

another arbitral tribunal (albeit dealing not with immunity but another issue not expressly addressed by UNCLOS, territorial sovereignty) just months before in *Ukraine v. Russia*, upholding Russia's preliminary objections that the territorial dispute related to Crimea was not incidental but central to the dispute between the parties and that, as such, the tribunal did not have jurisdiction.¹² In this sense, the *Enrica Lexie* Tribunal's approach to its own jurisdiction tells us something about how it sees its role not only as a legal means for settling disputes between two states but also as actor in the international legal order.

Given the nature of immunity which is so rarely mentioned explicitly in framework conventions such as UNCLOS, on balance the Tribunal's finding that it had jurisdiction was the most desirable outcome. The alternative—namely, determining that both states had jurisdiction over the incident but stopping short of spelling out the consequences of that finding—would have been less satisfactory. However, the authority of the Tribunal's decision to tip the balance in favor of effectiveness rather than state consent is undermined by its failure to provide fuller reasoning and justification for doing so.¹³

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DISPUTE CONCERNING DELIMITATION OF THE MARITIME BOUNDARY BETWEEN MAURITIUS AND MALDIVES IN THE INDIAN OCEAN (MAURITIUS/MALDIVES). Case No. 28. Judgment. At https://www.itlos.org/fileadmin/itlos/documents/cases/28/preliminary_objections/C28_Judgment_prelimobj_28.01.2021_orig.pdf.

Special Chamber of the International Tribunal for the Law of the Sea, January 28, 2021.

On January 28, 2021, a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS) dismissed all of the respondent's preliminary objections in *Dispute Concerning Delimitation of the Maritime Boundary Between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)*. The proceeding arose out of Mauritius's long-running effort to regain sovereignty over the Chagos Archipelago, which was originally "detached" from Mauritius in 1965 by the United Kingdom (UK). Although the Judgment will allow the case to proceed to the merits, it is significant in its own right for its engagement with several earlier legal decisions, including the arbitral award in *Chagos Marine Protected Area Arbitration*¹ and the

¹² *Ukraine v. Russia*, *supra* note 8, paras. 195–96.

¹³ In terms of Razian practical authority, Annex VII tribunals have content independent authority (see JOSEPH RAZ, *THE AUTHORITY OF LAW*, at ch. 1 (1979)). In addition, however, robust justification and reasoning also provides such tribunals with a measure of content dependent authority. This content-dependent authority is arguably even more important in international law given its decentralized nature. See JOSEPH RAZ, *BETWEEN AUTHORITY AND INTERPRETATION: ON THE THEORY OF LAW AND PRACTICAL REASON*, at ch. 5 (2009).

¹ *Chagos Marine Protected Area Arbitration (Mauritius v. UK)*, Case No. 2011-03, Award (Perm. Ct. Arb. Mar. 18, 2015), available at <https://files.pca-cpa.org/pcadocs/MU-UK%2020150318%20Award.pdf> [hereinafter *Chagos* Arbitral Award]; David A. Colson and Brian J. Vohrer, *In re Chagos Marine Protected Area (Mauritius v. United Kingdom)*, 109 AJIL 845 (2015).

International Court of Justice's (ICJ) Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*,² as well as UN General Assembly Resolution 73/295 affirming the Advisory Opinion.³ The Special Chamber stitched together a series of legal documents that, considered individually, were either non-binding or limited in scope to achieve a determination greater than the sum of its parts—one that effectively resolved the disputed sovereignty over the Chagos Archipelago.

The origin of the dispute dates back two centuries. The UK first acquired sovereignty over Mauritius in 1814 from France, and administered the Chagos Archipelago, 2,200 kilometers to the northeast, as a dependency of that colony. The archipelago's location in the middle of the Indian Ocean was a boon to the global naval power. In the mid-twentieth century, the United States sought to lease the archipelago's largest island, Diego Garcia, in order to construct and operate a joint naval base with the UK. The negotiations between the UK and the United States proceeded in tandem with negotiations concerning Mauritian independence, which followed in 1968. Prior to independence, and in order to facilitate the agreement with the United States, the UK sought to separate the Chagos Islands from Mauritius, converting them into a new British Indian Ocean Territory (BIOT), which would remain a British possession.

