles of the Convention, including Article 2(3), whose interpretation or  
13 application is clearly called for.

14           Mr. President, this Tribunal plainly has jurisdiction, under Article 288(1), over the dispute  
15 Mauritius has raised calling for the interpretation or application of Article 2(3).

16           I can be even more succinct in addressing the Tribunal’s jurisdiction over the aspects of  
17 this dispute calling for interpretation or application of Articles 76 and 300. Not because there is  
18 less to say, but because there is no need to say much. Your jurisdiction is plain as day.

19   **b. Article 76**

20   2.       The dispute over the interpretation and application of Article 76(8) is this. As you have  
21 seen in the documents tabbed in your folder and heard in our pleadings this week, Mauritius filed  
22 preliminary information with the CLCS in regard to the extended Continental Shelf in the area of  
23 the Chagos Archipelago on 9 May 2009, four days before the 10-year deadline for Mauritius  
24 expired. This was after the UK’s 10-year deadline had expired. The UK had encouraged Mauritius  
25 to file its preliminary information, and later offered to support it with a coordinated effort to make

1 a full submission, and to supply technical, legal and political support. That was as of July 2009.  
2 Although the coordinated effort never materialized, the UK made no objection or protest in regard  
3 to Mauritius' preliminary submission or its standing to make a full submission. That was the  
4 situation until last month.

5 3. The UK then changed position when it filed its Rejoinder on 17 March. As set out in  
6 Paragraph 8.39: it has now decided that "*Mauritius is not the coastal State in respect of BIOT and*  
7 *as such it has no standing before the CLCS with respect to BIOT.*"

8 4. There can be no question then that we have a dispute concerning interpretation or  
9 application of Article 76(8). Mauritius argues that it is the coastal State in respect of the Chagos  
10 Archipelago, or at least that it has been recognized as having the attributes of a coastal State,  
11 including by the UK, in respect of rights in the Continental Shelf appurtenant to the Archipelago,  
12 including the Extended Continental Shelf. As you have heard, with the support of the  
13 Commonwealth Secretariat, Mauritius is nearing completion of its full submission so that it can be  
14 filed this year. It claims, both before the CLCS, and in these proceedings, to have standing under  
15 Article 76(8) to make that submission. There is thus a dispute between the Parties as to whether or  
16 not Mauritius has standing under that article to submit information to the CLCS in respect of the  
17 Chagos Archipelago area. The resolution of that dispute requires that the Tribunal interpret or  
18 apply Article 76(8).

19 5. Another way to look at it is that there is a dispute as to whether the filing by Mauritius was  
20 effective, whether or not the clock has stopped, and whether or not Mauritius can make a full  
21 submission. There is thus a dispute as to whether the conditions exist for the CLCS to give effect  
22 to its role under Article 76(8) and Annex 2 in relation to Mauritius and the Chagos Archipelago.  
23 This is not an exhaustive list. But it is more than sufficient, Mr. President, to establish your  
24 jurisdiction in regard to the issues raised under Article 76(8).

1 6. Disputes concerning rights in the Continental Shelf, including the Extended Continental  
2 Shelf, are not subject to any of the exclusions of Section 3 of Part XV. *A fortiori* the Tribunal has  
3 jurisdiction to resolve the aspects of this dispute that concern Article 76(8).

4 c. **Article 300**

5 7. And finally, Mr. President, the Tribunal is also vested with jurisdiction to resolve  
6 Mauritius' claims against the UK concerning the UK's violations of Article 300.

7 As Professor Crawford has demonstrated, by establishing the "MPA" in the manner it did, the  
8 United Kingdom failed to act in good faith and abused Mauritius' rights in at least two respects: (i)  
9 the United Kingdom exercised its purported sovereign rights and jurisdiction in a manner that  
10 prevents Mauritius from exercising its fishing rights in blatant contradiction of the rules of  
11 international law including legally binding undertakings that were repeatedly renewed and  
12 reconfirmed and recognized over a 45-year period; and (ii) in unilaterally declaring the "MPA"  
13 without consultation with Mauritius, and in breach of the British Prime Minister's undertaking to  
14 put the "MPA" on hold pending consultations with Mauritius, and in so doing, failed to discharge  
15 its obligations owed to Mauritius under the Convention to coordinate, consult and cooperate in  
16 establishing the "MPA" – the procedural obligations which guarantee that the rights, jurisdictions  
17 and freedoms recognized by the Convention are exercised with due regard for the rights of others.

18 Mauritius claims in these proceedings that this conduct by the UK constitutes an abuse of  
19 the substantive rights recognized in Articles 2(3), 56(2) and 78, and as well as a failure to fulfill in  
20 good faith the obligations imposed by Articles 63, 64, and 194 of the Convention.

21 The UK argues that Article 300 "does not purport to give rise to an independent basis for the  
22 compulsory settlement of disputes", and that "if the Tribunal lacks jurisdiction to decide the  
23 dispute [concerning other provisions of the Convention], invoking Article 300 will not rectify the  
24 problem."<sup>122</sup> We agree with both statements. We do not argue otherwise. The *Virginia* case

---

<sup>122</sup> UKCM, paras. 6.63 and 6.64; UKR, para. 7.79.



1 provides a recent authority for the view that Article 300 cannot constitute an independent base for  
2 jurisdiction, in the absence of jurisdiction under any other of the Convention's substantive  
3 provisions. Since we do not invoke Article 300 as an independent basis for the Tribunal's  
4 jurisdiction, our position is unaffected by the *Virginia* decision.

5 We accept that, for the Tribunal to have jurisdiction to address our Article 300 claims in  
6 regard to abuse of rights and failure to fulfill obligations in good faith, it must have jurisdiction to  
7 address our claims in regard to one or more of the other provisions of the Convention that  
8 establishes the rights that we claim to have been abused. That is the case here, and that is why the  
9 Tribunal has jurisdiction to address Mauritius' abuse of rights and lack of good faith claims under  
10 Article 300.

11 To that end, I have already explained how the Tribunal has jurisdiction to address our  
12 claims of violation of Articles 2(3) and 76(8). It follows that the Tribunal must also have  
13 jurisdiction to determine whether the UK has violated Mauritius' rights in the Territorial Sea of the  
14 Chagos Archipelago in an abusive manner under Article 300; and it follows as well, that if the UK  
15 were to object to Mauritius' preliminary or full submission to the CLCS on grounds of lack of  
16 standing, and thereby prevent the Commission from considering Mauritius' rights to an Extended  
17 Continental Shelf, there would be jurisdiction to determine if this, too, constituted not only a  
18 violation of Mauritius' rights under Article 76(8), but also whether it is an abuse of rights under  
19 Article 300.

20 Mr. President, my colleagues, Professor Sands and Mr. Loewenstein have today  
21 demonstrated that your Tribunal has jurisdiction in regard to Mauritius' claims requiring the  
22 interpretation or application of Articles 56(2), 63, 64, 78, and 194. *A fortiori*, the Tribunal has  
23 jurisdiction to determine whether the UK has violated any of these provisions of the Convention in  
24 a manner that constitutes an abuse of rights or a failure to fulfill obligations in good faith under  
25 Article 300.

1 In conclusion, and I have now arrived at my conclusion, the Tribunal has jurisdiction to  
2 consider Mauritius' claims against the UK in regard to violation of Article 2(3), Article 76(8), and  
3 Article 300. Mr. President, Members of the Tribunal, this completes my presentation and the  
4 opening round for Mauritius. I want to thank you again on behalf of the Mauritius delegation for  
5 your kind and courteous attention. And I want to wish you all, again, a very enjoyable weekend.  
6 We extend the same wishes to our good friends and distinguished colleagues on the UK  
7 delegation, to our tireless and indispensable reporter and to our colleagues and friends at the PCA  
8 who have done such a marvelous job in organizing these hearings.

9 Thank you very much.

10 PRESIDENT SHEARER: Thank you very much, Mr. Reichler.

11 Are there any questions from the Tribunal? No? Well, thank you very much for  
12 your presentation, and also the counsel have spoken in this first round for Mauritius. We look  
13 forward to next week with the beginning of the UK first round.

14 Before we adjourn, I wanted to ask a question of the United Kingdom side – and  
15 there is no need for an answer to be given now; it can be given later, and preferably in written form  
16 – and I preface my question by apologizing in advance if the answers are to be found somewhere in  
17 the pleadings that I have overlooked, but it relates to the pattern of treaty application to Mauritius  
18 and to the Dependencies of Mauritius, and to what extent the formula was used in applying or  
19 extending a multilateral treaty or a bilateral treaty to Mauritius? Was it always to Mauritius and  
20 to the Dependencies of Mauritius? Or were there some occasions in which the application was  
21 just to the main islands of Mauritius excluding the Dependencies, or perhaps the other way  
22 around?

23 Just to shorten the task, I recall from previous work I have done on State secession  
24 that it has been the practice of the United Kingdom and I suppose it was so in relation to Mauritius  
25 that when approaching independence, the United Kingdom would give a treaty list to the

1 about-to-become independent State of all the treaties that had been applied prior to independence  
2 so that the newly independent country could make decisions as to secession. And I would further  
3 shorten it by saying that I think we could focus on the period from 1945 up to independence  
4 because the formulae for applying or extending treaties was fairly well-established. So, I hope  
5 I've made myself clear, but if I have that material preferably by the end of that proceeding.

6 Are there any other matters that any member wants to raise?

7 (No response.)

8 PRESIDENT SHEARER: Well, Mr. Reichler has wished us a pleasant weekend.  
9 I think some of us probably will be working hard through this weekend, but to the extent that you  
10 can, I hope you are able to enjoy the pleasures of this city.

11 I therefore wish you a productive weekend in whatever way you wish to interpret  
12 that, and the Tribunal now stands adjourned until – it's more than a weekend. We meet again next  
13 Wednesday that 09:30. So, with that, thank you very much, and the Tribunal stands adjourned.

14 (Whereupon, at 4:50 p.m., the hearing was adjourned until 9:30 a.m., Wednesday,  
15 30 April 2014.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, appearing to read "David A. Kasdan", is written over a horizontal line.

DAVID A. KASDAN

# Index

## A

- AB, *10*
- ability, *49, 68, 85*
- able, *34, 58, 65, 67, 69, 74-75, 123*
- abode, *28*
- abolishing, *115*
- above, *38, 47*
- abrupt, *70*
- absence, *20, 79, 121*
- absolute, *116-118*
- Absolutely, *30*
- absolutely, *19, 28, 39, 94*
- abus, *10*
- Abuse, *11*
- abuse, *9-11, 14-16, 120-121*
- abused, *25, 120-121*
- abusive, *10, 13, 121*
- AC, *9*
- academic, *69, 73, 78, 83, 89, 91-92, 94*
- accept, *12, 79, 95, 98, 121*
- accepted, *36, 86*
- accepts, *47, 75, 114*
- access, *42, 46, 114-115, 117-118*
- accommodate, *43*
- accompanied, *18*
- accompli, *10*
- accord, *35*
- accordance, *69, 103, 111, 114, 118*
- accorded, *36*
- according, *13, 27, 52*
- Accordingly, *60*
- accordingly, *58*
- account, *13, 30, 61, 101, 116*
- accounted, *54*
- accurate, *30, 53, 124*
- accuses, *63*
- achieve, *17-18*
- achieving, *15-16*
- acknowledge, *53, 65, 83*
- acknowledged, *13, 21, 41, 65-67, 96-97*
- acknowledgement, *65-66*
- acknowledgements, *96*
- acknowledges, *48, 66, 70, 91, 116*
- acknowledgments, *96*
- across, *44*
- Act, *27-28, 57*
- act, *76, 120*
- acted, *14, 16*
- acting, *10, 71, 98*
- action, *15, 33, 47, 50, 74, 124*
- actions, *101*
- activating, *14*
- active, *23, 113*
- actively, *67*
- activities, *52, 105, 108*
- acts, *78, 99*
- actual, *13, 16*
- actually, *34, 81, 90, 92*
- adapted, *22*
- add, *113*
- added, *20*
- adding, *87*
- addition, *40, 53, 67*
- additional, *97*
- address, *17, 31, 46, 53, 59, 62, 75-76, 97, 99, 101, 106, 108, 121*
- addressed, *38, 46, 49, 51-52, 55, 57, 68, 74, 96, 103, 106, 113*
- addresses, *102, 109*
- addressing, *104, 118*
- Adede, *85, 90*
- adequacy, *48*
- adequate, *48*
- adequately, *46*
- adjacent, *11, 26, 60, 93-94, 117*
- adjourn, *81, 122*
- adjourned, *82, 123*
- adjudge, *25*
- adjudicated, *73*
- Administration, *17, 20*
- administrative, *117*
- Administrator, *33*
- admit, *64-65, 72, 95*
- admitted, *65*
- admittedly, *94*
- adopted, *39, 52, 81, 106*
- advance, *122*
- advanced, *29, 44*
- advantage, *13*
- advertised, *19*
- advice, *17*
- advised, *32, 47*
- adviser, *17*
- advisers, *17, 79, 91*
- advocated, *85*

advocates, 13, 86  
Affairs, 14, 38-39, 42-45, 48  
affairs, 69  
affect, 111  
affecting, 95  
affirmative, 103  
affirmed, 66, 96, 99  
affirming, 14  
Africa, 33  
African, 8  
afternoon, 62, 64, 101  
afterwards, 23  
Agalega, 56  
agenda, 42-43  
Agent, 113  
ago, 59, 96  
agree, 33, 54, 90, 110, 120  
agreed, 42-43, 85, 87, 109-110  
Agreement, 55, 68, 101, 109-110, 112  
agreement, 14, 35, 60, 86-87, 117-118  
agreements, 55, 68  
agrees, 80, 105  
ahead, 59  
aid, 10  
aim, 12  
aims, 15  
alcohol, 19  
alcoholic, 19  
Alexandre, 11  
alia, 106, 114  
alien, 53  
Alison, 31  
allegations, 14  
alleged, 103, 116  
alleges, 71  
Allen, 32  
allow, 63, 88, 92, 108  
allowed, 72  
allows, 69, 91-92, 94, 96-97  
almost, 60  
alone, 65, 79  
alongside, 91  
already, 12, 17, 21-22, 35, 37, 42-43, 45, 48, 65, 76, 83, 86-87, 91, 113, 121  
alter, 115  
alternative, 85, 98  
alternatives, 17  
Although, 37, 56, 119  
although, 12, 37, 53, 64, 74, 77, 83, 100, 106  
amendment, 86-87  
American, 12-13, 41  
Amicorum, 74  
Among, 107-108  
among, 41, 43, 47, 88, 107  
amongst, 97, 101  
amount, 38  
amounted, 21  
ample, 88  
amply, 39  
analogous, 74  
analogy, 16  
analysis, 30, 36, 50, 90, 98  
analyzed, 36  
ancillary, 79-80, 83-84  
Andrew, 20, 32, 85, 101  
anecdotes, 84  
Animals, 55  
ANNEX, 58  
Annex, 8, 12-14, 16-17, 20-21, 32-33, 35, 38-49, 55, 57, 61-62, 69-72, 74, 77-78, 80-81, 86, 89, 91, 103, 106-107, 112, 119  
Annexes, 108  
annexes, 27  
announced, 32  
announcement, 46-47  
anonymous, 23  
Another, 90, 119  
another, 27, 47, 61, 65-66, 69, 72, 83, 88-91, 99, 103-104, 108-109  
answer, 14, 16, 28, 51, 83, 87, 106, 115, 122  
answered, 63  
answering, 23  
Answers, 20  
answers, 26, 28, 113, 115, 122  
Antarctic, 16  
anticipated, 32  
anyway, 57, 60  
apologies, 8  
apologize, 28  
apologizing, 122  
apparent, 73, 79, 91  
Apparently, 106  
apparently, 76, 83  
Appeal, 22  
appeal, 22  
appear, 32, 92-94  
appeared, 44, 59  
appearing, 90  
appears, 44, 76-77, 79, 90  
Appellate, 10  
Appendix, 54  
appertaining, 66, 96  
Applicable, 71  
applicable, 67, 69, 71, 75, 103, 114  
Applicant, 103  
Application, 13, 33, 53  
application, 31, 63, 68, 70, 72, 75-76, 78-80, 84, 93, 102-104, 108-109, 111, 113-119, 121-122  
applied, 35, 52, 67, 70, 72, 74, 116, 123  
applies, 52, 56-57, 75-76, 78, 80, 102-103, 109-112, 118  
APPLY, 113  
apply, 11, 43, 56, 72, 74-75, 81, 91, 94-95, 111-112, 114, 116-117, 119  
applying, 23, 70, 72, 115, 122-123  
appreciate, 71, 83, 113, 116  
appreciated, 88  
approach, 35, 44, 46, 51, 61, 72-73, 81, 83, 89, 92  
approached, 77  
approaches, 10  
approaching, 79, 122  
appropriate, 19,

22, 30, 46, 93  
 approval, 52, 73  
 approvals, 52  
 appurtenant, 93, 119  
 APRIL, 113  
 April, 11, 14, 32, 39, 46, 48, 59, 108, 123  
 Arbitral, 74  
 arbitral, 73, 89, 104, 117  
 ARBITRATION, 58  
 arbitration, 66  
 ARBITRATOR, 8, 28-30, 50, 81  
 Arbitrators, 8, 74  
 arbitrators, 72, 78, 91  
 archipelagic, 79  
 Archipelago, 9, 11, 13-14, 16, 21-29, 32, 36-47, 49, 52, 56-58, 63, 65-66, 68-69, 86, 96-98, 101, 111, 114-115, 117-119, 121  
 archipelago, 13, 56, 66  
 archival, 23  
 archives, 23, 27  
 Arctic, 73-74  
 Area, 17, 43, 45, 47, 49, 106  
 area, 12, 18, 20, 36, 39, 46, 56-57, 61-62, 64, 79, 94, 97, 118-119  
 Areas, 56  
 areas, 11, 17-19, 61, 93-94  
 Argentina, 24, 76-77  
 argue, 59, 75, 83, 93, 98, 100, 117, 120  
 argued, 18, 43, 74, 77, 85, 89, 91-92  
 argues, 18, 31, 36, 64, 68, 70, 108, 115, 117, 119-120  
 arguing, 13, 84, 94  
 argument, 24-25, 31, 35, 37, 45, 60-61, 63-64, 72-73, 75-78, 80, 83, 87-88, 90-92, 94-95, 97-100, 106, 114-118  
 arguments, 31, 50, 67, 77, 90-91, 97-99, 113-114  
 arise, 63, 75, 80, 83-84, 118  
 arises, 69, 72, 93  
 arising, 8, 69, 73-75, 77, 80, 84, 112  
 arose, 67, 77-78, 88  
 around, 9, 11, 16, 23, 38, 49, 57, 68, 101, 115, 122  
 arrangement, 17  
 Arrangements, 52  
 arrest, 93  
 arrested, 93  
 arrive, 76-77  
 arrived, 122  
 ARTICLE, 114  
 Article, 8-12, 14-16, 22, 24-25, 29-31, 33, 35-36, 38-39, 45, 49-50, 66-72, 74-80, 83-84, 86-88, 90-94, 98-105, 107-122  
 article, 11, 27, 29-30, 74, 77-78, 80-81, 91-92, 94, 103-104, 107-109, 114, 119  
 ARTICLES, 113  
 Articles, 57, 68, 75, 102, 109, 113, 118, 120-121  
 articles, 34, 42, 50, 95, 97, 108-109, 115, 118  
 articulated, 74  
 articulates, 10  
 artisanal, 65, 96  
 artist, 69  
 as, 55  
 Asia, 55  
 aside, 92, 99  
 asks, 72, 106  
 asp, 60  
 aspect, 64, 70, 80, 95  
 aspects, 32, 63, 68, 70, 75, 85, 113, 118, 120  
 aspirations, 53  
 Assembly, 26, 45, 49  
 assert, 33, 89-90  
 asserted, 40, 49  
 asserting, 40, 86  
 assertion, 32-33, 37, 80, 83  
 assertions, 31, 39, 74, 83  
 asserts, 61, 68, 73, 85  
 assess, 12, 15  
 assessed, 80  
 assesses, 30  
 Assessing, 15  
 assessing, 14, 73  
 assessment, 16, 18, 23  
 assigned, 113  
 assist, 62  
 assistance, 8, 29, 76  
 assisted, 124  
 associated, 54, 79  
 assume, 53  
 assumed, 52  
 assumes, 77, 118  
 Assuming, 87  
 assuming, 94  
 assumption, 98-99, 118  
 assumptions, 89  
 Atlantis, 93  
 atolls, 106  
 attachment, 61  
 attack, 22  
 attempt, 15, 76, 83, 90, 102, 105  
 attempting, 63  
 Attempts, 89  
 attempts, 30  
 attention, 11, 18, 25, 40, 42, 55, 89, 112-113, 122  
 Attorney, 10, 14-15, 18, 22, 64-66  
 attracted, 86  
 attributes, 65, 99, 119  
 Audit, 53  
 August, 37-38, 56, 86  
 Aust, 91  
 Australia, 16, 19, 34  
 Australian, 19  
 author, 90  
 authoritative, 77  
 authorities, 43, 74, 84, 94  
 Authority, 13, 23, 33-34, 80, 84, 104, 108  
 authority, 38, 83, 103-104, 106, 109, 121

authorize, 94  
authors, 27, 30, 90  
automatic, 75,  
85-87, 89, 102  
automatically, 66,  
80, 84, 87  
available, 11,  
14-15, 17, 27,  
30, 53-57, 60-62,  
75, 87, 104  
avoid, 14, 93-94,  
105  
Award, 61-62, 72  
award, 30, 61  
aware, 32, 38, 42,  
45, 49, 59, 61,  
86, 102  
awareness, 42  
away, 50, 61, 100

## B

Back, 64  
back, 18, 20, 48,  
50, 59-60, 62,  
65, 67, 92, 100,  
108-110  
backdrop, 42  
background, 25,  
40, 45, 67, 89  
bad, 24  
baffled, 19  
balance, 9, 87  
balances, 9  
bald, 90  
ban, 18, 20, 43, 46,  
105  
Bancoult, 14  
bang, 94  
Bangladesh, 61-62,  
76-78, 89

bar, 34, 101  
Barbados, 112  
base, 57, 121  
based, 11, 27, 31,  
50, 107, 109, 111  
Baselines, 57  
baselines, 38, 57,  
61, 79  
basepoint, 78  
basepoints, 57, 79  
bases, 32, 113  
basic, 10  
basin, 52  
basis, 14-15, 18,  
30, 36, 39, 59,  
72-73, 77, 80,  
85, 98, 100, 105,  
107-108, 116,  
118, 120-121

bay, 77  
bays, 84, 93  
bearing, 50, 73  
bears, 19  
became, 26-28  
become, 10, 21,  
62, 92, 123  
becomes, 106  
beer, 19  
begin, 51, 63, 104,  
114  
beginning, 61, 63,  
92, 111, 122  
begins, 102  
behalf, 14, 51, 56,  
59, 64, 113, 122  
behind, 12-13  
belatedly, 25  
believe, 12-13, 50,  
52  
believed, 45  
Bellingham, 20  
belong, 65  
belongs, 93  
beneficial, 17

benefit, 24, 40, 66,  
89  
benefits, 17  
Bernárdez, 90  
best, 16, 20, 27,  
29-30, 35, 48,  
113  
better, 62, 110  
between, 9, 20-21,  
23, 27, 31-33,  
40, 42-44, 47,  
49-50, 60, 70,  
73, 75-76, 83-84,  
86-87, 98,  
100-101, 104,  
117, 119  
beverage, 19  
beyond, 61-62, 66,  
68, 76, 79, 90, 96  
big, 17  
bilateral, 23, 31-32,  
42-49, 100, 116,  
122  
binding, 75, 93-94,  
99, 109-110,  
114-115, 117, 120  
Biodiversity, 53,  
55-56  
biodiversity, 53  
Biological, 53-56  
BIOT, 13, 17,  
20-22, 27-28,  
32-33, 43, 47,  
53-54, 106, 119  
Biot, 21  
BIOTs, 17  
birth, 28  
Bissau, 11  
bit, 24, 81  
black, 21  
Blair, 40-41  
blame, 113  
blanket, 86  
blast, 52

blasting, 52  
blatant, 120  
blind, 15  
blindingly, 115  
bloom, 64  
blue, 16  
Bluefin, 110-112  
Body, 10  
boiled, 34  
bold, 83  
born, 27-28  
both, 8, 28, 30-31,  
34, 47, 57, 63,  
69, 71, 76, 78,  
85, 92, 98, 100,  
103, 107, 114,  
119-120  
bottom, 80, 92  
bound, 23, 75, 83,  
94, 98  
boundaries, 60, 79  
boundary, 60-61,  
64, 70-71, 74,  
77-81, 83-84, 92  
box, 64  
Boyle, 69, 71, 74,  
78, 85, 91-92, 94  
breach, 10-12,  
15-16, 25, 96-97,  
110, 112, 120  
breached, 8-9, 96,  
114-115  
breaches, 101, 109  
break, 26, 30, 51,  
58, 97, 101,  
110-111  
breaking, 45  
breaks, 29  
brewed, 19  
Brief, 30, 58, 110  
brief, 33, 36, 100,  
113  
briefly, 32-33, 42,  
59



bring, 28, 37, 48,  
99, 106  
bringing, 31  
brings, 25, 50, 104,  
109  
brisk, 45  
British, 8, 21,  
27-28, 30, 32-33,  
40-44, 46-49, 52,  
66, 93, 99, 105,  
120  
broad, 11, 14, 106  
broader, 84, 108  
broadly, 81  
broken, 35, 45, 49  
brought, 14, 28,  
32, 34, 40-41,  
49, 57, 59,  
71-72, 100, 108,  
112, 115  
Brown, 8, 41, 45,  
47, 101, 111  
Bryant, 47  
budget, 19-20  
build, 40  
building, 61  
built, 39  
Bulgaria, 33  
Bulletin, 39  
bundle, 8  
burden, 34

## C

CAB, 41, 49  
Cabinet, 46  
Cable, 13  
cable, 12  
call, 8, 21, 44, 48,  
51, 59, 63, 70,  
75, 99-101, 115

called, 9, 27-28,  
33, 43, 46, 83,  
104, 117-118  
calling, 117-118  
calls, 64, 67, 73,  
83, 98, 116  
came, 12, 40, 42,  
45, 51, 62, 89-90  
Canada, 34  
cannot, 8, 33, 37,  
50, 58, 60-62,  
64, 67, 69, 72,  
79, 81, 88, 90,  
92-93, 97, 99,  
103, 114-115,  
117, 121  
capable, 12, 16,  
21, 57, 88, 91  
capacity, 20, 69,  
71, 79, 92, 94  
Carajos, 56  
cardinal, 71  
carefully, 10, 19,  
77, 87, 99  
Cargados, 56  
carried, 29, 52, 57,  
105  
carry, 15, 21, 28, 94  
carrying, 93  
Carter, 8  
Case, 10-11  
case, 11, 15-16,  
22-24, 26-27, 30,  
33-35, 39, 50,  
59-62, 64-68,  
70-73, 76-81,  
83-87, 89, 91-98,  
100-101,  
103-104,  
110-112, 116,  
118, 120-121  
Cases, 33  
cases, 9, 11, 16-17,  
22-23, 49, 59,  
62, 69, 73-74,  
76, 78, 84, 87,  
89, 100, 103, 118  
casts, 12  
catch, 21  
categorically, 16  
categories, 28, 40,  
102, 111  
categorized, 27, 29  
category, 28, 40,  
65, 90, 94, 96  
cathedra, 80  
caused, 52  
causing, 21, 32  
cautioned, 33  
CBD, 54  
cbd, 56  
ceci, 69  
ceded, 29  
central, 76, 80  
Centre, 48  
Certain, 10  
certain, 9-10, 38,  
65, 73, 76-77,  
81, 89, 96, 109,  
111  
Certainly, 88  
certainly, 12, 30  
CERTIFICATE, 124  
certify, 124  
cetera, 83  
Chagos, 13-17,  
21-22, 26-29, 32,  
36-43, 45-46, 49,  
52, 56-58, 63,  
65-66, 68-69, 86,  
96-98, 101, 111,  
114-115,  
117-119, 121  
chagos, 15  
Chagossian, 13-14  
Chagossians, 13, 58  
challenge, 33,  
47-48, 105, 116  
chance, 49

Chandrasekhara,  
74  
change, 24, 36, 70  
changed, 61, 119  
Chapter, 57  
chapter, 36, 55, 61  
character, 97, 109,  
115  
characteristics, 65  
characterize, 107  
characterized, 100,  
110-112  
characterizing,  
102, 110-111  
Charles, 17  
Charter, 73-74  
charts, 37-38  
check, 59  
cherish, 53  
Chile, 71, 88  
Chilean, 88  
choice, 107  
chose, 53  
Chris, 47  
chronology, 45  
Churchill, 90  
circular, 118  
circumstances, 34,  
40, 49, 71, 85,  
106  
cited, 33, 35, 38,  
90, 106  
citizen, 27  
Citizens, 28  
citizens, 27-28, 58  
citizenship, 25,  
27-28  
city, 113, 123  
Civil, 46  
Claim, 31, 98  
claim, 10-11,  
13-14, 16, 21-23,  
31, 34, 36-37,  
39, 41-42, 58,

64, 66, 68, 78,  
 85, 87, 93-95,  
 97-98, 112, 118,  
 121  
 claimed, 61, 93  
 claiming, 105  
 claims, 11, 13-14,  
 31, 35-36, 71,  
 74, 78, 93, 98,  
 102, 104,  
 109-110,  
 112-113, 116,  
 118-122  
 clarity, 15, 31-32,  
 34, 44  
 classed, 28  
 clause, 10, 84, 118  
 clauses, 63  
 Claytons, 19  
 CLCS, 24, 67, 70,  
 118-119, 121  
 cleaning, 53  
 clear, 22, 29,  
 35-37, 40, 42-47,  
 49, 66, 85, 94,  
 97, 100, 103,  
 108-109, 112,  
 117, 123  
 clearly, 45-46, 54,  
 67, 70, 75, 87,  
 94, 118  
 clock, 59, 70, 119  
 close, 66, 83, 89  
 Closely, 90  
 closely, 72, 79-80,  
 95  
 closer, 10, 48  
 closing, 17-18  
 CM, 83  
 Cm, 54  
 cm, 53-54  
 cmenvaud, 53-54  
 cmselect, 53-54  
 co, 38, 76, 90  
 coastal, 9, 12,  
 36-38, 50-52, 55,  
 59, 61-65, 67-69,  
 73, 75-76, 81,  
 85, 88, 95-103,  
 107, 110-112,  
 116-117, 119  
 coastline, 95  
 coffee, 58  
 Colin, 14, 21, 33, 47  
 collates, 30  
 colleague, 69  
 colleagues, 9, 24,  
 30, 56, 70, 91,  
 113, 121-122  
 colonial, 29, 64  
 Colonies, 27-28  
 colonies, 27-28  
 colony, 27-28  
 com, 15, 27  
 combination, 14  
 come, 30, 43, 45,  
 48, 50, 56, 65,  
 74, 83, 94-95,  
 100, 105, 110,  
 113  
 comes, 11, 14, 70  
 comfortably, 36  
 comforting, 19  
 coming, 106  
 commence, 32  
 commenced, 34, 49  
 commencement,  
 34  
 comment, 29  
 Commentary, 86  
 commentators, 73,  
 89-91  
 Comments, 17, 20  
 comments, 20, 55  
 commercial, 41  
 Commission, 8, 21,  
 39, 42-43, 48,  
 54, 67, 71, 109,  
 121  
 commissioned, 18,  
 58  
 Commissioner, 8,  
 32-33, 38, 44,  
 46-47, 53  
 commissioning, 54  
 commit, 47  
 commitment, 45,  
 47, 49, 99  
 commitments, 66,  
 99  
 committed, 55, 109  
 Committee, 21, 53  
 common, 9  
 Commons, 20, 53  
 Commonwealth,  
 14, 17, 20-21,  
 33, 38-39, 41-42,  
 44-45, 47, 54,  
 58, 119  
 communications,  
 31, 36-37, 39,  
 42-43, 47  
 Communiqué,  
 43-44  
 Community, 11  
 community, 97  
 Comparative, 78  
 compare, 18  
 compared, 23  
 comparison, 27  
 compass, 72  
 compatibility, 39  
 compatible, 40, 46  
 Compétence, 98  
 competence, 80  
 competent, 80,  
 103-104  
 competing, 93  
 complains, 31, 37  
 complaint, 116  
 complaints, 9  
 complete, 21, 85,  
 113  
 completely, 23, 85  
 completes, 122  
 completion, 119  
 complex, 26  
 compliance, 114  
 complicate, 113  
 complied, 36, 117  
 comply, 35, 114,  
 117  
 composition, 83  
 comprehensive, 30  
 comprised, 56  
 comprises, 53  
 compromise, 86-88  
 compromises, 77  
 Compulsory, 75  
 compulsory, 59,  
 69, 77-80, 85-86,  
 88, 92-94, 102,  
 111, 120  
 computer, 124  
 concealed, 23  
 concede, 83  
 conceded, 14, 67  
 concedes, 84, 105  
 conceding, 83  
 conceivable, 24  
 conceived, 14, 107  
 concept, 34, 106  
 concern, 16, 49,  
 75-76, 79-80, 93,  
 102, 108, 112,  
 120  
 concerned, 12, 16,  
 29, 36, 42,  
 44-45, 47, 92, 96  
 Concerning, 10  
 concerning, 31, 55,  
 63, 65, 68,  
 75-76, 78-79, 81,  
 86, 102-103,  
 108-111, 114,  
 116, 119-120  
 concerns, 17, 35,  
 64, 68, 70-71,  
 103-104, 111

concession, 66, 75, 116  
 Concessions, 33-35  
 concessions, 69  
 conciliation, 77-78, 93, 102, 109, 111  
 conclude, 14-15, 22, 35, 84, 97  
 concluded, 58, 78, 89, 97  
 concludes, 49, 101, 109, 112  
 Conclusion, 25, 49  
 conclusion, 18, 37, 71-73, 76, 83, 86, 88-92, 96, 105, 116, 118, 122  
 Conclusions, 94  
 conclusions, 74, 94  
 conclusively, 92  
 concomitant, 10  
 concrete, 11, 19, 70  
 concurrent, 77, 79  
 condemning, 48  
 conditions, 108, 119  
 conducive, 12  
 conduct, 15-16, 24, 34, 66, 78, 120  
 Conference, 26, 29, 55, 77, 86, 89-90  
 conference, 103  
 conferred, 28  
 conferring, 68  
 confine, 102  
 confirmed, 21, 99, 103  
 confirming, 38  
 confirms, 80, 92  
 conflict, 33  
 conformity, 105  
 confronted, 62  
 connected, 72, 95  
 connection, 11, 27-28, 74-75, 80, 88, 104  
 consensus, 85-88  
 consent, 99  
 consequence, 31, 99  
 consequences, 52, 72  
 consequent, 101  
 Conservation, 16-17, 55  
 conservation, 17-18, 21-22, 41, 102, 105-108  
 conserving, 66, 107  
 consider, 22, 27, 33, 36, 40, 43, 45, 54, 67, 71-72, 74, 91, 98, 105, 122  
 considerable, 21, 35-36  
 consideration, 23-24, 43, 49, 77, 79, 95  
 considerations, 22, 43, 73, 117  
 considered, 10, 19-20, 24, 27, 29-30, 35, 37, 43, 50, 67, 75, 80, 88, 108  
 considering, 34, 67, 121  
 considers, 27, 46  
 consistent, 17, 23, 90  
 consistently, 65, 95, 100  
 consolidate, 14  
 constituency, 26  
 constitute, 10-11, 121  
 constituted, 11, 14, 102, 121  
 constitutes, 15, 81, 120-121  
 Constitution, 26-27, 56  
 constitutional, 26  
 constrain, 83  
 construction, 52  
 construed, 11, 76  
 consult, 10, 23, 46, 48, 50, 120  
 consultants, 17, 20  
 consultation, 9, 22, 45-48, 112, 120  
 consultations, 23, 43, 45, 48, 120  
 consulted, 32, 47, 111  
 consulting, 46  
 contain, 34  
 contained, 9-10, 77, 103  
 contaminated, 53  
 contemplated, 70, 74  
 contemporaneous, 100  
 contemporary, 27  
 contend, 85  
 contended, 88  
 contending, 85  
 contends, 64, 87  
 content, 67, 110  
 contention, 70, 76, 88, 95  
 contentions, 85  
 contentious, 24, 33, 94  
 contested, 95  
 context, 16, 43, 71, 80, 88, 100  
 contexts, 32  
 Continental, 32, 43, 67, 71, 112, 118-121  
 continental, 24, 57-58, 61-62, 65, 67, 78-79, 93-94, 96  
 continue, 25, 30, 35, 59  
 continued, 44  
 continues, 15, 104, 116  
 Continuing, 46  
 continuing, 96  
 continuous, 32, 37, 39  
 continuously, 40  
 contradict, 93  
 contradiction, 21, 120  
 contrario, 79-80, 84  
 contrary, 15, 31, 61-62, 88, 95  
 contrast, 19  
 contravened, 99, 103  
 contravention, 102-103, 108, 110  
 contribute, 41  
 control, 56, 98, 104-105, 116-118  
 controversy, 13  
 convenient, 25, 51, 81, 101  
 conveniently, 26, 40  
 Convention, 9-11, 15, 25, 31, 35, 37-40, 50, 53-57, 60, 62-80, 83-85, 87-92, 94-98, 101-105, 107-109, 111-118, 120-121  
 convention, 78  
 conventions, 54, 56  
 conversation, 13,