The power dynamic between the colonial power and its (soon to be former) dependency was not one of equals. There was reason to doubt whether Mauritius would still be granted its independence if it refused to relinquish its claims to the archipelago. Yet Mauritius formally consented. On this basis, the UK purported to detach the Chagos Archipelago, deported the original inhabitants of the Chagos Islands, formed the BIOT, and granted Mauritius its independence in 1968, whereupon it joined the United Nations.⁴ Mauritius would later claim that its consent was not freely given. The UN General Assembly swiftly began to call for the return of the Chagos Islands as part of its campaign for global decolonization.

Since 1980, Mauritius has periodically asserted its sovereignty over the Chagos Archipelago, but generally acquiesced to the UK's presence so long as its fishing rights remained undisturbed. Initially in 2001, and again in 2010, Mauritius invited the Maldives to enter into discussions to delimit the maritime boundary between the Maldives and the Chagos Archipelago, but the Maldives demurred, citing the UK's claim to the islands.

In 2010, the UK imposed a "marine protected area" around the Chagos Islands, which threatened Mauritian fishing rights and brought the conflict between the parties to a head. An emboldened Mauritius instituted arbitration against the UK under Annex VII of the 1982

² *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, Advisory Opinion, 2019 ICJ Rep. 95 (Feb. 25), available at <https://www.icj-cij.org/public/files/case-related/169/169-20190225-ADV-01-00-EN.pdf> [hereinafter *Chagos Advisory Opinion*]; Diane Marie Amann, *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*, 113 AJIL 784 (2019); Stephen Allen, *Introductory Note to Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (I.C.J.)*, 58 ILM 445 (2019).

³ GA Res. 73/295 (2019).

⁴ The United Kingdom made several pledges to Mauritius known as the "Lancaster House Undertakings," including: (1) that the islands would be returned to Mauritius, and the deported Chagossians returned to the islands, when no longer needed for the joint naval defense facility on Diego Garcia; (2) that any natural resources discovered in the vicinity would be directed to the Mauritius government; and (3) that Mauritius's fishing rights among and around the Chagos islands would be protected.

United Nations Convention on the Law of the Sea (UNCLOS).⁵ Five years later, the UNCLOS arbitral tribunal issued its award, making several key findings. Notably, the tribunal held that it lacked jurisdiction to determine sovereignty over the Chagos Islands as between Mauritius and the UK. However, it also found that the UK's imposition of the marine protected area violated Mauritius's rights in respect of the Chagos Islands.⁶

After the arbitral tribunal declined to adjudicate the matter of sovereignty, the General Assembly again turned its attention to the matter. On June 22, 2017, General Assembly Resolution 71/292 asked the ICJ to determine whether the process of decolonization of Mauritius had been lawfully completed when Mauritius gained independence in 1968, and what consequences flowed from the UK's continued administration of the Chagos Archipelago.⁷ The ICJ's ensuing Advisory Opinion of February 25, 2019 thoroughly rejected the UK's position. The Court found, by thirteen votes to one, that: (1) "the process of decolonization of Mauritius was not lawfully completed . . . following the separation of the Chagos Archipelago"; (2) "the United Kingdom is under an obligation to bring to an end its administration of the Chagos Archipelago as rapidly as possible"; and (3) "all Member States are under an obligation to co-operate with the United Nations in order to complete the decolonization of Mauritius."⁸ Following that decision, the General Assembly endorsed the Advisory Opinion by Resolution 73/295, "*affirm[ing]* . . . that the continued administration of the Chagos Archipelago by the United Kingdom . . . constitutes a wrongful act entailing the international responsibility of that State" and "*[d]emand[ing]* that the United Kingdom . . . withdraw its colonial administration from the Chagos Archipelago unconditionally within a period of no more than six months."⁹ The UK condemned the Advisory Opinion and ensuing General Assembly Resolution, and to date maintains its claim to sovereignty over the archipelago.¹⁰

Following the Advisory Opinion and Resolution 73/295, Mauritius renewed its invitation to the Maldives to delimit their shared maritime boundary, but the latter still declined. Mauritius forced the issue by initiating an Annex VII arbitration against the Maldives, and the two parties agreed to submit the dispute to a Special Chamber of ITLOS.¹¹

The Maldives made five preliminary objections to jurisdiction and admissibility (paras. 78–80). The first two were explicitly grounded in the UK's non-participation in the instant

⁵ United Nations Convention on the Law of the Sea, *opened for signature* Dec. 10, 1982, 1833 UNTS 397, available at https://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf [hereinafter UNCLOS].