44, 48, 79  
conversely, 75  
conveyed, 48  
convincing, 94  
cooperate, 120  
Cooperation, 38  
cooperation, 9, 23, 112  
coordinate, 120  
coordinated, 118-119  
coordinates, 37-39, 57  
coordination, 9  
copies, 27, 29-30, 38, 52  
copy, 30, 38, 53, 56-57, 60, 81  
copying, 87  
core, 34, 54, 97  
correct, 39, 73, 79, 81, 83, 87-88, 92, 95, 98, 102, 110-112  
correctly, 22, 116  
correctness, 73  
correspondence, 37  
costs, 54  
couldn't, 26  
counsel, 59, 73-74, 83, 122, 124  
Counsellor, 12  
Counter, 31, 61-62, 104-106, 114, 116  
counter, 85  
counterpart, 40  
countless, 37  
country, 27, 123  
couple, 41  
course, 9, 13-16, 26-27, 30, 32-35, 37, 40-42, 44, 50-52, 56-58, 61, 65, 68-70, 74, 77, 79, 85-86,

91, 97-98, 100, 106, 114-116  
Court, 9-10, 13, 15-16, 22-24, 33-34, 71, 124  
court, 22-23, 59-60, 79, 83, 93-94, 96, 104, 108, 111, 116  
courteous, 122  
courts, 16, 23, 28, 34-35, 80, 104, 108  
cover, 20, 56, 88, 90, 106  
covered, 78, 84, 95  
Covering, 13  
covering, 21  
covers, 56, 58, 64  
cpa, 60  
crafted, 88  
CRAWFORD, 8, 25  
Crawford, 8-9, 25, 69, 120  
create, 18, 64, 68, 94  
created, 11  
creating, 107  
creation, 27, 40, 42  
creature, 95  
credibly, 117  
crew, 73  
criminal, 16  
criteria, 109  
criticising, 46  
criticism, 18  
Cross, 14  
cross, 13-14  
CRR, 124  
cryptically, 88  
crystallizing, 40  
curious, 100  
currency, 76  
current, 13, 116  
customary, 59, 73

cut, 44

## D

dark, 42  
darüber, 23  
data, 30, 41  
date, 28, 55  
dated, 17, 20, 33, 38-48, 53  
dating, 62  
Davey, 48  
DAVID, 124  
David, 124  
Day, 15, 18, 51, 60, 66  
day, 10, 18, 27, 32-33, 47-48, 51, 82, 92, 118  
days, 118  
de, 10  
deadline, 118  
deal, 12, 14, 36, 61, 65, 71, 78, 80, 92, 97-98, 104  
dealing, 14, 71, 89  
deals, 34, 38, 84, 105  
dealt, 18, 25, 40-42, 70, 84, 91  
dear, 69  
debatable, 22  
debate, 88, 92  
decades, 32, 36-37, 58, 62, 96  
December, 8, 13, 19, 33, 40-41, 45, 48-49, 52, 61-62  
decide, 17, 24, 61,

67, 69-71, 77, 98-100, 115, 120  
decided, 23, 33, 59, 110, 119  
deciding, 22, 33, 63, 86, 98  
decision, 16, 22, 34-35, 40, 48-49, 54, 78, 109, 116, 121  
decisions, 73, 75, 123  
Declaration, 93, 99  
declaration, 19, 38, 70, 75-76, 78-79, 92, 94, 98-100, 115  
declarations, 37  
declare, 25, 36-39, 49-50, 63, 68, 97, 106  
declared, 12, 32, 47, 57  
declaring, 8, 17, 39, 47, 50, 120  
decline, 35, 64, 97  
dedicated, 55  
deepest, 113  
deeply, 55  
default, 93  
defeated, 116  
defective, 23  
defence, 96  
defined, 27  
definitive, 30  
delay, 8, 24  
delegation, 43, 88, 113, 122  
delegations, 85, 89  
deliberate, 22, 89  
delicacy, 87  
delicate, 77, 86-87  
delicately, 88  
delimit, 61  
Delimitation, 43,

61, 74, 84  
 delimitation, 60,  
     70, 77-79, 81,  
     83-84, 86-89,  
     92-94  
 delimitations, 64,  
     81  
 delimited, 9, 62  
 Delineating, 57  
 delineation, 70, 79,  
     81, 84  
 delivered, 19  
 demonstrable, 17  
 demonstrate, 9, 31  
 demonstrated,  
     117, 120-121  
 demonstrates, 88  
 denial, 14, 18, 33  
 denied, 13, 46  
 denies, 13, 68  
 denouncing, 48  
 deny, 109  
 denying, 16, 94  
 depart, 74  
 Department, 12, 38  
 department, 8  
 Dependencies, 26,  
     122  
 Dependency, 29  
 Dependent, 28  
 depends, 68  
 depicting, 57  
 depleting, 18  
 deposit, 38-39  
 deposited, 38, 57  
 Depositing, 38  
 deposits, 37  
 deprived, 22  
 deprives, 109  
 Deputy, 113  
 derive, 81  
 derived, 16  
 descent, 28  
 describe, 64, 102,  
     109-110  
 described, 17-19,  
     38, 52, 65  
 descriptions, 105,  
     107  
 design, 10, 15-16  
 designate, 17, 20  
 designated, 108  
 designation, 99  
 designed, 12, 14,  
     22  
 Despite, 38  
 despite, 18, 36, 49,  
     60, 74, 76  
 destined, 29  
 destroyed, 12  
 destroying, 24  
 detaching, 96  
 detail, 18, 24, 36,  
     40, 42-43, 53, 70  
 detailed, 19, 25,  
     28-29, 32, 35,  
     45, 50-51, 92  
 details, 52  
 detain, 81, 87  
 detained, 73-74  
 detection, 20  
 detention, 73  
 determination, 22,  
     24, 73, 79, 81,  
     85, 96-97  
 determinations, 77  
 determine, 15, 54,  
     61, 64, 100,  
     115-116, 121  
 determined, 54,  
     77, 79  
 determining, 102  
 detriment, 9  
 Developing, 55  
 Development, 17,  
     20, 55  
 development, 38,  
     46, 55  
 df, 62  
 Diego, 8, 12,  
     21-22, 41, 52-54,  
     56-58  
 difference, 40, 70,  
     91  
 different, 11, 14,  
     16, 22-23, 28-30,  
     34, 53, 56, 72,  
     89, 95  
 differently, 84, 103  
 difficult, 13-14, 21,  
     47, 83, 87, 105  
 difficulty, 65, 72,  
     74, 87, 105  
 dimension, 73  
 diminishes, 44  
 diplomat, 8, 13  
 diplomatic, 23, 33,  
     35, 37-39, 42,  
     46, 49, 103  
 direct, 8, 36, 76, 92  
 directed, 8  
 direction, 67, 124  
 directly, 80, 118  
 Director, 12, 17,  
     20-21, 33, 38, 47  
 Directorate, 21, 33,  
     47, 106  
 directs, 72  
 dirt, 53  
 disabled, 24  
 disagree, 74, 116  
 disagreement, 33,  
     48  
 disappointed, 48  
 disappointing, 53  
 disapproved, 17  
 disaster, 62  
 discard, 80  
 discharge, 52, 120  
 discharged, 12  
 Discharges, 52  
 discharges, 52  
 disclosure, 24  
 discounted, 86  
 discourage, 113  
 discovered, 66  
 discovery, 42  
 discuss, 12, 41, 113  
 discussed, 24,  
     41-42, 45  
 discussing, 40, 87,  
     108  
 discussion, 34,  
     42-45  
 discussions, 23,  
     41, 43, 48  
 dismissive, 89  
 disparity, 26  
 dispatches, 34  
 disposal, 60  
 dispose, 63, 98, 101  
 dispositive, 101  
 Dispute, 71, 78, 103  
 dispute, 18, 25,  
     31-37, 40, 42,  
     44, 47-49, 59-60,  
     62-80, 83-88,  
     91-96, 100,  
     102-105, 108-120  
 disputed, 78,  
     93-94, 118  
 Disputes, 74, 92,  
     108-109, 111, 120  
 disputes, 10, 46,  
     62-64, 67, 70,  
     77-78, 80-81,  
     83-84, 86-91,  
     93-95, 102-104,  
     106, 109-112,  
     114, 117, 120  
 disregarded,  
     17-18, 47  
 disrepute, 20  
 disruption, 88  
 distinct, 68  
 distinction, 28, 71,  
     83-84



distinguished, 122  
District, 10  
district, 26  
districts, 26  
disturbing, 73  
Diversity, 53-56  
divest, 114  
divided, 26, 40  
divides, 108  
diving, 64  
Division, 39  
doc, 56  
doctrine, 10  
Document, 8  
document, 8, 12,  
23-24, 46, 61  
DOCUMENTS, 56  
documents, 8, 11,  
14, 16, 26, 36,  
48, 62, 113, 118  
doi, 27  
doing, 12, 21-22,  
51, 60, 120  
dollars, 20  
domain, 12, 72  
done, 11, 46, 67,  
113, 122  
door, 96  
doubt, 12, 36, 39,  
47, 90, 100, 112  
doubts, 18, 60  
down, 9, 13, 29,  
34, 60-62, 64,  
79, 81  
dozens, 21  
drafted, 103, 106  
drafters, 62, 74  
drafting, 78  
draw, 18, 40, 50,  
55, 83  
drawn, 16, 23, 96  
dreadful, 19  
dredging, 52  
drink, 19

driven, 72  
droit, 10  
DS, 10  
due, 51, 58, 68-69,  
101, 120  
dumping, 52  
During, 53  
during, 59, 65,  
85-86, 113  
duties, 105

## E

Each, 107  
each, 26, 30, 99,  
113, 117  
Earlier, 24  
earlier, 67  
early, 42, 59, 62  
earnestly, 38  
easily, 93-94  
East, 8, 55  
easy, 113  
Economic, 17, 57  
economic, 17, 38,  
46, 58, 66, 114  
economically, 58  
ed, 47  
edge, 57  
editors, 86  
eds, 74  
Edward, 48  
EEZ, 17, 32, 38-39,  
43, 57, 75, 78,  
93-94, 102-103,  
106-107, 110-112  
EEZs, 38  
effect, 11, 13, 27,  
38, 52, 70-71,  
75, 94, 97-98,

119  
effective, 18, 22,  
56, 62, 119  
effectiveness, 20,  
69  
effects, 11, 53  
effort, 92, 118-119  
efforts, 16  
egotiations, 34  
eight, 90  
Eighth, 54  
either, 31, 34, 51,  
59, 64, 73, 75,  
77, 84-85, 88-89,  
93, 98, 107  
electing, 26  
elections, 26  
electoral, 26  
elements, 41  
elicited, 40  
elsewhere, 74  
Email, 17, 20-21,  
32-33, 47  
email, 21, 47-48  
Embassy, 12-13  
embraced, 90  
emerge, 84  
emerged, 40, 42  
emerging, 27  
eminent, 89  
emphasis, 20  
emphasised, 13, 46  
emphasize, 80, 97  
emphasized, 111  
emphasizing, 40  
employed, 124  
en, 19, 52, 56  
enable, 34, 41  
enacted, 18, 27  
enclave, 21  
encompass, 115  
encompasses, 116  
encourage, 18  
encouraged, 67,

118  
encouraging, 24  
encroach, 16  
end, 9, 19, 25, 34,  
40, 60, 106,  
113-114, 121, 123  
Endangered, 55  
endeavour, 105  
ended, 76  
endorse, 110  
endorsed, 88  
enforced, 20  
enforcement,  
20-22, 74  
engage, 31, 34, 48  
engaged, 93  
engagement, 113  
engaging, 18  
England, 64  
English, 22-23, 28,  
52, 56  
enjoy, 21, 24, 81,  
123  
enjoyable, 113, 122  
enjoyed, 37, 107  
enjoyment, 46  
enjoys, 22, 36, 117  
enlightening, 28  
enough, 35  
ensure, 9, 36  
ensured, 53  
ensuring, 22  
entail, 54  
entailing, 75  
entails, 37  
entered, 77  
enterprise, 14, 20  
enters, 77, 106  
entire, 13, 20, 56,  
71, 79, 104, 113  
entirely, 11, 36, 49,  
59, 78-79, 81, 83  
entirety, 17, 86,  
98, 106  
entities, 104

entitle, 38  
 entitled, 14, 36, 39, 45, 58, 62, 64, 66, 68, 70, 75, 95, 97-98, 105  
 entitlement, 24, 37-38, 76, 93, 98-99  
 entitlements, 40, 79, 81  
 entity, 69  
 entry, 69, 78  
 ENVIRONMENT, 56  
 Environment, 55, 103-104  
 environment, 11, 14, 16, 22, 48, 52-53, 55-56, 102-110  
 Environmental, 37-38, 53, 74, 107  
 environmental, 9, 12-15, 17-21, 43, 47, 52-55, 107, 117  
 environmentally, 54  
 envisaged, 10, 45  
 EPPZ, 17, 38-39, 75, 107  
 equally, 80, 92, 94, 105  
 equipment, 52  
 era, 64  
 Eritrea, 117  
 especially, 11, 86, 113  
 essential, 70  
 Essentially, 9  
 essentially, 9, 115  
 est, 69  
 establish, 12, 15, 21, 38, 64, 95, 97, 101, 107, 119  
 established, 9, 12, 16, 18, 39, 62, 88, 103, 107, 109, 123  
 establishes, 121  
 establishing, 13, 18, 21, 38, 107, 120  
 Establishment, 19  
 establishment, 18, 33, 47-49, 98, 107  
 esteemed, 113  
 estuaries, 9  
 et, 72, 83  
 Ethiopia, 33  
 evaluation, 102  
 eve, 29  
 Even, 61, 84, 98  
 even, 9, 12, 15, 17, 21, 23, 27, 32, 64, 69, 72, 77, 79, 85, 91, 95, 97, 99, 102, 109-113, 115, 118  
 event, 23, 39, 51, 76, 113, 118  
 events, 42, 101  
 eventual, 46  
 eventually, 60, 76  
 everything, 32, 60  
 eviction, 15  
 evidence, 10, 15-18, 20, 24, 30, 32, 34, 40, 42-44, 86-87, 107-108  
 evidenced, 79  
 evidently, 49  
 evoked, 10  
 evolution, 100  
 evolved, 62  
 evolves, 84, 100  
 ex, 80, 100  
 exacerbate, 64  
 exactly, 43, 94, 97  
 exaggeration, 92  
 Examination, 14  
 examination, 13-14, 43  
 example, 10, 17, 23, 27, 32, 44, 47, 62, 70, 73, 76, 78, 88-90, 92, 94, 99-100, 104-105, 115  
 examples, 99  
 Except, 102  
 except, 76  
 exception, 15, 20, 61, 63, 75, 77, 102-103, 110-112  
 exceptional, 78  
 exceptions, 75, 85-86, 89, 102, 104, 111  
 excerpt, 16, 80, 104  
 exchange, 21, 31-32, 34-35, 39, 41, 45, 49, 59  
 exchanged, 47, 100-101  
 Exchanges, 31, 40, 42, 46  
 exchanges, 33-34, 36, 39-40, 45, 49, 100-101  
 excised, 26  
 excision, 27, 29, 99  
 exclude, 70, 86, 110, 114  
 excluded, 63, 70, 75-76, 78, 80, 84, 87-88, 103, 111-112, 114  
 excludes, 89, 95, 112  
 excluding, 41, 78, 85, 87, 90, 122  
 exclusion, 21-22, 63, 76, 84-88, 109, 112  
 Exclusions, 75  
 exclusions, 75, 86, 89, 111, 114, 120  
 Exclusive, 17, 57  
 exclusive, 38, 58, 114  
 exclusively, 86  
 exempted, 77  
 exercise, 9-11, 15-16, 35, 38, 41, 49, 54, 61-62, 67, 69, 76-77, 83-84, 87, 97-100, 102-103, 105-108, 110-111, 113-114, 117  
 exercised, 11-12, 41, 60, 62, 66, 78, 93, 95, 120  
 exercises, 56  
 exercising, 14, 38, 59-60, 99, 110, 112, 115, 117, 120  
 exhausted, 35  
 exhaustive, 106, 119  
 exist, 83, 119  
 existence, 33, 40, 70, 95, 97  
 existing, 86, 106  
 exists, 31, 33, 75, 95  
 expand, 75  
 expanding, 65  
 expect, 42  
 expectations, 17  
 expected, 43  
 expeditiously, 76  
 expenditures, 19  
 expense, 11

experience, *19, 59, 100*  
expert, *17-18, 21*  
experts, *15, 43*  
expired, *118*  
explain, *110*  
explained, *98-99, 104, 114, 121*  
explaining, *108*  
explains, *73*  
explanation, *90, 111*  
explicit, *38*  
explicitly, *96*  
exploitation, *46, 96*  
exploiting, *66*  
exploring, *66*  
express, *85-86, 90, 113*  
expressed, *15, 37, 46, 49, 53, 88, 91, 94*  
expression, *77*  
expressly, *31, 34, 36, 41, 65, 68, 73, 115-118*  
expulsion, *57*  
ext, *53*  
extend, *54, 68, 122*  
Extended, *32, 43, 119-121*  
extended, *16, 22, 26, 65, 118*  
extending, *38, 122-123*  
extension, *53-54*  
Extent, *61*  
extent, *56, 70, 78, 88, 99, 108, 122-123*  
extinguished, *67*  
extra, *77*  
Extract, *14, 39, 41, 49*

extract, *80*  
extracted, *66*  
extraction, *80*  
extraneous, *22*  
extraordinarily, *14*  
extraordinary, *10, 84*  
extremely, *29-30, 90*  
eye, *15*  
eyes, *27*

## F

face, *22, 68, 75-76, 81, 83, 86, 90-91, 94-95, 98*  
faced, *32, 61, 71, 86*  
faces, *105*  
fact, *18, 23, 33, 35, 37-38, 42-44, 47, 49, 51, 63, 65, 67, 69, 71-72, 76, 83, 90, 92, 96, 98, 101, 103, 106-107, 109, 115*  
factor, *86*  
facts, *24, 30, 40, 95-96*  
factual, *31, 33, 35-36, 40, 42, 50, 80*  
fail, *17*  
failed, *19, 31, 46, 53, 120*  
failing, *115*  
fails, *117*  
failure, *10, 35, 42, 46, 48, 120-121*  
fair, *9*

fairly, *31-32, 123*  
fairness, *13, 92*  
fait, *10*  
faith, *10-11, 13, 24, 46, 120-121*  
fall, *17, 60-62, 64, 70, 79-80, 84-85, 88, 90-91, 100, 102, 110-112*  
fallen, *20, 74*  
falling, *72-74, 95, 111*  
falls, *38, 78, 80, 84, 102-103, 113, 117*  
familiar, *12, 53, 66*  
familiarity, *77*  
famous, *23*  
fan, *21*  
far, *13-15, 39, 44-45, 50, 64*  
fares, *110*  
fascinating, *113*  
faster, *20*  
fatal, *71, 87*  
fauna, *106*  
favoured, *85*  
faze, *13*  
FCMZ, *17, 20*  
FCO, *12, 14-15, 17, 20-21, 47, 54, 106*  
feared, *85*  
feasibility, *15, 54*  
features, *70*  
February, *41-42, 46*  
Federation, *33, 73*  
fell, *15, 61*  
fences, *96*  
fetched, *14*  
few, *17, 25, 40, 43, 90*  
Fifth, *21*  
fifth, *23*  
Figure, *57*

figure, *91*  
figures, *26-27, 29-30*  
file, *24, 65, 118*  
fileadmin, *11, 62*  
filed, *36, 60-61, 67, 75, 118-119*  
files, *8*  
filing, *24, 57, 62, 67, 70, 76, 119*  
final, *33, 56*  
Finally, *24, 112*  
finally, *95, 101, 120*  
financially, *124*  
financing, *19*  
find, *8, 13, 16, 53, 57, 64-65, 68, 84, 90, 92, 101, 107*  
finding, *15, 60, 74*  
finely, *70*  
finish, *51, 59, 100, 113*  
firm, *90*  
firma, *79*  
firmly, *63*  
First, *11, 16, 22, 50, 63, 67, 87, 98, 111, 118*  
first, *10, 12, 23, 25-26, 28, 31-32, 36, 40, 42, 51, 59-60, 65, 68, 72, 75, 77, 81, 88, 91-92, 94-95, 97-99, 102-104, 114, 122*  
Firstly, *31, 33-34*  
firstly, *34, 55*  
Fish, *101, 109*  
fish, *17-18, 20-21, 41, 47, 111, 114*  
Fisheries, *17, 34*  
fisheries, *16, 21,*



- 23, 41, 46, 73,  
76, 96, 102-103,  
106, 108,  
110-111, 117-118
- fisherman, 117
- Fishing, 54
- fishing, 17-18,  
20-22, 32, 40-44,  
54, 56, 65-67,  
96, 105-106,  
112, 115-118, 120
- fit, 50
- five, 16, 22, 96
- fixing, 79
- flagship, 53
- floor, 8
- flora, 106
- flowing, 24
- focus, 123
- Focusing, 40
- Folder, 12, 16-18,  
20-21, 74, 79-81,  
93-94
- folder, 14, 60,  
78-79, 92, 108,  
118
- Folders, 12, 23
- folders, 53, 60, 113
- follow, 15, 18, 37,  
63, 87, 100
- followed, 45, 59, 62
- Following, 27, 41,  
44-45
- following, 16, 28,  
38-39, 44, 47-48,  
115
- follows, 18, 34, 54,  
83, 121
- footing, 9, 12, 98
- Footnote, 54, 81
- footnote, 55, 65,  
88, 90
- footnotes, 32, 40
- footprints, 13
- forbidden, 64, 71
- force, 47, 69,  
72-74, 77-78, 89,  
106
- forced, 57
- forcible, 27
- forefront, 62
- foregoing, 124
- Foreign, 14, 17,  
20-21, 33, 38-39,  
42-45, 47-49, 54,  
58, 66, 106
- foreseen, 62
- forgive, 40, 97
- form, 33, 36, 40,  
95, 116, 122, 124
- forma, 43
- formally, 106
- former, 13-14,  
27-28, 49, 91
- formula, 122
- formulae, 123
- formulated, 16, 37,  
75
- formulations, 69
- forth, 83
- forthcoming, 19
- fortiori, 120-121
- Forum, 92
- forward, 40, 50,  
52-54, 58, 61,  
65, 113, 122
- found, 28, 53, 62,  
74, 76-77, 87,  
92, 102, 106,  
108, 122
- founded, 38, 91
- four, 12, 19, 33,  
72, 92, 99, 102,  
118
- Fourth, 20, 56
- fourth, 99
- Fourthly, 23, 33
- Fragmentation, 78
- frame, 37
- framework, 9, 26,  
46, 63
- France, 10, 20, 29,  
34, 49
- fraught, 87
- Free, 10
- free, 12, 117
- freedom, 11
- freedoms, 9-10,  
120
- freeholder, 24, 65
- frequently, 10, 67
- Friday, 12-13, 59
- Fridays, 13
- friend, 69
- friends, 122
- frightened, 74
- frightening, 64
- front, 30, 79
- fulfil, 10, 54
- fulfill, 120-121
- fulfilled, 11, 109,  
111
- fulfilling, 12, 16
- full, 24, 27-28, 51,  
79, 92, 99, 104,  
119, 121
- fuller, 36
- fully, 42, 49, 51, 91
- Function, 11
- function, 16, 23
- fundamental, 50,  
96
- fundamentally, 97
- funded, 20
- funding, 22
- funds, 19
- Further, 38, 45
- further, 9, 39, 44,  
49-50, 53, 61,  
64, 77, 81,  
87-90, 97-98,  
110, 123-124
- Furthermore, 96
- future, 40, 54-55,  
63, 66-67, 69,  
117
- ## G
- game, 64, 91
- Garcia, 8, 12,  
21-22, 41, 52-54,  
56-58
- gave, 29, 84
- General, 10, 14-15,  
18, 22, 38-39,  
57, 64-65
- general, 10, 20, 25,  
27, 34, 53, 56,  
63, 69, 71,  
73-76, 80, 86-87,  
90-91, 95, 111,  
116
- generally, 64, 81,  
87, 92
- generate, 81
- generated, 57
- generating, 16
- generis, 64
- gentlemen, 8
- genuine, 73-75, 88,  
91
- geographical, 39,  
57
- Georgia, 33-34
- German, 10
- Germany, 10
- Gex, 10
- Ghana, 76-77
- give, 8, 18, 29, 33,  
51, 59, 70-71,  
83, 91, 99-100,  
108, 113,  
119-120, 122

Given, 49  
given, 25, 29, 35,  
42, 45, 48-49,  
52, 71, 89,  
94-96, 98, 101,  
111, 117, 122  
giving, 40, 90  
glad, 60  
Global, 48  
globally, 53  
GN, 57  
goals, 17-18  
Gordon, 41  
Gormenghast, 93  
got, 22, 47, 60, 69,  
81, 89, 97  
gov, 19, 56  
govern, 105  
governed, 75  
governing, 72-73,  
75, 115  
Government, 8,  
13, 15-16, 27,  
38, 41, 45-49,  
52-54, 66  
government,  
14-16, 35, 49  
governments, 48  
governs, 104  
grant, 102-103, 111  
grants, 103, 110  
grass, 54  
grateful, 28-29,  
50-51, 75  
gratitude, 113  
great, 14, 59, 64-65  
greater, 20  
greatest, 87  
Greece, 88  
GREENWOOD, 8,  
28-30, 81  
Greenwood, 8,  
25-26, 59, 71  
Grenadines, 35

Grieve, 15, 66, 96  
ground, 11  
grounds, 110, 121  
group, 85  
guarantee, 20, 120  
Guardian, 15  
Guinea, 11  
gums, 71  
Guyana, 35, 59-62,  
72-74, 76, 78

## H

habitation, 57-58  
Habitats, 55  
Hague, 48, 59, 64  
half, 101  
Hamburg, 64, 73  
hamstrung, 106  
hand, 13, 60, 66  
hands, 51  
Hansard, 20  
happened, 60-62,  
85  
Happily, 113  
happy, 97  
hard, 27, 29, 46,  
56, 105, 113, 123  
hardening, 53  
Hariabangha, 77  
harm, 52, 73  
harmful, 52-53  
harmonise, 105  
harmonize, 104  
harvest, 112  
Haskoning, 58  
Hawaiian, 18-19  
HC, 53-54  
Head, 17, 20-21,  
32-33, 46-47

headed, 17  
heading, 92  
Heads, 41  
hear, 29  
heard, 8-9, 35,  
44-45, 59,  
118-119  
Hearing, 60, 82  
hearing, 52, 54,  
58-60, 65, 123  
hearings, 59, 113,  
122  
heart, 12, 64  
hectares, 56  
heed, 23  
held, 10, 23, 35,  
42, 66, 86, 100,  
117  
helpful, 8, 11, 15,  
29, 57, 90-91,  
100  
Henry, 20  
hereby, 124  
hesitated, 78  
High, 8, 13, 32-33,  
38-39, 42-44,  
46-48, 93  
high, 9, 34, 47  
higher, 61  
highest, 35, 40, 45,  
49  
highlight, 36  
highlighting, 81  
highly, 17  
historic, 32, 40, 44,  
47, 77, 84, 93,  
96, 117  
historical, 80, 88-90  
historically, 41, 66  
history, 25, 85, 88  
hive, 81  
HMG, 13  
Hoffmann, 71  
hold, 23, 45, 49,

99, 120  
holding, 65  
holdout, 77  
holds, 96  
hole, 21  
Hon, 48  
honour, 59  
hoof, 16  
hope, 28, 30-31,  
40, 59, 113, 123  
hoped, 25, 48  
hopefully, 32, 51  
horse, 64  
host, 105  
hour, 57, 101  
House, 14, 20, 22,  
26, 29, 53, 66, 99  
However, 92, 116  
however, 8, 70  
http, 15, 19, 27,  
53-54, 56, 60, 62  
https, 11, 56  
huge, 40  
hugely, 80  
hulls, 12  
human, 13, 57-58,  
73-74  
hundreds, 20  
Hungary, 33  
husbandry, 17  
hydro, 52  
hypothesi, 100  
Hypothesis, 100  
hypothesis, 99-100  
hypothetical, 61,  
106  
**I**  
Ibid, 13, 18, 21, 56,  
81

ICJ, 33-34, 71, 109  
 ICSID, 66  
 id, 60  
 idea, 31, 44  
 identical, 107  
 identification, 79  
 identify, 34  
 ignore, 22, 73, 81, 106  
 II, 15, 56, 68, 117  
 ii, 31, 120  
 III, 61  
 iii, 11, 31, 107-108  
 illegal, 18  
 illegally, 20  
 illustrates, 23, 84  
 ILM, 61  
 imagine, 46  
 immediate, 41  
 immediately, 54  
 immunity, 23  
 impact, 30, 108  
 impacting, 117  
 impacts, 52  
 impair, 24  
 impending, 33  
 impermissibly, 75  
 implement, 55-56  
 implementation, 10-11, 15-16, 99, 104  
 implemented, 12, 18  
 implementing, 55  
 implication, 78, 116  
 implications, 12, 41, 43, 63, 73  
 implicit, 63  
 implied, 93, 117-118  
 implies, 20, 116  
 Import, 10  
 Importance, 55  
 importance, 40, 47, 92, 97  
 important, 9-10, 16, 28, 34, 40, 45, 62, 80, 104  
 importation, 53  
 impose, 21, 40, 97, 115  
 imposed, 49, 120  
 imposes, 9  
 imposing, 21  
 impossible, 13, 36, 107  
 impractical, 71  
 impression, 29  
 improper, 22, 73  
 improve, 14  
 inaccurate, 30  
 inappropriate, 45  
 incapable, 19  
 incentive, 18, 20  
 incidental, 75, 83-84  
 inclined, 13, 22  
 include, 26, 43-44, 99, 108, 114, 116  
 included, 26, 28, 84, 116-117  
 includes, 26, 37, 56, 111, 116  
 including, 11, 23, 32, 39-40, 47, 49, 54-58, 78-79, 88-89, 91, 101, 104, 107, 112, 114-115, 118-120  
 incompatible, 46, 49, 72, 97, 114  
 inconceivable, 85  
 inconsistency, 21  
 increased, 20  
 increasingly, 62  
 Indeed, 12, 22, 65, 73, 86, 105  
 indeed, 11, 23, 26, 32, 39, 42, 46, 62, 67, 76, 81, 84, 87, 89, 95, 105  
 Independence, 27-28  
 independence, 27-28, 122-123  
 independent, 11, 103, 110, 120-121, 123  
 independently, 97-98  
 India, 61, 76-78  
 Indian, 17, 21, 41, 47, 54-55, 66, 105, 109  
 indicate, 50-51, 101  
 indicated, 18, 37, 72, 100  
 indicates, 19, 103, 106  
 indication, 18  
 indirectly, 76  
 indispensable, 122  
 indisputably, 99, 116  
 individual, 15-16  
 individuals, 16, 87  
 inevitably, 93, 117  
 inference, 43, 83  
 inform, 20, 48  
 informal, 79  
 Information, 41, 49  
 information, 19-20, 24, 27, 51-54, 65, 70, 118-119  
 informed, 35, 37, 48  
 ing, 80  
 inhabitants, 13, 26-27, 29, 57  
 inhabited, 58  
 inherent, 21, 39, 83  
 inherently, 9, 76  
 initial, 51-52, 74  
 initially, 39, 109  
 initiated, 35, 93  
 initiation, 36  
 initiatives, 18  
 inquiry, 53  
 inserted, 91  
 inshore, 66  
 inside, 21  
 insistence, 43  
 Insofar, 117  
 insofar, 78, 108  
 inspiration, 92  
 instead, 92  
 institution, 35  
 instrument, 34  
 instruments, 67  
 insular, 79, 86  
 int, 56  
 Integration, 42-45, 48  
 intend, 81, 92, 113  
 intended, 105  
 intensive, 113  
 intention, 16, 24, 37, 65-66, 92, 103  
 intentions, 15-16, 77  
 Inter, 106  
 inter, 106, 114  
 interest, 24, 50, 58, 65-66  
 interested, 89, 124  
 interesting, 8, 29, 36, 50, 56  
 Interests, 10  
 interests, 11-12, 16, 33, 46, 48, 96-97, 111  
 interfered, 66  
 interference, 105

interfering, 105  
 interlinked, 9  
 interlocutory, 59  
 intermediate, 89  
 internal, 9, 14, 42, 48  
 International, 9, 11, 15-16, 24, 33-35, 42-45, 48, 55, 62, 73-74, 76, 78-79  
 international, 10, 17, 22-23, 32-33, 54-55, 59, 62, 67-69, 71-75, 84, 90-91, 95-97, 99, 102-103, 105, 107-110, 112, 114-118, 120  
 interplay, 98  
 INTERPRET, 113  
 interpret, 74, 116, 119, 123  
 Interpretation, 33  
 interpretation, 31, 62-63, 68, 70, 72, 75-76, 78-80, 84, 89, 92-93, 102-104, 108-109, 111, 113-119, 121  
 interpreted, 77, 89, 116  
 interpreting, 70, 115  
 interstate, 23  
 intertwined, 32  
 Intervening, 16  
 intervention, 76  
 intimately, 96  
 introduced, 63  
 Introduction, 9, 51, 59  
 introduction, 53  
 introductory, 70, 104  
 inundated, 64  
 invariably, 56  
 invasive, 53  
 invitation, 50  
 invite, 30, 67, 80, 89, 100-101, 103  
 inviting, 64, 80  
 invoke, 34-35, 121  
 invoked, 10, 110, 113, 115-116  
 invoking, 118, 120  
 involve, 93, 95, 103  
 involved, 43, 59, 74, 86, 93, 104  
 involves, 77, 93-94  
 involving, 76, 85, 87, 95, 104, 115  
 IOTC, 21, 109-110  
 irrelevant, 103-104  
 irreparable, 73  
 irrespective, 98  
 isheries, 17  
 Island, 26, 55  
 island, 26-27, 29, 56, 65, 78, 92, 95  
 Islands, 15, 18-19, 54, 56, 81  
 islands, 13, 15, 26, 29-30, 41, 46, 56-58, 64-65, 79, 93, 95-96, 106, 122  
 isn, 84, 117  
 isolation, 79  
 issue, 9, 13, 17, 22, 28, 30, 38, 40, 46, 49-51, 58, 61, 64, 67-68, 72, 74, 77, 79, 85, 88, 93-95, 97-98, 108, 111  
 Issues, 79  
 issues, 22, 28, 30, 41, 43, 45-46, 59-60, 62, 67, 70, 72-74, 76-77, 79-81, 83-84, 88-90, 92, 94, 98-100, 119  
 Istanbul, 72  
 It, 106  
 ITLOS, 61-62, 71-73, 78, 89, 91  
 itlos, 11, 62  
 its, 57  
 itself, 10, 13-14, 18, 24, 37, 46, 65, 67-69, 83, 100, 105, 107-108, 118  
 iv, 31  
**J**  
 James, 9  
 January, 23, 41-42, 44, 53, 71, 100  
 Japan, 16  
 JARPA, 15  
 Joanne, 17, 20-21, 32-33, 47  
 job, 122  
 John, 33, 47  
 Johor, 35  
 joined, 60  
 Joint, 43-44  
 joint, 43-44, 76  
 jointly, 62  
 journal, 27  
 joy, 25  
 Judge, 8, 26-28, 50-51, 58-59, 71, 74, 78-81, 83, 85, 97-98, 100-101, 103-104, 108-112  
 judge, 18, 35, 78  
 judged, 33, 49  
 judgement, 95  
 Judges, 25, 53, 93  
 judges, 78, 91  
 Judgment, 11, 16, 22, 24, 33-34, 71  
 judgment, 11, 13, 15, 22-24, 35-36, 49, 61  
 judicial, 13, 22, 62  
 July, 17, 20-21, 38-39, 42-44, 49, 60, 100, 119  
 jump, 13, 61  
 June, 19, 49, 54  
 JURISDICTION, 112  
 Jurisdiction, 31, 34, 36, 59, 61, 76, 78, 80, 101  
 jurisdiction, 8, 10-11, 25-26, 31, 35, 38, 49, 51, 59-64, 67-71, 74-80, 83-85, 89-90, 92-95, 97-122  
 jurisdictional, 9, 11, 14-15, 36, 59-61, 63, 68, 98-99, 105  
 jurisdictionally, 106  
 jurisdictions, 120  
 jurisprudence, 10, 34  
 justiciability, 23  
 justiciable, 22-23, 106  
 justifiability, 18  
 justification, 16, 89  
 justified, 92, 107  
 justify, 107