⁶ *Chagos* Arbitral Award, *supra* note 1, at 582, para. 547; Colson and Vohrer, *supra* note 1.

⁷ GA Res. 71/292 (2017).

⁸ *Chagos* Advisory Opinion, *supra* note 2, para. 183(3)–(5).

⁹ GA Res. 73/295, *supra* note 3, Arts. 2(c), 3 (116 in favor, six opposed (including the United Kingdom, United States, and Maldives), and fifty-six abstaining).

¹⁰ See Patrick Wintour, *UN Court Rejects UK Claim to Chagos Islands in Favour of Mauritius*, *GUARDIAN* (Jan. 28, 2021), at <https://www.theguardian.com/world/2021/jan/28/un-court-rejects-uk-claim-to-chagos-islands-in-favour-of-mauritius> (quoting the UK Foreign, Commonwealth & Development Office: "The UK has no doubt as to our sovereignty over the British Indian Ocean Territory, which has been under continuous British sovereignty since 1814. Mauritius has never held sovereignty over the BIOT and the UK does not recognise its claim.")

¹¹ The parties selected Judge Jin-Hyun Paik as president; Judges José Luís Jesus, Stanislaw Pawlak (following the resignation of Jean-Pierre Cot), Shunji Yanai, Boualem Bouguetaia, Tomas Heidar, and Neeru Chadha as members of the Special Chamber; and Bernard Oxman and Nicholaas Schrijver as Judges *ad hoc*.

proceeding, and all five touched upon that issue in some way. The Maldives contended that: (1) the UK was an indispensable third party to the proceeding such that its absence deprived the Special Chamber of jurisdiction per the *Monetary Gold* principle;¹² (2), the Special Chamber otherwise had no jurisdiction to determine the disputed issue of sovereignty over the Chagos Islands as between Mauritius and the UK; (3) the Special Chamber lacked jurisdiction because the parties had not engaged in the negotiations required by UNCLOS Article 74 (concerning the exclusive economic zone) and Article 83 (concerning the continental shelf); (4) there was no real dispute between Mauritius and the Maldives concerning the maritime boundary; and (5) Mauritius's claims were inadmissible due to abuse of process.

Given the close linkage between the first two Preliminary Objections, the Special Chamber analyzed them together (paras. 81–251). It began by closely examining the earlier *Chagos* arbitral award, the Advisory Opinion, and UN General Assembly Resolution 73/295. In its view, two of the findings by the *Chagos* arbitral tribunal were relevant (paras. 128–132). First, the earlier tribunal found that there existed a sovereignty dispute between Mauritius and the UK over the Chagos Archipelago, but that it lacked jurisdiction to address the matter (para. 134). Second, the tribunal found that the UK had breached certain of Mauritius's rights established under UNCLOS, the Lancaster House Agreements, and the marine protected area (para. 137). Rather than make a determination of sovereignty as between the UK and Mauritius, this finding established that the archipelago “has been subject to a special regime, according to which Mauritius is entitled to certain maritime rights” (para. 246).

The Special Chamber next turned to the ICJ Advisory Opinion. It agreed that the questions posed to the ICJ were “concerned with the lawfulness of the process of decolonization of Mauritius and the consequences . . . arising from the United Kingdom's continued administration of the Chagos Archipelago” (para. 163). It noted that the ICJ took great care to state that the General Assembly had not sought the Court's opinion to resolve a territorial dispute. Rather, in its view, the ICJ had determined that the UK's continued administration of the islands was “an unlawful act of a continuing character, entailing its international responsibility, and must be brought to an end as rapidly as possible” (paras. 167–173).

The Special Chamber noted that this determination had several consequences for both the UK and Mauritius. First, it viewed the decolonization and sovereignty of Mauritius (including Chagos) as “inseparably related” (para. 189). Second, the Special Chamber distinguished between the non-binding character of an ICJ advisory opinion with its authoritative stature (para. 203). In its words, an ICJ advisory opinion “cannot be disregarded simply because the advisory opinion is not binding” (para. 205). The Special Chamber thus concluded that the Advisory Opinion's determinations “have legal effect” (*id.*). The combination of the first two conclusions led ineluctably to the third: according to the Special Chamber “there can be no question of the advisory opinion overruling the arbitral award” notwithstanding any ambiguity as to the issue of sovereignty left by that earlier award (para. 215). In other words, the later-in-time advisory opinion removed any question that the UK might have retained sovereignty based on the arbitral award's silence on the matter.