# K

kann, 23  
KASDAN, 124  
Kasdan, 124  
Kateka, 71  
keen, 47  
keep, 46  
Keith, 110-112  
kept, 42  
key, 33-34, 96  
kilometres, 20  
kind, 21, 53, 93,  
112-113, 122  
kinds, 79  
Kingdom, 8-9,  
11-12, 14-15,  
19-20, 24, 27-31,  
39-41, 49, 51-54,  
56-59, 62-76,  
83-92, 94-102,  
104-105,  
107-108, 110,  
112, 114,  
116-117, 120, 122  
Kiss, 11  
km, 56  
knocked, 86  
knows, 60

# L

lack, 9-10, 88, 121  
lacked, 49  
lacks, 37, 39, 70,  
120  
ladies, 8  
lagoon, 12, 52-53  
Lancaster, 14, 26,

29, 66, 99  
Land, 9, 35  
land, 11, 35, 60-61,  
71, 74, 77-81,  
84, 86, 93, 98,  
106  
landfill, 52  
language, 66,  
87-88, 90, 107,  
114  
large, 9, 12, 17, 87  
larger, 57-58  
Largest, 105  
largest, 19  
last, 15, 50, 59-60,  
65, 80, 83-84,  
113, 119  
late, 42  
later, 34, 50, 107,  
118, 122  
latter, 28, 41  
Lauterpacht, 11  
Law, 9, 11, 35, 39,  
50, 55-56, 60-62,  
73-74, 76-79, 90,  
104, 107  
law, 10, 17, 22-24,  
28-29, 32-33,  
36-37, 52, 55-56,  
62, 67-69, 71-75,  
81, 83-85, 89-91,  
95-97, 99, 107,  
112, 114-117, 120

lawfully, 99  
lawfulness, 106  
laws, 106  
lawyers, 91  
lays, 9  
lead, 24, 89, 91  
leading, 46, 48  
leads, 94, 96  
learn, 12  
learned, 32, 42  
least, 9, 12, 21, 44,  
52, 65, 90, 105,

117, 119-120  
leave, 51, 101  
leaves, 109  
led, 15, 38  
left, 36-37, 60,  
90-91  
Legal, 23, 33, 39  
legal, 16, 22, 24,  
30, 32-34, 47-48,  
50, 69, 79, 91,  
95, 97, 99, 108,  
119  
legally, 11, 20, 39,  
115, 117, 120  
legislate, 106  
Legislation, 106  
legislation, 27-28,  
106  
Legislative, 26  
legitimate, 60, 86,  
97  
length, 28, 78  
lengthier, 51  
lengths, 61  
lengthy, 32, 34, 36,  
40, 87  
less, 34-35, 94,  
100, 116, 118  
lesser, 13  
Letter, 38, 40-41,  
46, 48  
letter, 8, 38, 40-41,  
83  
letters, 17  
level, 35, 40, 45,  
49, 91  
levels, 40  
Liber, 74  
Liberia, 33  
licences, 43  
license, 20  
licensing, 43  
lie, 66  
life, 58  
light, 22, 47, 70

likely, 17, 87  
likes, 62-63  
Likewise, 112  
Limit, 57  
limit, 65  
limitation, 76, 78,  
83, 87, 102  
limitations, 9,  
75-76, 102, 104,  
108, 111  
limited, 17, 23, 58,  
60, 71, 79, 81,  
83, 98, 103, 117  
Limits, 67, 71  
limits, 39, 57, 62,  
114  
line, 60-61, 73,  
80-81, 87, 94  
Lines, 57  
lines, 15, 18, 60,  
66, 90  
link, 27, 55-56,  
73-75, 91  
linked, 74, 79-80,  
96  
links, 26, 107  
list, 10, 89, 94, 106,  
119, 122  
literature, 83  
litigation, 28, 124  
little, 22, 51, 53,  
60, 64, 84, 92  
lived, 19  
living, 16, 66,  
102-103,  
105-107,  
110-111, 115  
ll, 18, 51, 53, 57,  
60, 65, 68, 78,  
80-81, 83, 92  
lobbies, 13  
lobby, 13-14  
located, 19, 79,  
102, 104, 108,

111-112  
location, 60-61, 74,  
77  
LOEWENSTEIN,  
101, 110-112  
Loewenstein, 8,  
24, 59, 63, 68,  
70, 101, 110,  
112, 121  
logic, 24  
logical, 80  
Logico, 23  
London, 8, 12-13,  
38-39, 53  
long, 10, 15, 19,  
34, 46, 49, 54,  
58, 60, 65, 86,  
96, 106  
longer, 59, 80,  
93-94, 96  
look, 10, 29-30,  
35-36, 40, 44,  
48, 52-54, 58,  
65, 67, 71-72,  
85, 89, 92, 104,  
109, 119, 122  
Looking, 42, 87  
looking, 14, 61, 68,  
88, 113  
looks, 69, 81  
loomed, 9  
loophole, 22  
Lords, 22  
lose, 28  
Louis, 32, 42-44,  
46-48  
Louisa, 35  
low, 20  
Ltd, 17  
lunch, 51, 59, 81

## M

MACDONALD, 25,  
29-30, 50  
Macdonald, 25, 28,  
30-31, 50-51, 59,  
100  
machinery, 52  
made, 10, 13, 16,  
20, 22, 30,  
34-35, 39-40,  
42-45, 49, 54,  
57, 61, 66,  
69-70, 72-73,  
75-80, 83-84,  
88-90, 92-96,  
98-100, 109,  
112, 116-117,  
119, 123  
magnitude, 19  
Magritte, 69  
main, 36, 41, 80,  
122  
mainland, 56, 95  
mainstay, 92  
maintain, 54, 97  
maintains, 67, 105  
Majesty, 15, 107  
majority, 85, 88  
Malaysia, 9, 35  
Maldives, 64  
Malta, 88  
Man, 12-13  
man, 23  
manage, 16  
managed, 60  
Management,  
16-17, 19, 55  
management, 17,  
19, 105, 107, 114  
managing, 66, 107  
mandate, 23

mandates, 117  
mandatory, 109  
manner, 10-12,  
14-15, 70,  
120-121  
Many, 9, 90  
many, 26, 29,  
36-37, 43, 49,  
55, 58, 62, 70,  
77, 88, 96, 105  
map, 57  
mar, 15  
March, 15-16, 27,  
33, 39, 42, 47,  
53-54, 119  
margin, 57  
Marine, 13, 17-19,  
43, 45, 47, 49,  
55-56, 92,  
103-106  
marine, 11-14,  
16-22, 52, 55-56,  
66, 93-94,  
102-110  
Maritime, 57, 61,  
71, 81  
maritime, 9, 36-39,  
42, 49, 57,  
60-61, 64, 66,  
70-71, 78-81,  
83-88, 91, 93-94,  
97, 100  
Mark, 17  
marked, 47  
marvelous, 122  
massive, 52  
match, 20  
material, 42-43,  
52-53, 123  
materialized, 119  
materials, 23, 67  
matter, 20, 22, 29,  
31-32, 34, 37,  
42, 46, 56, 63,  
71, 83, 87,  
91-92, 101,  
115-116  
matters, 25, 68-69,  
72, 75, 85,  
88-89, 91, 95,  
102, 105, 111,  
114, 123  
Mauritian, 8, 18,  
29, 40-41, 43-44,  
47, 49, 55, 65  
Mauritians, 43, 46  
MAURITIUS, 56  
Mauritius, 8, 12-15,  
18, 20, 22-29,  
31-33, 35-51,  
54-58, 63-71, 73,  
75, 84-86, 88-89,  
91-92, 94-102,  
104, 109-115,  
117-122  
Mavrommatis,  
33-35  
maxim, 23  
May, 20  
mean, 50, 63, 68  
meaning, 64,  
68-69, 72, 75,  
95, 104  
meaningfully, 41  
means, 18, 32, 63,  
70, 103, 113  
meant, 18, 98  
measure, 38, 49,  
102, 106-108, 117  
measured, 61  
measures, 11-12,  
16, 18, 55-56,  
73-74, 104-105,  
108  
mechanism, 21, 45  
mechanisms, 22  
meet, 17, 123  
Meeting, 41  
meeting, 12-13,  
21, 41, 43-45,  
49, 79



- meetings, *100-101*  
meets, *17, 39*  
melted, *61*  
Member, *10*  
member, *26, 94, 123*  
Members, *9-11, 15, 19, 22, 24-25, 28, 31, 50, 59, 83, 110, 113, 122*  
members, *26, 101, 112*  
Memorandum, *55*  
memorandum, *13, 47*  
Memorial, *20, 31, 54, 57, 61-62, 80, 97, 104-106, 114, 116*  
Mensah, *74, 103-104, 108-109*  
mention, *42*  
mentioned, *43, 66, 77, 89, 100, 103, 110*  
mentions, *88*  
mere, *33, 65*  
Merely, *68*  
merely, *44, 80, 86-87, 90*  
Merits, *61*  
merits, *22, 24-25, 64, 98*  
message, *47*  
Messrs, *63, 90-91*  
met, *11-12, 36, 45*  
metropolitan, *52*  
MHCL, *39*  
might, *10, 16, 21-23, 26, 59, 62, 66, 69-70, 73, 83, 99-100*  
Migratory, *55*  
migratory, *18*
- mile, *57, 65*  
miles, *38, 57, 61-62, 65, 96*  
military, *12, 21*  
millions, *20*  
Mills, *9, 24*  
mind, *67, 87-88*  
minds, *62, 87*  
mineral, *65-66, 96*  
minerals, *66*  
Minister, *38, 40-42, 44-45, 48-49, 66, 83, 101, 111, 120*  
minister, *16, 54*  
Ministerial, *49*  
Ministers, *44, 54*  
Ministry, *42-45, 48, 55*  
minute, *110*  
minutes, *51, 113*  
misapprehended, *23*  
misapprehends, *23*  
misconceived, *74, 114*  
misheard, *28*  
miss, *74*  
missed, *54*  
Mission, *39, 49*  
mistake, *23*  
mistaken, *108-109*  
misunderstandings, *83*  
mixed, *64, 78, 80, 83-84, 91, 94-95*  
MM, *12, 21, 38-42, 44-46, 48, 57, 65-66, 74, 78, 107*  
mmp, *19*  
modalities, *100*  
moment, *44, 46, 51, 58, 70, 81, 85*  
monitoring, *53*
- month, *42, 65, 119*  
months, *32, 43-44*  
Monument, *18-19*  
monument, *18*  
mooring, *106*  
Moreover, *18, 39, 79, 81, 110*  
morning, *8, 25-26, 30, 97, 100*  
most, *27, 29-30, 56, 67, 71-72, 84, 89-90*  
mostly, *50*  
motivated, *22*  
motives, *15*  
mouths, *79*  
move, *46, 55, 81, 89, 93*  
movement, *14*  
moving, *109*  
MP, *20, 48*  
mp, *19*  
MPA, *8-23, 32-33, 37, 39-40, 42-50, 56, 63-64, 68, 75, 97-102, 105-108, 115, 120*  
MPEPIL, *11*  
MRAG, *17, 20*  
MS, *25, 29-30, 50*  
Ms, *21, 25, 28, 30, 33, 47, 50-51, 59, 100*  
mu, *56*  
much, *8, 23, 25, 30, 33, 35, 43, 51, 64, 80, 100-101, 112, 118, 122-123*  
multi, *14*  
multilateral, *32, 122*  
Murton, *33, 47*  
muss, *23*  
must, *11-12, 18, 23, 34-35, 54, 59, 61, 72, 74, 78, 81, 83-84, 89, 91, 94, 106, 121*
- MV, *74*  
Myanmar, *61-62, 64*  
myriad, *91*  
myself, *51, 60, 123*
- ## N
- name, *71*  
namely, *53, 74-75, 79*  
narrow, *73, 75, 84*  
nation, *54*  
National, *18-19, 21, 45, 49, 55-56*  
national, *18, 23, 55, 62, 89*  
Nationality, *27-28*  
nationality, *27*  
Nationals, *117*  
Nations, *39, 53, 57, 74, 78, 104, 107*  
natural, *42, 52, 66, 114*  
naturalization, *27*  
nature, *52, 63, 96*  
nautical, *38, 57, 65*  
naval, *52*  
Navy, *21*  
Ndiaye, *74*  
near, *40, 66, 93*  
nearing, *119*  
nearly, *46, 59, 107*  
necessarily, *37, 39, 76-79, 84, 93-95, 99*  
necessary, *10, 17,*

21-22, 31, 34,  
71, 74-75, 78,  
80, 87, 94, 98  
necessity, 34  
need, 17-18, 20,  
27, 34, 39, 43,  
68, 76, 84-86,  
93, 96, 103, 115,  
118, 122  
needed, 13, 44, 96,  
107  
needs, 41, 83  
negative, 17  
negotiate, 46, 53  
negotiated, 77, 87  
negotiating, 85  
negotiation, 31, 34  
negotiations, 35,  
85-86, 88  
negotiators, 77,  
87-88  
Neither, 107  
neither, 19, 124  
Netherlands, 73  
Never, 71-72  
never, 10, 24, 37,  
61, 67, 71-72,  
74, 85, 91, 119  
nevertheless, 83,  
98  
New, 16, 39, 79  
new, 27-28, 54, 68,  
84, 106  
Newhaven, 72-73  
newly, 123  
news, 113  
Next, 47  
next, 17, 25, 29,  
45, 51, 57,  
79-80, 93, 100,  
109, 122-123  
NGOs, 20  
nice, 18  
nicht, 23  
nineteen, 32

no, 11, 62  
non, 10, 19, 22-24,  
33, 52, 58, 61,  
66, 93, 116  
None, 43, 75, 102,  
114  
none, 26, 30, 83, 87  
Nonetheless, 14,  
89, 114  
nonetheless, 9, 87  
noon, 58  
Nor, 112  
nor, 83, 124  
normal, 27  
Northwestern,  
18-19  
Note, 39, 42-45, 48  
note, 11, 15-16, 32,  
38-39, 44, 46,  
51-52, 57-58, 67,  
69, 76, 90-91,  
94, 101, 104  
noted, 22, 37, 58,  
76, 80, 85  
Notes, 48-49  
notes, 23, 34, 41,  
56, 61  
Nothing, 112  
nothing, 44, 63,  
72, 76, 79, 91,  
95, 97, 103, 118  
notice, 19, 29, 81  
noticed, 81  
Notification, 31  
notion, 10  
November, 21, 38,  
41, 44-45, 48-49,  
101  
novice, 21  
noxious, 13  
NR, 21  
nr, 56  
nuanced, 70  
Nuclear, 34

number, 28, 40,  
54, 57, 62-63,  
65, 81, 87, 89  
numbers, 12, 30, 91  
Numerous, 86  
numerous, 72, 85,  
95, 115  
Nutshell, 90  
nutshell, 106  
NY, 39

## O

object, 10, 24, 32,  
121  
objected, 38  
objection, 24, 38,  
61, 119  
objectionable, 12  
Objections, 33, 36  
objections, 32, 44,  
59-60, 63, 74,  
87, 97  
objective, 14, 16,  
47  
objectively, 33  
objectives, 12,  
15-16, 18-19  
objects, 70  
obligates, 114, 117  
obligation, 9-10,  
25, 37, 59, 93,  
105, 114-115, 117  
obligations, 9-11,  
54-55, 96-97,  
112, 116, 120-121  
obliged, 35, 39  
observation, 35,  
51-52, 90  
observations, 49,  
63

observe, 17, 91  
observed, 15, 111  
observes, 90  
obstacle, 35, 49  
obstacles, 32  
obtained, 99  
obvious, 10, 39,  
41, 43, 56, 65,  
70, 72, 84-85,  
87-88, 98, 105,  
115  
obviously, 8, 30,  
60, 69-70, 96,  
113  
occasion, 92  
occasionally, 50, 75  
occasions, 36-37,  
40, 72, 96, 122  
occupant, 65  
occurred, 24  
occurs, 11  
Ocean, 15, 17, 21,  
39, 41, 47,  
54-55, 66, 105,  
109  
oceans, 9, 11  
October, 10, 17,  
36, 44, 79  
oddly, 61  
odds, 29  
Of, 14  
offer, 19, 51-52,  
83, 90  
offered, 118  
offering, 24  
offers, 76, 92, 94  
Office, 17, 20-21,  
33, 38-39, 42,  
44-45, 47, 54, 58  
officers, 20-21  
Official, 49  
official, 16, 21,  
32-33, 105  
officially, 12, 106



officials, *15-16, 30, 32, 42-43, 47-48, 99*  
offshore, *66*  
often, *38*  
oil, *65-66*  
Okay, *25*  
omission, *46*  
Once, *54*  
once, *64, 91, 106*  
One, *9, 73, 83, 90, 101*  
one, *8-9, 11, 14, 16-17, 19-20, 22-23, 26, 30-33, 39, 50, 59-60, 62-66, 68-69, 71, 75-81, 83-84, 89, 92, 95, 99-100, 103, 105, 108, 112-113, 115, 121*  
onerous, *34, 36*  
ongoing, *43, 45*  
online, *27, 56*  
onlinelibrary, *27*  
only, *14, 17, 22, 24, 33, 35, 42-43, 45, 55-56, 64-67, 69, 71, 73, 75, 77-80, 83-84, 87-88, 91-92, 94, 96, 102-104, 106, 108-109, 111-112, 114, 117-118, 121*  
onwards, *45*  
open, *48, 81, 96, 109*  
opening, *61, 113, 122*  
operation, *67, 71*  
operations, *52*  
Opinion, *110-112*  
opinion, *111*

opponents, *20*  
opportunity, *20, 54-55*  
opposite, *64*  
opposition, *44, 48*  
opprobrium, *61*  
opt, *85, 93*  
opting, *92, 110*  
option, *14, 78, 109*  
optional, *75, 88, 102, 104*  
options, *48, 54*  
oral, *25, 40, 111, 113*  
Order, *26-27, 73-74*  
order, *24, 35, 52, 54, 84*  
Ordinance, *106*  
ordinarily, *90*  
ordinates, *38*  
org, *11, 19, 60, 62*  
organization, *103*  
organizing, *122*  
orig, *11*  
origin, *29*  
original, *8, 23, 54*  
Originally, *36*  
origins, *28*  
ostensibly, *18*  
Other, *85*  
other, *10-11, 13-14, 16, 18, 32-34, 37, 39, 43, 47-48, 51-52, 56-57, 59, 65-68, 72, 74-76, 79, 81, 88, 91, 95-97, 99-100, 102, 104-108, 112-118, 120-123*  
others, *9, 11, 25, 30, 50, 101, 120*  
otherwise, *27, 75, 84, 98, 120, 124*

out, *8, 12, 15, 18, 21, 26, 29, 40, 43-44, 46, 52, 57, 59-60, 67, 75-76, 78-79, 85-86, 89-90, 92-94, 96-97, 99, 102, 105, 107, 109-110, 112, 119*  
outcome, *17, 54, 76, 124*  
Outer, *57*  
outer, *24, 57, 61-62, 96*  
outing, *59*  
outline, *53*  
outlined, *47*  
OUTLOOK, *56*  
Outlook, *55*  
outset, *71, 84, 91, 95*  
outside, *18, 45, 72, 80, 87, 112*  
outstanding, *25*  
Over, *19*  
over, *8-9, 23, 32, 36-41, 44, 46, 49, 51, 56, 59-60, 62-64, 68, 70, 72, 76-79, 81, 83-84, 86-88, 90, 92-98, 100-110, 112-118, 120*  
overarching, *96*  
overlooked, *122*  
Overseas, *12, 21, 28, 33, 38, 47, 53-54, 106*  
overview, *33*  
overwhelming, *87*  
owed, *120*  
own, *10, 17-18, 23, 48, 58, 65-66, 83, 91, 93-94,*

*96, 110, 114, 116, 118*  
owner, *66*  
ownership, *66*  
Oxman, *90*

## P

pa, *53-54*  
pace, *45*  
package, *46*  
pag, *60*  
Page, *108-109, 111*  
page, *12-14, 16-18, 20-21, 23, 54, 60, 78-81, 84, 92-94, 109*  
pages, *53, 81*  
paid, *13*  
pains, *90, 109*  
Pakistan, *88*  
Palace, *59*  
Palestine, *33-35*  
Panama, *11*  
Pandora, *64*  
  
pāpāhānaumokuākea, *19*  
  
papahānaumokuākea, *19*  
Paper, *41, 49, 54*  
paper, *19, 92*  
para, *11, 16, 24, 31, 33-35, 55, 57, 61, 63, 65-66, 72, 76-78, 83-85, 87, 89-90, 95, 106, 120*  
Paragraph, *32, 43, 97, 105-108, 116, 119*

paragraph, *12-13, 17, 20, 22-24, 52, 54, 61, 76, 79-80, 84, 86, 92, 95, 104, 109*  
 Paragraphs, *114*  
 paragraphs, *71*  
 parallel, *86, 91*  
 paraphrase, *26, 69*  
 paras, *34-35, 65, 72, 74, 120*  
 Paris, *29*  
 park, *13, 18, 21*  
 parks, *56*  
 parlance, *54*  
 parliament, *53-54*  
 Parliamentary, *47*  
 Part, *10, 38, 59, 62-64, 70-71, 73-78, 80, 83-85, 87-95, 102, 104, 108-109, 112, 114, 117-118, 120*  
 part, *26-28, 31, 36-37, 39-40, 53, 59, 61, 69, 71, 73, 77, 89, 92, 104, 110-111*  
 particular, *11, 13, 16-18, 24-25, 30, 36, 47, 50, 69, 80, 85, 88, 96, 104, 115*  
 particularly, *20, 35-36, 45*  
 particulars, *70*  
 Parties, *8, 10, 30-34, 37, 40, 47-48, 100, 104, 108-110, 117, 119*  
 parties, *36, 43, 57, 62-63, 69-70, 77-78, 86, 117, 124*  
 partly, *9*  
 partnership, *20*  
 Parts, *101-102, 108*  
 parts, *26, 55, 58, 102, 111*  
 Party, *99, 104, 117*  
 party, *33, 55-57, 75, 77*  
 pas, *69*  
 pass, *18*  
 passage, *17, 22, 62, 92*  
 passages, *81*  
 passant, *52*  
 passed, *19, 28, 67, 87*  
 past, *30, 62, 86, 110*  
 patient, *113*  
 patrol, *20-21*  
 patrolling, *20*  
 pattern, *122*  
 PAUL, *113*  
 Pause, *25*  
 pause, *58, 91, 101*  
 paving, *24*  
 pay, *11*  
 PCA, *122*  
 pca, *60*  
 PDF, *56*  
 pdf, *11, 19, 53-54, 56*  
 Peace, *33, 59*  
 peaceful, *9, 32*  
 pecial, *109*  
 pedigree, *10*  
 pending, *22, 120*  
 people, *27, 29*  
 per, *80, 99*  
 perceived, *20*  
 Perhaps, *21, 58, 110*  
 perhaps, *20-21, 23, 25, 43, 50, 68, 76, 122*  
 perilously, *83*  
 period, *26, 29, 42, 46, 65, 87, 120, 123*  
 Permanent, *10, 33, 39*  
 permit, *21*  
 permits, *17, 88*  
 permitted, *21, 64, 68*  
 permitting, *21, 66*  
 perpetuate, *64*  
 person, *27*  
 persons, *27-28, 33, 74*  
 persuade, *46, 64, 71, 94*  
 persuasive, *64*  
 pertaining, *73*  
 pertains, *112*  
 pertinent, *34-35*  
 Peru, *71, 88*  
 Philippe, *58*  
 Philosophicus, *23*  
 phoned, *48*  
 phrase, *10, 16, 19-20*  
 phrases, *13*  
 phrasing, *87*  
 pick, *44*  
 picture, *29*  
 pieces, *19*  
 pinnacle, *93*  
 Pitcairn, *17, 20-21, 32-33, 47*  
 Place, *27*  
 place, *21, 26, 39-40, 45, 48, 54, 62-63, 70, 94, 97*  
 placed, *86, 91*  
 places, *65, 99, 102*  
 plagued, *22*  
 plain, *43, 72, 78, 85-87, 89, 105, 115, 118*  
 plainest, *16*  
 Plainly, *106*  
 plainly, *16, 57, 75, 95, 105, 108-109, 118*  
 Plan, *16-17, 19*  
 plan, *17, 19, 43, 101*  
 planning, *42*  
 plans, *12, 15, 44, 101*  
 plant, *53*  
 play, *91*  
 playing, *64*  
 plays, *10*  
 pleadings, *36, 40, 53-54, 64, 67-68, 111, 113, 116, 118, 122*  
 pleasant, *123*  
 Please, *92*  
 please, *63, 97*  
 pleasures, *64, 123*  
 point, *10, 20, 24, 26, 29, 33-34, 36-37, 39, 44, 49-50, 57, 62-63, 70, 73-74, 80-81, 83-85, 87-90, 92, 94, 99, 101, 113*  
 pointed, *26*  
 points, *12, 22, 28, 36, 57, 65, 67, 99*  
 Poland, *10*  
 police, *20*  
 policies, *104*  
 policy, *15, 23, 53-54, 72-73, 105*  
 Polish, *10*  
 Political, *12*  
 political, *12, 14-15, 17, 22, 35, 119*  
 Pollutant, *52*

polluting, 21  
 pollution, 21, 52, 73, 104-106, 108  
 Population, 27  
 population, 26  
 PORT, 56  
 Port, 32, 42-44, 46-48  
 posed, 95  
 Posford, 58  
 posit, 72  
 Position, 55  
 position, 14, 20, 23-24, 29, 35-39, 42, 44, 55-56, 58, 61, 65-66, 70, 77, 80, 88, 97-99, 119, 121  
 positions, 24  
 positive, 76  
 positively, 110  
 possibilities, 35, 98, 100  
 possibility, 16, 32, 46, 61, 90, 109  
 possible, 30, 40, 58, 113  
 possibly, 37, 85  
 posthumous, 90  
 potential, 18  
 potentially, 13  
 power, 70, 100  
 powerful, 13, 60, 85  
 powers, 69, 94, 97, 99-100, 108  
 PQ, 49  
 practical, 62, 70, 106  
 practice, 14, 27, 65, 78, 89, 122  
 practise, 89  
 pragmatically, 77  
 precautionary, 11  
 precise, 57  
 precisely, 44, 74, 85, 116  
 precluded, 22  
 predicated, 97-98  
 preface, 122  
 preferably, 122-123  
 prefers, 72  
 prejudice, 30, 46, 62  
 prejudicial, 46  
 Preliminary, 33, 36  
 preliminary, 24, 59-60, 63, 65, 70, 90, 118-119, 121  
 prelude, 29  
 premises, 47  
 preparation, 106, 113  
 preparations, 54  
 préparatoires, 85  
 prepared, 43, 100, 106  
 prescient, 78  
 presence, 21, 41  
 present, 15-16, 18, 42-43, 61, 65, 69-70, 89, 91, 94-95  
 presentation, 8, 11, 18, 32, 50-51, 102, 122  
 presentational, 77  
 presented, 22, 70, 94-95  
 presents, 80  
 Preservation, 37-38, 103-104, 107  
 preservation, 11, 14, 16, 102-105, 107-108, 110  
 preserve, 106  
 preserved, 22  
 preserving, 55  
 PRESIDENT, 8, 25, 30, 50-51, 58, 81, 83, 101, 110, 112, 122-123  
 President, 8-9, 11, 15, 22, 24-25, 30-31, 35-36, 49, 51, 58-59, 72, 77-79, 81, 83, 86, 90, 95, 101, 110-113, 116, 118-122  
 Presidential, 19  
 press, 15, 32, 42  
 pressure, 14  
 pressures, 86  
 presumably, 21, 87  
 presumptions, 77  
 presuppose, 34  
 pretext, 85  
 prevail, 88  
 prevent, 24, 35, 104-105, 121  
 prevention, 108-109  
 prevents, 80, 120  
 previous, 16, 22, 27, 39-40, 43, 79, 122  
 previously, 42  
 primarily, 27  
 Prime, 40-42, 44-45, 48-49, 83, 101, 111, 120  
 principal, 98-99  
 principle, 10, 15, 75, 81, 83-84, 95-96, 98  
 principles, 34-35  
 printed, 69, 92  
 prior, 34, 52, 123  
 priori, 73  
 pristine, 21  
 Private, 47, 106  
 private, 20  
 pro, 43  
 probable, 93  
 probably, 22, 60, 90, 123  
 problem, 29, 98, 120  
 Problems, 78  
 problems, 10  
 Procedural, 112  
 procedural, 47, 49, 112, 120  
 procedure, 78, 109-110  
 Procedures, 74  
 procedures, 75, 77, 86, 92, 102, 109, 111  
 proceed, 38, 49, 77, 98  
 proceeded, 60  
 proceeding, 13, 23, 90, 123-124  
 proceedings, 16, 22, 32, 34-36, 49, 59, 93, 96, 103, 119-120, 124  
 proceeds, 53  
 process, 23, 44, 48, 93, 106, 109  
 proclaim, 23, 75  
 proclaimed, 19  
 proclaiming, 22  
 Proclamation, 18-19, 38, 107  
 proclamation, 12-13, 22, 105, 107  
 produced, 104, 108  
 productive, 58, 123  
 products, 10  
 PROFESSOR, 8, 25, 51, 81, 83

- Professor, 8-9, 25, 51-52, 58-60, 64, 69, 71, 73-74, 78, 80-81, 83-85, 90-92, 94, 101, 104, 106, 114, 117, 120-121
- program, 15
- programme, 15
- progress, 46
- prohibition, 9-10, 20, 106
- prohibitions, 21
- project, 46, 48-49
- projects, 19
- prolong, 64
- promise, 35, 49, 113
- promised, 45
- promote, 17
- promptly, 42, 113
- pronouncement, 62
- proper, 84
- properly, 22-23, 74, 84, 91, 110, 113
- property, 66
- proposal, 17, 20, 32, 40, 42-44, 86, 106
- Proposals, 13
- proposals, 86
- propose, 11, 13, 25, 36, 70
- Proposed, 47
- proposed, 42-43, 45, 86
- proposing, 51
- Proposition, 23
- proposition, 34-35, 83
- propositions, 33-34
- prospect, 64
- prospecting, 66
- protect, 18, 66, 106
- Protected, 17, 43, 45, 47, 49, 56, 106
- protected, 11, 18-19, 21, 23, 94
- protecting, 55, 106
- Protection, 37-38, 103-104, 107
- protection, 11-12, 14, 16, 18, 20-21, 53, 55, 102-110
- protections, 21
- protest, 38, 42, 96, 119
- protested, 39, 65, 67
- prove, 33
- proven, 107
- proves, 33
- provide, 17, 20, 26-27, 29, 52, 56, 89, 102, 113, 118
- provided, 11, 15-16, 18, 24, 26-28, 52, 54, 56, 73, 89, 97, 104, 107
- provides, 9, 26-27, 49, 55, 103-106, 111, 121
- providing, 19-20, 88
- provision, 27, 50, 52, 71, 73, 76-77, 84-86, 105
- provisional, 73-74
- Provisions, 10
- provisions, 9, 31, 35-39, 67-69, 74-77, 89, 98-99, 101-104, 107-109, 111-112, 114, 116, 118, 120-121
- psp, 27
- public, 12, 14, 19-20, 33, 46, 72-75, 84, 90, 95
- publication, 27
- publications, 53-54
- publicly, 57, 60-61
- published, 46, 92
- Pulp, 9, 24
- pure, 19
- purely, 15
- purist, 10
- purple, 60
- purport, 120
- purported, 38, 63-64, 97-98, 110-111, 114-115, 120
- purpose, 11-12, 14, 16, 22, 26-27, 66, 93, 97
- purposes, 12-13, 15-16, 21, 30, 33, 37, 42, 62, 68, 70, 77, 96-99
- pursuance, 105
- pursuant, 38, 108, 118
- pursue, 12-13, 19
- pursued, 15
- pursuing, 15
- Put, 90
- put, 13, 17, 28, 33-34, 45, 49-50, 61, 64-65, 68-69, 76-78, 80, 83-84, 86, 89-90, 92, 96-97, 102, 113, 120
- puts, 13-14, 80, 85, 87
- putting, 60, 78
- ## Q
- QC, 58
- qualifiers, 74
- qualifies, 69
- qualifying, 27
- quality, 108
- quarter, 58
- Quarterly, 78
- Question, 52-56
- question, 13-16, 20-23, 26-28, 30, 33, 37, 41, 45, 50-51, 53, 55-56, 58, 62-64, 66-76, 83-84, 87, 91, 94-100, 109, 115-117, 119, 122
- Questions, 51-52
- questions, 9, 16, 25-26, 28, 50-52, 58, 62-63, 67, 71-74, 76, 80-81, 83-85, 88, 90-95, 97, 101, 113-115, 122
- Quite, 62
- quite, 22, 29-30, 37, 40, 43, 69-70, 73, 89-90, 92
- quod, 61
- quote, 10-11, 13-15, 17, 20-22, 26, 32, 53, 59, 61, 89, 104, 116
- quoted, 26
- quoting, 89