¹² *Monetary Gold Removed from Rome in 1943* (It. v. Fr., UK and U.S.), Judgment, 1954 ICJ Rep. 19 (June 15), available at <https://www.icj-cij.org/public/files/case-related/19/019-19540615-JUD-01-00-EN.pdf>.

The Special Chamber then turned its attention to UN General Assembly Resolution 73/295. Although such resolutions are recommendatory in character, the effect of legal and factual determinations they contain depend largely on their content and the conditions and context of their adoption (paras. 224–25). In the Special Chamber’s view, the ICJ declined to opine on the means and timeline by which the decolonization process of Mauritius had to be completed; therefore, it was the General Assembly that had been “entrusted to take the necessary steps toward the completion” (para. 227). That the six-month time period imposed by the General Assembly had expired without the UK vacating the Chagos Islands or permitting the resettling of the Chagossians “strengthen[ed] the Special Chamber’s finding as to the United Kingdom’s [lack of] sovereignty over the Chagos Archipelago” (para. 229).

Reading all three documents together—the arbitral award, the advisory opinion, and the resolution—the Special Chamber determined that “the continued claim of the United Kingdom to sovereignty over the Chagos Archipelago cannot be considered anything more than ‘a mere assertion’” (para. 243). The ITLOS Special Chamber thus decided that Mauritius’s full sovereignty over the Chagos Islands “can be inferred,” even while awaiting the UK’s withdrawal (para. 247). Given its determination that the UK had no legitimate claim to the Chagos Archipelago or interest in the *Mauritius v. Maldives* proceeding, the *Monetary Gold* principle could not apply. The Special Chamber accordingly dismissed the first two Preliminary Objections (paras. 247–251).

The three remaining Preliminary Objections required comparatively less analysis. The Maldives’ third objection was that the Special Chamber lacked jurisdiction because the parties had not engaged in the required negotiations (paras. 252–293).¹³ The Special Chamber easily found that “Mauritius, on several occasions, attempted to engage the Maldives in negotiations,” and that “the Maldives, for most of the time, refused to negotiate with Mauritius” (paras. 288–89). The fourth objection was that there was no real dispute within the meaning of UNCLOS between Mauritius and the Maldives concerning its maritime boundary (paras. 294–336). The Special Chamber refuted this line of argument by referring to its prior conclusions (para. 321). The Maldives’ fifth objection was that Mauritius’s claims were an abuse of process and therefore inadmissible (paras. 337–50). The Special Chamber confined itself to observing that all of the jurisdictional requirements and preconditions to formal dispute resolution had been met (paras. 345–50).

In sum, the Special Chamber rejected each of the Maldives’ five preliminary objections, and concluded that “it has jurisdiction to adjudicate upon the dispute concerning the delimitation of the maritime boundary between [Mauritius and the Maldives] in the Indian Ocean” (para. 351, 354). The practical effect of the decision, however, was to decide the question of sovereignty over the Chagos Archipelago.

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The defining feature of the judgment of the ITLOS Special Chamber is the way in which its reasoning synthesized several preceding international legal decisions and resolutions. That an international tribunal has to balance and resolve real or perceived tensions between prior decisions might not be noteworthy on its own. Here, however, two tightly intertwined aspects of

¹³ See UNCLOS, *supra* note 5, Arts. 74, 84.

the Special Chamber's analysis warrant careful consideration: (1) the way in which it combined several non-binding decisions to reach a binding conclusion; and (2) the "non-determinative determination" that the UK has no claim to sovereignty over the Chagos Archipelago.

Recall that the original *Chagos* arbitral tribunal in 2015 found that it lacked jurisdiction to determine sovereignty over the archipelago, finding instead that the islands were subject to a "special regime" entitling Mauritius to certain maritime rights. The subsequent ICJ Advisory Opinion was sought by the General Assembly to resolve the lacuna regarding the UK's continuing claim of sovereignty. And the ICJ did address this question. But an ICJ Advisory Opinion is not formally binding upon the entity that requested it, let alone third parties, so it was sensible for the Maldives to insist before ITLOS that the Advisory Opinion (like the arbitral award before it) had not disposed of the bilateral dispute between Mauritius and the UK.