# R

- radical, 18  
radically, 29  
raft, 69  
raise, 10, 31, 44, 67, 69, 115, 123  
raised, 31-32, 36-37, 42, 48-49, 59, 64, 73, 89, 100, 114, 118-119  
raises, 87, 115-116  
raising, 41, 46-47  
Ramgoolam, 41, 44-45, 48-49, 83, 101, 111  
RAMSAR, 55  
range, 40, 54, 62, 99  
Rao, 74, 78, 80-81, 83, 85  
Rather, 34, 84, 91  
rather, 8, 15, 25-26, 36, 59, 64, 69-70, 77, 90-91  
ratification, 54, 57  
ratifications, 54  
rd, 86  
RDR, 124  
RE, 56  
re, 9, 19, 24, 64, 68, 72, 75, 79, 86, 99-100  
reach, 9, 94, 116  
reached, 86-87  
reaching, 35, 111  
reacted, 48  
reaction, 47, 86  
read, 23, 78-80, 89-90, 92  
reading, 14, 22, 57, 79-80, 87  
reaffirmed, 57  
reaffirms, 116  
real, 19, 48, 85  
reality, 61, 64, 77  
Really, 66  
really, 20, 29, 50, 77, 80, 83  
realm, 73  
reason, 13, 16, 18-19, 21, 23, 35, 69, 81, 84, 86, 88, 101, 112  
reasonable, 15-16, 49  
reasonableness, 18  
reasoned, 89-91  
reasoning, 50, 73, 89-90, 94  
reasons, 16, 25, 35, 41, 50, 56, 65, 98-99, 108, 114, 117  
recall, 36, 59, 61, 108, 122  
recalling, 38  
Received, 21  
received, 17, 31, 54  
receiving, 53  
recent, 11, 27, 53, 61, 73, 92, 121  
recently, 61, 64, 71  
recess, 30, 58, 110  
recharacterize, 102  
recited, 73  
Reclamation, 9, 35  
reclamation, 35  
recognise, 75  
recognised, 10-11, 14, 34, 48, 71, 97  
recognises, 96  
recognising, 48  
recognition, 65, 67, 96  
recognized, 10, 114-115, 117, 119-120  
recognizes, 116  
recognizing, 99  
Recommendation, 54  
recommendation, 54  
recommendations, 54  
reconcile, 58  
reconciled, 43  
reconfirmed, 120  
reconsidered, 15  
Record, 44  
record, 8, 12, 15, 23, 31, 33, 35-37, 40-41, 44, 48-49, 60, 85, 88-89, 107, 124  
recorded, 13, 45, 124  
records, 27, 43, 48, 100-101  
recourse, 73, 77  
Recreational, 54  
recreational, 21, 54  
rectify, 120  
reduce, 75, 104-105  
reduced, 124  
reduction, 105  
Ref, 39  
refer, 13, 21, 23, 27, 31, 34, 37, 53, 73, 76, 92, 97, 107, 109, 112  
reference, 11, 19, 27, 33, 36, 58, 68-69, 75, 77-79, 89-90, 107, 109, 116  
referenced, 32, 106  
referral, 109  
referred, 8, 10, 15, 26, 35, 48, 50, 65-68, 86, 91, 97, 100, 109  
referring, 12, 50, 92  
refers, 8, 50, 56, 84, 107  
reflect, 13, 87, 107  
reflected, 50  
reflects, 10, 85-86  
refrain, 105  
refusal, 17  
refused, 86  
regard, 27, 31, 34, 39, 41, 52, 56, 66, 76, 83, 95-96, 99-100, 103, 107, 111, 113, 116-122  
regarded, 27  
regarding, 19, 31, 38, 42, 48, 66, 84, 94-95, 104-105  
Regardless, 109  
regards, 58, 116  
Regime, 103  
regime, 17-18, 43  
region, 47  
Regional, 38, 42-45, 48  
Registry, 56  
regularly, 32  
regulate, 90, 105, 107  
regulation, 19, 105-107, 117  
Regulations, 57  
regulations, 18-19, 22, 52, 57  
rehearsed, 33  
REICHLER, 113  
Reichler, 40, 42, 59, 63, 112, 122-123  
reinforced, 106  
reject, 99



rejected, 35, 73, 86, 89  
 Rejoinder, 8, 18, 24, 32, 43, 46, 67, 74, 84, 92, 95, 105-106, 114, 119  
 relate, 97, 104  
 related, 31, 37, 78-79, 124  
 relatedly, 95  
 relates, 52, 57, 122  
 Relating, 92  
 relating, 8, 14, 37, 39-41, 45, 60, 62, 84, 86, 96, 99, 102, 104-105, 110, 112, 114-115  
 relation, 11, 14-16, 19, 35, 40, 56, 59, 65, 70, 72, 76, 86, 94, 96-98, 100, 110-112, 114, 119, 122  
 Relations, 62  
 relations, 19  
 relationship, 19, 50, 97  
 relevance, 17, 42, 68  
 relevant, 14, 17-18, 23, 27, 38, 47, 53, 68, 73-74, 79, 89, 99, 102-103, 105, 107, 116  
 reliable, 27  
 reliance, 10, 110  
 relied, 73, 99, 102  
 relies, 20, 84, 90, 110  
 rely, 62, 76, 93  
 remain, 47, 113  
 remaining, 63  
 remains, 43, 66, 93  
 remark, 13, 90  
 remarks, 23, 70, 88, 102, 104  
 remember, 59-60  
 remind, 60, 96  
 reminded, 67  
 remotely, 12  
 removal, 27  
 removed, 27  
 renamed, 28  
 rendition, 14  
 René, 69  
 renewed, 15, 120  
 repair, 12  
 repaired, 12, 62  
 reparation, 16  
 repeat, 99  
 repeated, 38, 47, 69, 96  
 repeatedly, 37, 85, 120  
 repeats, 90  
 replace, 106  
 replaced, 28  
 replied, 20  
 Reply, 14, 17, 36, 49, 55, 97-98, 106  
 Report, 10, 21, 53-56  
 report, 8, 29, 53, 55, 58, 86, 105-106  
 reported, 32  
 reportedly, 90  
 REPORTER, 124  
 Reporter, 124  
 reporter, 122  
 reporting, 8, 12  
 Reports, 24, 33-34  
 reports, 15, 30  
 Representative, 52  
 reproduced, 12  
 reproduces, 104  
 Republic, 39, 45-46, 48, 56, 58  
 reputation, 14, 54  
 request, 8, 38, 61, 73  
 require, 19, 36, 78, 110, 113, 116-117  
 required, 18, 35, 60, 85, 93, 109  
 requirement, 34, 36-37, 110  
 Requirements, 33  
 requirements, 11, 31, 35-36, 39, 45  
 requires, 72, 97, 104-105, 116, 119  
 requiring, 11, 43, 121  
 Research, 92  
 research, 15, 18, 60, 93-94, 106  
 researched, 91  
 Reserve, 13, 106  
 reserve, 12-13, 17, 20, 106  
 reserves, 56  
 resettlement, 13-15, 46, 54, 58  
 reside, 58  
 resident, 14  
 residents, 13, 26, 28  
 resolution, 46, 119  
 resolve, 49, 69, 71, 80, 84, 94, 100, 120  
 resolved, 62, 69, 76, 81, 115  
 resolving, 49, 114  
 resource, 24  
 resources, 16, 24, 42, 46, 55, 66, 102-103, 105-107, 110-111, 114-115  
 respect, 13, 15, 22-24, 35-36, 50, 64-65, 67, 69, 72-73, 76, 87, 91-92, 96, 102, 111, 114-115, 117, 119  
 respected, 67  
 respectfully, 25  
 respects, 10, 67, 76, 99, 120  
 respond, 50  
 Respondent, 59, 98  
 respondent, 11, 86  
 responding, 51  
 Response, 48, 51  
 response, 22, 26, 41, 48, 54, 63, 83, 88, 97, 101, 123  
 responses, 51-52  
 responsibilities, 53  
 responsibility, 53  
 responsible, 21, 32, 46, 54  
 responsive, 113  
 rest, 21  
 restrain, 51  
 restrictions, 106  
 result, 53, 78, 80, 84, 91, 94  
 resulting, 93  
 results, 10, 16  
 resume, 47, 51  
 retain, 28  
 retained, 27  
 return, 22, 26, 33, 58, 68-70, 76, 85, 92  
 returned, 96  
 revealing, 14  
 reveals, 21

reversed, 36  
reversion, 65, 69, 96, 99  
reversionary, 24  
reversioner, 24  
revert, 51, 66  
reverts, 66  
review, 13, 22, 29-30, 40, 104  
reviewed, 42  
reviewing, 90, 100, 109  
revise, 90  
rhetorical, 13  
rhetorically, 22  
rightly, 69, 73, 110  
Rights, 11  
rights, 9-11, 14-16, 18, 22-23, 25, 32, 37-38, 40-44, 46-47, 49, 62, 65-67, 69-70, 73-74, 79, 81, 93-98, 100, 102-103, 105, 107-108, 110-112, 114-115, 117-121  
ring, 96  
rise, 18, 40, 91, 120  
risk, 20, 48  
risked, 32  
risks, 54  
River, 24, 77  
river, 79  
RM, 21  
road, 46, 61  
roadmap, 59  
Roberts, 12-15, 21, 33, 47  
robust, 32  
rock, 92-93  
rocks, 53, 58, 93  
Rodrigues, 26-29,

56  
role, 10, 104, 119  
Romania, 33  
room, 59, 77  
Rosenne, 59-60, 64  
Rosindell, 20  
round, 25, 42-43, 45-46, 60, 113, 122  
route, 64  
Rt, 48  
rubric, 98, 115  
rule, 46, 67, 71, 90, 95, 103, 105, 108-109, 111  
ruled, 60  
rules, 68, 72-74, 91, 95, 102-103, 105, 108, 110, 112, 114-117, 120  
rulings, 74  
run, 51, 98, 111  
running, 49  
Ruritania, 93  
Ruritanian, 93  
Russia, 34  
Russian, 33, 73

## S

safeguarded, 67  
Saiga, 73-74  
Saint, 35  
same, 26, 28-29, 33, 35, 39, 47, 60-61, 73-74, 76, 81-82, 89, 107, 109, 122  
sandblasted, 12  
SANDS, 51, 81, 83  
Sands, 51, 58, 81, 83, 101, 104, 106, 114, 117, 121  
sat, 59  
satisfaction, 76  
satisfactory, 76  
satisfied, 36, 72  
satisfy, 35-36, 103  
save, 32  
Savoy, 10  
saw, 42, 47  
saying, 13, 21, 43-44, 59, 123  
says, 13, 17, 31, 43, 54, 58, 63, 67, 71-73, 76, 79-81, 86, 90, 92, 105-106, 111, 114-115  
SC, 9, 21  
scale, 58  
scenario, 14  
sceptical, 17  
scholarly, 103  
scholarship, 91  
schweigen, 23  
science, 18  
Scientific, 21, 92  
scientific, 15-16, 18, 44, 93-94, 106  
scientifically, 22  
scope, 21, 74, 79, 88-89  
scrutiny, 88  
se, 80, 99  
Sea, 9, 11, 35, 39, 50, 55-56, 60-62, 73-74, 76-79, 90, 104, 107, 114-118, 121  
sea, 9, 38, 56-57, 60-61, 65, 69, 79, 81, 84-85, 93  
seabed, 62, 66

Seas, 93  
seas, 9, 106  
secession, 122-123  
Second, 11, 18, 22, 60, 63, 65, 68, 99, 103, 111, 118  
second, 17, 20, 26, 29, 40, 42, 58, 75, 79-80, 91, 104, 116  
Secondly, 31, 33-34, 50  
secondly, 34, 77  
Secretariat, 119  
Secretary, 14, 20, 38-39, 44, 46-49, 57, 106  
Section, 17, 20-21, 26-27, 32-33, 47, 120  
section, 17, 56, 75, 102, 111  
sector, 20  
secure, 117  
Security, 54  
security, 41  
sedentary, 112  
See, 19, 21, 33, 48  
see, 8, 13-15, 18, 22, 30, 34, 37, 44, 46-47, 50, 56-57, 60-61, 67, 71, 79-80, 83-84, 92, 100, 105, 109  
seek, 9, 70, 97  
seeking, 46, 75  
seeks, 9, 63-64, 71, 83, 86, 89, 94, 114  
seem, 21, 90  
seemed, 44  
seeming, 90  
seems, 43, 80  
seen, 29-30, 35,

38, 42-43, 45-47,  
 83-84, 111, 118  
 Seewoosagar, 8  
 self, 49, 73, 96-97  
 senior, 99  
 sense, 57, 69, 84,  
 87  
 sensible, 9, 62  
 sensu, 80  
 sent, 41  
 sentence, 90, 92  
 Separate, 110-112  
 separate, 111  
 separately, 27, 41  
 September, 61, 72  
 seq, 72  
 ser, 10, 33  
 series, 9, 14, 34  
 serious, 12, 15, 43,  
 45, 52, 60  
 seriously, 23, 43, 55  
 seriousness, 32  
 serve, 93  
 serves, 64  
 Service, 46  
 Session, 53-54  
 set, 9, 26, 34, 40,  
 43, 57, 59-60,  
 75, 97, 99, 102,  
 105, 107-108,  
 112, 119  
 sets, 83  
 setting, 18, 56  
 settle, 104, 109  
 settled, 62, 94,  
 111, 117  
 Settlement, 74, 78,  
 103  
 settlement, 31, 35,  
 62-64, 69, 77-78,  
 85-88, 94,  
 109-111, 118, 120  
 settles, 92  
 seven, 62  
 Several, 89  
 several, 9, 32, 46,  
 50  
 sewage, 12, 52  
 Seychelles, 26-27,  
 29  
 Seychellois, 29  
 shall, 10-11, 26,  
 31, 72, 95, 101,  
 109, 111-112,  
 114, 117  
 sham, 10  
 share, 70  
 shark, 22  
 SHEARER, 8, 25,  
 30, 50-51, 58,  
 81, 83, 101, 110,  
 112, 122-123  
 Shearer, 81  
 Shelf, 32, 43, 67,  
 71, 112, 118-121  
 shelf, 24, 57-58,  
 61-62, 65, 67,  
 78, 93-94, 96  
 Sheppard, 17, 21,  
 53  
 shift, 15  
 shifting, 30  
 ship, 93  
 ships, 12  
 shoehorn, 63  
 Shopping, 92  
 shore, 66  
 shoreline, 53  
 short, 17, 19, 22,  
 34, 118  
 shorten, 122-123  
 shortly, 76  
 show, 32, 40, 60,  
 69, 76, 85, 92,  
 102, 113  
 showed, 32, 45, 114  
 showing, 17, 76  
 shown, 9, 42, 48,  
 88, 94-95, 111  
 showpage, 60  
 shows, 36-37, 40,  
 42, 87  
 shrimp, 10  
 side, 60, 77, 81,  
 89, 122  
 sidestep, 105  
 sight, 113  
 signal, 15, 64  
 signalled, 61  
 significance, 13,  
 46, 63, 71, 91, 95  
 significant, 11, 18,  
 48, 52-53, 58  
 silencio, 103  
 silent, 23, 84, 91  
 Silesia, 10  
 Similar, 88  
 similar, 17-18, 39,  
 49  
 similarly, 74  
 simple, 62, 66, 72,  
 88, 115  
 simply, 13, 35-37,  
 40, 46, 68-69,  
 73, 84, 86,  
 88-90, 93,  
 99-100, 113, 115  
 Since, 27, 121  
 since, 19, 45, 47,  
 52, 81, 84, 96, 99  
 Singapore, 9, 35  
 single, 20, 59, 61,  
 67, 89, 96  
 singles, 109  
 Sir, 8, 26  
 sir, 8  
 sit, 71  
 sitting, 30, 71-72  
 situation, 71, 79,  
 81, 86, 88,  
 94-96, 98, 119  
 situations, 77, 79,  
 81  
 six, 56  
 size, 20  
 sizeable, 21  
 skies, 60-62, 74  
 slight, 8  
 slightly, 26, 28, 34,  
 59, 78  
 slowly, 92  
 sludge, 52  
 Small, 55  
 small, 26  
 Smith, 90  
 Sohn, 90  
 solely, 38, 68, 84  
 solitary, 91  
 solutions, 62  
 somehow, 85  
 someone, 66  
 somewhat, 88  
 somewhere, 122  
 soon, 18  
 sort, 21, 64, 78  
 sought, 32  
 source, 27, 29, 92,  
 105  
 South, 33, 55  
 Southern, 15,  
 110-112  
 sovereign, 9,  
 37-38, 49, 66-67,  
 93-94, 96,  
 102-103, 107,  
 110-111, 114, 120  
 Sovereignty, 41  
 sovereignty, 23,  
 32, 36-39, 46,  
 63-64, 67, 70-72,  
 74, 76-81, 83-95,  
 97-98, 101,  
 114-117  
 Space, 27  
 space, 9  
 spaces, 9  
 Spain, 34



Spalding, 17  
 speaker, 113  
 Special, 54  
 special, 65-66, 95-97, 99  
 Species, 55  
 species, 18, 21, 53-54, 112  
 specific, 16, 34-37, 40, 42, 44, 84, 101, 115-116  
 Specifically, 97, 104  
 specifically, 14, 38, 55, 86  
 Specified, 108  
 specified, 61, 102-104, 108-110  
 specify, 11  
 SPEECH, 31  
 Speech, 8, 59, 101  
 speech, 78, 104, 112  
 speed, 20  
 spend, 22, 57  
 spent, 46  
 SPLOS, 70  
 spoke, 24  
 spoken, 122  
 sprechen, 23  
 spring, 32  
 square, 20, 56  
 squarely, 94  
 squeeze, 60  
 st, 61  
 stage, 40, 44, 59  
 stakeholders, 23  
 stalking, 64  
 stance, 67  
 stand, 12, 16, 76  
 standard, 103, 108  
 standards, 102-103, 108, 110  
 standing, 70, 119, 121  
 stands, 15, 123  
 start, 25-26, 44, 101  
 starting, 81, 85, 113  
 starts, 60  
 State, 9, 11-12, 14, 16, 20, 34-39, 46, 50-51, 56, 62-69, 75-76, 85-86, 95-105, 107, 110-112, 116-119, 122-123  
 state, 36, 45, 54, 59, 65, 68-70, 73, 81, 88, 97  
 stated, 15-16, 18, 20-21, 38, 41, 75, 97, 110  
 Statement, 31  
 statement, 41, 45, 48, 79, 81, 83  
 statements, 34, 66, 80, 95, 120  
 States, 9-12, 16, 18-19, 35, 38, 52, 55, 76, 85, 104-105, 109, 112, 117  
 states, 24, 47-48, 53, 60, 76, 88, 92, 107  
 stating, 109  
 status, 28-29, 32, 56-57, 81, 98  
 Steel, 91  
 stenographically, 124  
 step, 61, 109  
 Steps, 47  
 steps, 19  
 Stevens, 29  
 stewardship, 47  
 still, 15-16, 61, 102, 106, 110-111, 116  
 stipulated, 105  
 stock, 21  
 Stocks, 55, 68, 101, 109  
 stocks, 17-18, 41  
 stood, 49  
 stop, 67, 70, 81  
 stopped, 119  
 store, 28  
 story, 46, 70  
 Straddling, 55, 68  
 straight, 50  
 straightforward, 111  
 Straits, 35  
 strands, 50, 97, 100  
 strange, 65  
 strategic, 12  
 straw, 16  
 strengthen, 64  
 strengthening, 47  
 stress, 18, 47, 67, 99  
 stressed, 47, 77  
 strict, 52  
 stricter, 17  
 striking, 9, 19, 91  
 stripe, 95  
 strong, 10, 48, 61  
 strongly, 17, 61, 74  
 struck, 16  
 structure, 64  
 studies, 15  
 study, 15, 54  
 style, 73  
 sub, 103  
 subject, 9, 19, 21-22, 31-32, 34, 37, 39-42, 45, 47, 49, 69, 77, 79, 94, 102, 104, 111, 113, 117, 120  
 subjective, 16, 33  
 subjects, 36, 41  
 submarine, 53  
 Submission, 47  
 submission, 24-25, 29, 33, 37, 57-58, 67, 70, 76, 119, 121  
 submissions, 24-26, 31, 33, 39-40, 42, 51, 54, 62, 73, 97, 101  
 submit, 36, 65, 70, 75, 81, 83, 93, 107, 109, 115, 119  
 submits, 73  
 submitted, 16, 56, 95, 104, 106, 109, 114, 118  
 subsequent, 10, 14  
 subsequently, 65, 70, 101  
 substance, 13, 33, 36  
 substantial, 19, 23, 60  
 substantive, 11, 31, 47, 49, 90, 99, 114, 118, 120-121  
 Substitute, 94  
 succeed, 93, 102, 105  
 succeeding, 16  
 Success, 54  
 successful, 17, 62  
 succinct, 118  
 succinctly, 31  
 suddenly, 64  
 suffice, 34  
 sufficient, 31, 33-34, 60, 63, 80, 101, 119  
 sufficiently, 58, 72, 74, 95  
 suggest, 36, 39,