The Special Chamber, however, emphasized the distinction between the non-binding nature of ICJ advisory opinions and their authoritative character (paras. 202–06), which invites deference. In the Special Chamber's view, "[ICJ] judicial determinations made in advisory opinions carry no less weight and authority than those in judgments because they are made with the same rigour and scrutiny by the 'principal judicial organ' of the United Nations" (para. 203). By concluding that the Advisory Opinion's determinations had legal effects (para. 205), the Special Chamber felt obliged to give those determinations force in some manner. It further observed that the ICJ deferred to the General Assembly's choice of modalities to effectuate the legal determinations made in the Advisory Opinion. The General Assembly chose to impose a six-month time period for the UK to complete its withdrawal from the Chagos Islands (paras. 227, 229). Each of these developments had occurred prior to and independently of the ITLOS proceeding. Because the six-month time period had expired by the time the proceedings began, the Special Chamber treated the entire matter as a *fait accompli*. The Special Chamber did not decide on the issue of sovereignty so much as observe that the preceding developments vitiated the UK's claim to the islands.

Thus, the Special Chamber's reasoning both strengthened and broadened the ICJ Advisory Opinion. It strengthened it by combining two declarative, ostensibly non-binding instruments to yield a binding rule that *de jure* sovereignty over the Chagos Archipelago rested with Mauritius alone. In reaching this conclusion, the *Chagos* Arbitral Award (which avoided the issue) was arguably just as important to the outcome as the General Assembly resolution. If the Arbitral Award had concluded that the UK retained its claim to the archipelago, the General Assembly might not have requested the Advisory Opinion in the first instance, or alternatively, the Special Chamber would have had to resolve any potential conflict between the Arbitral Award and the Advisory Opinion. Minimizing the effect of the Arbitral Award allowed the Special Chamber to emphasize the Advisory Opinion and subsequent General Assembly resolution.

The ITLOS Special Chamber also endorsed how the General Assembly broadened the ICJ Advisory Opinion by multilateralizing what was essentially two related, but distinct, bilateral disputes—Mauritius/UK and Mauritius/Maldives. The General Assembly took great care to characterize the questions presented as pertaining to decolonization writ large rather than making a legal determination in a dispute between two opposing UN member states. By operating through the General Assembly and the ICJ, Mauritius was able to enlist *all* UN member

states to aid in the decolonization of the Chagos Archipelago (para. 226). This aggrandizement of advisory opinions might embolden individual states and the General Assembly to request and subsequently endorse further ICJ advisory opinions, thereby authorizing binding outcomes that the UN Charter and a formal understanding of the General Assembly's powers and duties would otherwise deny. It also risks enlisting the ICJ and other judicial bodies, such as ITLOS, in disputes more political in nature that are better suited for deliberation or recommendations by the General Assembly alone.¹⁴ These are not negative outcomes per se, but could significantly change the way states seek to resolve their disputes.

It might also affect the institutions themselves. Even assuming that Mauritius used the General Assembly in order to avoid the strictures of bilateral dispute settlement, the overwhelming vote totals in the ICJ and the General Assembly evinced no qualms against allowing Mauritius to do so. It would have been extraordinary for the ITLOS Special Chamber to start its analysis from scratch rather than at least begin its analysis by accepting the decisions previously rendered by those two bodies. Other international institutions facing the same situation might feel similarly guided.¹⁵ Most recently, the Universal Postal Union recommended that its member states disregard postage stamps issued by the BIOT.¹⁶ The Judgment thus empowers specialized or peripheral international organizations to play an outsized role.