42-43, 49, 88-89,  
91, 106, 109  
suggested, 89  
suggesting, 83  
suggests, 86  
sui, 64  
suits, 110  
summarily, 91  
summarised, 54  
summary, 36, 39,  
55  
summer, 59  
sundry, 23  
Sunrise, 73-74  
superjacent, 107  
supervision, 124  
Supplementary, 52  
supplemented, 19  
supply, 119  
support, 24, 74,  
76, 86-87, 92,  
94, 106, 118-119  
supported, 31, 44,  
58, 85  
supporting, 88  
supports, 73, 85  
suppose, 22, 91,  
93, 122  
supposed, 8, 19  
Supreme, 22  
surely, 116  
Suriname, 35,  
59-62, 64, 72-74,  
76, 78, 89  
surprise, 36, 42-43,  
48  
surprising, 36  
surrounding, 8, 38  
survive, 22  
suspects, 77  
sustain, 58, 91  
Sustainability, 54  
Sustainable, 55  
sustainable, 17, 55  
sustaining, 57

sweeping, 80, 86  
swimmers, 21  
Switzerland, 10  
system, 10, 63,  
77-78, 85-86, 88

## T

TAB, 60  
Tab, 12, 14, 16-17,  
20-21, 23, 53,  
60, 74, 78-81,  
91-92, 103-104,  
107-108  
tab, 80  
tabbed, 118  
table, 69  
Tabs, 101  
take, 42  
talked, 41  
talks, 42-47, 49, 100  
Talmon, 73-74, 84,  
90-91  
task, 101, 122  
team, 83, 94  
technical, 43, 119  
telegram, 8  
telephone, 44, 48  
tells, 72  
temporary, 24, 65  
tempted, 50-51  
ten, 51, 59, 62,  
101, 110  
tendency, 13  
tension, 21  
Tenth, 53  
term, 19, 46, 65,  
95-96  
termed, 28, 36, 54  
terminate, 35-36,

45  
terminus, 60-61,  
71, 74, 77  
terms, 11, 20, 34,  
37, 54, 78, 83,  
90, 106, 114  
terra, 79  
terrestrial, 81, 105  
Territorial,  
114-118, 121  
territorial, 21, 38,  
57, 60-61, 64-65,  
74, 81, 85, 88,  
90, 93, 95  
Territories, 12, 21,  
28, 33, 38, 47,  
53-54, 106  
territories, 14, 86  
Territory, 14, 21,  
28, 41, 47, 54,  
66, 105  
territory, 11, 17,  
52, 56-58, 63,  
66, 72, 77,  
79-81, 88, 90,  
92-94, 98  
Test, 37  
test, 16, 36, 74  
tested, 18  
Tests, 34  
text, 54, 72, 77, 79,  
81, 85-86, 88-90,  
97, 103, 112  
textual, 77, 90  
th, 12, 27, 52-53, 71  
thankfully, 22  
the, 13, 20, 33, 39,  
42, 56  
theguardian, 15  
themselves, 35, 116  
thereafter, 124  
thereby, 24, 121  
Therefore, 26  
therefore, 26, 28,  
37, 50, 76, 79,  
81, 98, 123

thereof, 23, 38  
thereto, 26  
thinking, 13, 37, 60  
thinks, 9, 83  
Third, 19, 23, 55,  
66, 77, 86,  
89-90, 99  
third, 35, 45-46,  
62-63, 68, 77,  
100, 111  
Thirdly, 33  
thirdly, 50  
Thomas, 74, 90  
thorough, 29  
thoroughly, 30  
those, 15  
though, 27, 65, 103  
threads, 96  
threat, 33, 47  
three, 27, 50, 63,  
67, 74, 90, 97,  
100-102, 111,  
113, 115  
threshold, 36  
tie, 39  
timetable, 54  
timetabled, 54  
timetables, 19  
tip, 59  
tireless, 122  
title, 90, 93, 103  
titles, 84  
Tobago, 112  
Today, 64  
today, 59, 92, 121  
together, 38, 48,  
50, 53, 96  
tonnes, 21, 54  
took, 29, 35, 39-41,  
45, 48, 61  
top, 18, 81  
topside, 53  
Torres, 90  
total, 46

- totality, *80*  
 totally, *77*  
 touch, *63-65, 72, 85, 98*  
 touched, *70*  
 touching, *74, 83, 95*  
 Towards, *92*  
 towards, *72*  
 Tractatus, *23*  
 Trade, *42-45, 48, 55*  
 traded, *18*  
 traditional, *65-66, 117*  
 Transcript, *14-15, 18, 66*  
 transcript, *13-14, 20, 27, 32, 40, 56, 60, 124*  
 transcription, *124*  
 transcripts, *14*  
 transfer, *86*  
 transferring, *87*  
 transformed, *62*  
 transparency, *10*  
 transposition, *88*  
 travaux, *85*  
 treated, *52, 64, 69, 84, 96, 98-99*  
 Treaties, *33*  
 treaties, *36, 53, 56, 123*  
 treatment, *79*  
 Treaty, *29*  
 treaty, *10, 34-35, 116, 122*  
 trees, *12*  
 Treves, *80, 84-85*  
 TRIBUNAL, *112*  
 Tribunal, *9, 11, 15, 18-20, 22, 24-25, 27-28, 30-31, 35, 50-51, 53, 56-64, 66-80, 83-84, 87, 89, 91, 94-104, 106, 110, 112-123*  
 tribunal, *23-24, 33, 59-60, 71, 75, 78-79, 83, 93-94, 96, 102-106, 108, 111-112, 116-117*  
 Tribunals, *62, 72*  
 tribunals, *34-35, 68, 71, 80, 89, 104, 108*  
 tries, *43, 105*  
 Trinidad, *112*  
 trivial, *43*  
 troika, *85*  
 Tromelin, *56*  
 trouble, *60*  
 troublesome, *86*  
 true, *22, 62, 124*  
 truly, *66*  
 trundle, *12, 21*  
 truth, *100*  
 try, *14, 93*  
 trying, *46*  
 Tuesday, *14-15, 22, 64, 70, 96*  
 Tuna, *21, 54, 109-112*  
 tuna, *18, 20-21, 54*  
 tune, *20*  
 turn, *15, 20, 25, 35-36, 39, 54, 59, 63, 68, 75-76, 78, 92, 97, 103, 108, 110*  
 Turning, *53*  
 turning, *52, 63*  
 turns, *100*  
 Turtles, *55*  
 twin, *41*  
 Two, *101, 103*  
 two, *11, 26, 28, 31, 33, 40-41, 46, 48, 55-56, 63, 70, 77, 83, 89-90, 98-100, 102-103, 107, 109, 112, 114, 117, 120*  
 type, *116*  
 types, *111*  
 typewritten, *124*  
 typically, *11*
- ## U
- UK, *8-9, 13, 15-21, 23-25, 27-29, 31-33, 36-39, 41-50, 53-54, 59, 63-66, 68, 70-71, 73, 75-77, 80, 84-85, 87-89, 93-94, 96-98, 101-102, 104-111, 114-122*  
 uk, *15, 53-54*  
 UKCM, *13, 16-17, 20, 23, 31-34, 37, 43-44, 48, 72, 85, 106, 120*  
 UKOTs, *54*  
 UKR, *18, 32, 43, 63, 65, 72, 84-85, 87, 89, 95, 120*  
 ultimate, *66*  
 ultra, *100*  
 UN, *37-39, 54, 73*  
 unable, *19, 76*  
 unaccompanied, *90*  
 unaffected, *121*  
 unauthorized, *93*  
 unclear, *53*  
 UNCLOS, *9-10, 14, 31, 38-39, 58, 63, 68, 71, 74, 77, 92-95, 97, 99, 102, 107, 109-110, 115-116*  
 unconstrained, *112*  
 undemarcated, *9*  
 UNDER, *58*  
 Under, *20, 28, 47, 56*  
 under, *10-11, 14, 16-17, 22-23, 25, 28-29, 31, 37-38, 40, 49, 52-57, 60, 62, 64-65, 68-71, 73-76, 78-80, 83-85, 89, 91, 93-95, 97-100, 102-105, 107-110, 112, 114, 116-121, 124*  
 underlie, *18*  
 underlined, *48*  
 underlines, *97*  
 underlying, *12, 14, 47, 66, 86*  
 undermine, *42, 62*  
 undermining, *64*  
 underpinned, *35*  
 understand, *25-26, 31, 37, 51-52, 98*  
 Understanding, *55*  
 understanding, *84, 88*  
 understandings, *50*  
 understatedly, *25*  
 understood, *50, 67, 87, 97, 106, 108*  
 undertaken, *48, 55*  
 undertaking, *14, 49, 93, 111, 117, 120*  
 undertakings, *14, 50, 66-67, 69-70, 101, 114-116, 120*  
 undertook, *38*

underway, *43, 46*  
unduly, *89*  
une, *69*  
unfortunately, *25*  
unhappy, *47, 67*  
unilateral, *44, 46-47, 115, 117*  
unilaterally, *120*  
uninhabited, *13, 54*  
unique, *65, 67, 96*  
United, *8-12, 14-15, 18-20, 24, 27-31, 39-41, 49, 51-54, 56-59, 62-76, 78, 83-92, 94-105, 107-108, 110, 112, 114, 116-117, 120, 122*  
universal, *88*  
universally, *87*  
unjustifiable, *105*  
unjustifiably, *105*  
unlawful, *98-99*  
Unless, *101*  
unless, *15-16, 28, 75, 93, 97, 100, 102, 110-111*  
unmistakably, *112*  
unnecessarily, *64*  
unquestionably, *114*  
unregulated, *18-19*  
unrelated, *12*  
unreported, *18*  
unsettled, *60, 79*  
unspecified, *53*  
unsupported, *19*  
untenable, *88*  
until, *31, 35, 54, 59, 65, 67, 81-82, 96, 119, 123*  
untreated, *52*  
unwilling, *53*

unwritten, *63, 78*  
up, *13, 15, 18, 26, 28, 30, 41, 44-46, 48-49, 55-56, 59, 65, 71, 123*  
Upper, *10*  
upset, *86-87*  
urgency, *73*  
urges, *106*  
Uruguay, *24*  
uses, *11, 69, 106-107*  
using, *66*  
utilizing, *109*

**V**

vaguest, *20*  
vain, *46*  
valid, *99*  
validly, *99*  
value, *66*  
various, *9, 13, 26, 30, 50, 57, 76, 97, 108, 118*  
ve, *10, 12, 16-17, 19, 22, 27, 29, 37-39, 42, 45-46, 57-60, 69, 77, 80-81, 83-84, 89-92, 95, 98-99, 123*  
vehicles, *52*  
Venezuela, *61*  
Verbale, *39, 42-45, 48*  
Verbales, *48*  
versa, *117*  
version, *97*  
versus, *59, 61-62,*

*76-77*  
vessel, *20-21, 93*  
vessels, *20-21, 52, 106*  
vested, *120*  
VI, *71, 94, 101-102, 112*  
vice, *117*  
vicinity, *41, 93*  
view, *36-39, 44-45, 49-50, 55-56, 58, 63-64, 73-74, 79-81, 85, 88, 90, 94, 106, 110, 121*  
views, *30-35, 39-40, 45, 47, 49, 59, 88, 90-91, 100-101, 110*  
vigorously, *43, 59*  
VII, *35, 58, 61-62, 70-72, 77, 89, 91, 103, 112*  
VIII, *15*  
Vincent, *35*  
violate, *44, 49-50, 115*  
violated, *11, 43, 47, 50, 101, 115, 121*  
violating, *43*  
violation, *10, 49-50, 121-122*  
violations, *73, 120*  
vires, *100*  
Virginia, *11, 86, 120-121*  
virtue, *14, 24, 28, 57, 63, 72*  
vis, *23*  
visit, *95*  
visited, *29-30*  
vista, *62*  
Vol, *19*

vol, *19, 53*  
Volume, *57*  
vote, *26*  
voted, *26*  
voting, *25*

## W

wait, *106*  
Wales, *64*  
wanted, *59-60, 122*  
wantonly, *24*  
wants, *75, 123*  
warned, *17, 32*  
warning, *33*  
warnings, *47*  
warranted, *15*  
warships, *12*  
Washington, *8*  
wasn, *71*  
waste, *52*  
waters, *8-9, 11, 16-17, 20-22, 37-38, 40-42, 47, 93, 98, 106-107, 117*  
Watts, *91*  
way, *13, 18, 20, 22, 24, 37, 46, 51-52, 60-61, 66, 68, 72, 74, 79, 87, 89-90, 100, 102, 107, 119, 122-123*  
weaken, *14*  
wealth, *96*  
wearing, *21*  
Web, *19, 27, 56*  
web, *55*  
website, *12, 55*

Wednesday, 25, 123  
week, 29, 100, 113, 118, 122  
weekend, 59, 113, 122-123  
weeks, 46  
welcomed, 113  
West, 33  
Wetlands, 55  
wetsuits, 21  
Whaling, 15-16  
whaling, 15  
whatever, 16, 51, 75, 88, 123  
whenever, 80, 95  
whereas, 27  
Whereof, 23  
Whereupon, 82, 123  
Whether, 13, 68-69, 99, 117  
whether, 8, 10, 13-16, 22, 26, 33, 36-37, 45, 61-64, 66-67, 70, 72, 75, 77-81, 84, 88, 92-93, 98-99, 101-102, 109-110, 114-116, 119, 121  
whiskey, 19  
White, 54  
whole, 11, 52, 56, 64, 84, 97, 99-100, 111  
wholly, 72, 88  
whom, 49, 79, 89  
widely, 52  
widen, 68  
wider, 85  
wiggling, 94  
wiki, 19  
Wikileaks, 12, 23

wikipedia, 19  
Wild, 55  
wiley, 27  
will, 9, 16, 18, 20, 24, 30, 32-36, 40-41, 44, 48, 51-61, 63-71, 75-77, 79-80, 84-86, 91-93, 95-98, 100-102, 104, 106-108, 110, 113, 120, 123  
William, 48  
wisely, 77  
wiser, 50  
wish, 67, 89, 122-123  
wished, 87, 117, 123  
wishes, 27, 58, 67, 71, 104, 122  
wishing, 83  
withers, 88  
Within, 107  
within, 15, 21, 26, 38-39, 45, 63-64, 70, 72-74, 76, 78-80, 84-86, 88, 90-95, 102-103, 106, 111-112, 116-117  
without, 10, 19-22, 28, 30, 48, 52, 60, 77, 79, 85, 89, 94, 115, 120  
witness, 41, 45, 48  
Wittgenstein, 23  
WOLFRUM, 50  
Wolfrum, 25, 27-28, 50-51, 58, 72, 74, 78-79, 97-98, 100-101  
won, 23, 50, 57, 85  
wonder, 8, 78, 81,

97  
word, 22, 24, 97, 106, 112  
wording, 68, 88-89  
words, 13, 33-35, 37, 42, 63-64, 68-69, 72, 75, 79, 83, 88, 90, 92, 94, 102, 104  
work, 44, 48, 77, 90-91, 100, 113, 122  
worked, 44  
working, 62, 123  
World, 105  
world, 9, 15, 19, 56, 65  
worth, 18  
wouldn, 61  
Wovon, 23  
wrap, 59  
writes, 80-81, 94, 104, 108  
writing, 21, 69, 73, 79, 81, 89  
writings, 62, 78, 83  
Written, 20, 51  
written, 30, 40, 51, 71, 74, 85, 91-92, 94, 97, 111, 116, 122  
wrongdoing, 16  
wrote, 40, 74, 78, 89  
WT, 10  
WTO, 10  
www, 11, 15, 19, 53-54, 56, 60, 62

## X

XI, 62  
XII, 94, 101-102, 104, 108  
XIII, 92, 94  
XV, 59, 62-64, 70-71, 73-78, 80, 83-85, 87-92, 94-96, 102, 104, 109, 114, 117-118, 120  
XVI, 11  
XXIII, 109-110

## Y

Yeadon, 17, 20-21, 32-33, 47  
year, 26, 45, 54, 118-120  
years, 12, 19, 27, 36, 40-41, 49, 59, 62  
Yee, 90  
Yemen, 117  
yesterday, 8-9, 25, 32, 42, 45, 47, 51, 70, 106, 114, 117  
York, 39, 79  
yourself, 23, 72  
youthful, 91

# Z

Zealand, *16*

Zone, *17, 38, 57, 107*

zone, *12, 17-18, 20-22, 32, 37-39, 42, 58, 68, 107, 114*

Zones, *10, 57*

zones, *9, 36-37, 39, 49, 57-58, 97, 107*