The Judgment also contributes to two lines of international decisions, though in both cases more significantly in what it does not say than in what it does. First, for all the importance attached to the effects of the ICJ's *Chagos* Advisory Opinion, the Special Chamber chose not to engage in any great detail with the corpus of advisory opinion jurisprudence—save for distinguishing *Namibia* and *Western Sahara* on the basis of their unique facts (para. 192), or briefly citing others in support of firmly established principles, such as their non-binding nature (para. 202). Given how much authority the Special Chamber invests in the ICJ's Advisory Opinion, it is curious that it has so little to say about the nature of advisory opinions more generally. Perhaps the Special Chamber was wary of inviting criticism for opining on issues not strictly necessary for the resolution of the discrete dispute. Second, the Judgment contributes to the line of international decisions on absent third parties, again for what it declined to do. Scholars have already started to point to the Judgment as possibly heralding a turn against the *Monetary Gold* principle, whose invocation was unsuccessful in this case as in many others.¹⁷

¹⁴ See Separate and Dissenting Opinion of Judge *ad hoc* Oxman, para. 32 (“Quite apart from its underlying analytical challenges, accepting that invitation [of treating the territorial dispute as resolved by the Advisory Opinion and ensuing General Assembly action] risks complicating the exercise by the General Assembly of its political functions and the exercise of the ICJ of its discretion with respect to requests for advisory opinions.”).

¹⁵ Curiously, however, the Special Chamber seemed to exclude itself from Resolution 73/295's scope. That resolution, at Articles 6 and 7, called upon “the United Nations and all its specialized agencies” and “all other international, regional, and intergovernmental organizations, including those established by treaty” to give effect to the Advisory Opinion. The ITLOS Special Chamber ultimately gave effect to the Advisory Opinion, but denied that it was so obligated to: “neither the language of the resolution nor the practice of the General Assembly suggests that the reference . . . is directed to the Special Chamber or any other international court or tribunal in light of the independent exercise of their adjudicatory functions” (para. 230).

¹⁶ Haroon Siddique, *UN Favours Mauritian Control Over Chagos Islands by Rejecting UK Stamps*, GUARDIAN (May 16, 2021), at <https://www.theguardian.com/world/2021/may/16/un-favours-mauritian-control-over-chagos-islands-by-rejecting-uk-stamps>.

¹⁷ See Dapo Akande, *Introduction to the Symposium on Zachary Mollengarden & Noam Zamir's “The Monetary Gold Principle: Back to Basics,”* 115 AJIL UNBOUND 140, 143 (2021); Martins Paparinskis, *Symposium on Zachary*

Many commentators characterize the long-running disagreement between Mauritius and the UK as one pertaining to decolonization rather than a bilateral dispute over sovereignty.¹⁸ The Special Chamber, on the other hand, viewed the decolonization and sovereignty of the Chagos Archipelago as “inseparably related” (para. 198). Taking a step back, one might view the various legal proceedings in three different ways. In the first view, it is a tale pitting David against Goliath, in which a small, underdeveloped state successfully challenged one of the world’s most powerful. In the second view, it is way to mark the diminution of a former Great Power. The UK’s position has been rejected in nearly every international judicial or political forum in which it was raised, as well as in the court of public opinion. Moreover, the events leading up to the Advisory Opinion are contemporaneous with the United Kingdom losing a judge on the ICJ’s bench for the first time in the court’s then seventy-one-year history.¹⁹ A third view, reconciling the two previous, sees the states in parity: the outcome of the dispute confirms the oft-questioned notion of sovereign equality of states under international law.

The precepts articulated in the ITLOS Special Chamber Judgment on Preliminary Objections constitute a significant South-South contribution to international law, by which developing countries seek to shape the international legal order to their unique needs and circumstances. The precise maritime boundary between Mauritius and Maldives will be settled in due course, but the Judgment’s reasoning will have significantly broader ramifications.

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¹⁸ See generally THE INTERNATIONAL COURT OF JUSTICE AND DECOLONISATION: NEW DIRECTIONS FROM THE CHAGOS ADVISORY OPINION (Thomas Burri & Jamie Trinidad eds., 2021); see also, e.g., Amann, *supra* note 2, at 784 (“Decolonization and its quite valid discontents lay at the center of this advisory opinion[.]”).

¹⁹ It bears noting that that very judge, Sir Christopher Greenwood CMG QC, served as an arbitrator in the *Chagos Marine Protected Area* arbitration. See Jeremy K. Sharpe, *Introductory Note to the Arbitral Tribunal Constituted Under Annex VII of the 1982 United Nations Convention on the Law of the Sea: Republic of Mauritius v. United Kingdom & Northern Ireland [sic], Reasoned Decision on Challenge*, 51 ILM 350 (2012).