



Challenging the ITLOS Delimitation

The Non-Binding Nature of ICJ Advisory Opinions and Implications for Sovereignty

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Abstract / Executive Summary

This paper rigorously challenges the legal validity and foundational premise of the International Tribunal for the Law of the Sea (ITLOS) judgment in the Mauritius/Maldives maritime delimitation case (Case No. 28, April 2023). It argues that the judgment is legally infirm due to an **improper and problematic reliance** on a non-binding advisory opinion of the International Court of Justice (ICJ) for a definitive determination of territorial sovereignty.

Through a **holistic and robust analysis** of key international legal instruments, including the ICJ Statute (Articles 59, 65, 68), the UNCLOS (Article 296), the UN Charter (Articles 1, 2, Chapter XIV), and the ICJ's own Chagos Advisory Opinion and Practice Directions, this research comprehensively **demonstrates that ICJ advisory opinions inherently lack the *res judicata* effect of contentious judgments**. Furthermore, it highlights how ITLOS's own internal rules and amendments consistently reinforce the disparate legal natures of advisory opinions and binding judgments.

The paper presents **direct rebuttals** to the court's approach, arguing that ITLOS's use of this non-binding opinion to determine sovereignty over the Chagos Archipelago for delimitation purposes violates fundamental principles of international law. Notably, it contravenes the **Monetary Gold principle** and *res inter alios acta*, as it implicitly adjudicates the vital interests of a third State (the United Kingdom) without its consent. This reliance on an unsettled and non-binding premise for a definitive territorial attribution undermines the predictability, consistency, and integrity of international judicial processes.

The core conclusion is that the ITLOS decision, specifically in its foundational determination of sovereignty, is legally infirm and potentially void *ab initio*. This research asserts that the UN has an obligation to address such systemic flaws to uphold the rule of law, protect general principles of state sovereignty and self-determination within the international legal order, and ensure consistency across its judicial mechanisms. It provides a robust legal basis for states, such as the Maldives, to challenge the problematic aspects of the ITLOS decision and advocates for a necessary re-evaluation of how non-binding advisory opinions are treated in contentious proceedings.

Introduction

The recent judgment by the International Tribunal for the Law of the Sea (ITLOS) in the maritime delimitation case between Mauritius and Maldives (Case No. 28), rendered on April 28, 2023, has generated significant contention within international legal discourse. While ostensibly focused on establishing maritime boundaries, the decision's most critical and controversial aspect lies in ITLOS's reliance on the February 25, 2019, advisory opinion of the International Court of Justice (ICJ) concerning the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

The crux of the controversy stems from the unsettled sovereignty of the Chagos Archipelago, a matter actively contested between Mauritius and the United Kingdom. Despite the ICJ's advisory opinion being, by its inherent nature, a **non-binding pronouncement** intended to guide the United Nations General Assembly on decolonization, ITLOS controversially treated this opinion as a **dispositive and foundational premise** to determine the sovereign status of the Chagos Archipelago. This determination then served as the basis for projecting baselines within a **binding maritime delimitation judgment**.

This approach by ITLOS raises profound questions regarding the strict distinction between advisory and contentious proceedings in international law, the legitimate scope of judicial authority, and the fundamental principles of **consent-based jurisdiction** and the protection of **third-party rights** (the *Monetary Gold* principle). By effectively adjudicating an unsettled territorial dispute based on a non-binding instrument, and impacting a State not party to the delimitation, ITLOS's methodology represents a significant legal flaw. This paper will critically examine these challenges, arguing that such reliance constitutes a problematic departure from established international legal norms that merits urgent attention and rigorous scrutiny within the international legal system.



Problem Statement

The central legal issue addressed by this paper is the **legitimacy and implications of the International Tribunal for the Law of the Sea (ITLOS) relying on a non-binding advisory opinion of the International Court of Justice (ICJ) to make a binding determination of territorial sovereignty** for the purpose of maritime delimitation. Specifically, the problem arises in the context of the ITLOS judgment in the Mauritius/Maldives case (Case No. 28), where the Tribunal utilized the ICJ's advisory opinion on the Chagos Archipelago to establish the sovereign status of the territory, a foundational step for baseline construction. This approach raises profound concerns regarding:

1. **The fundamental distinction between advisory opinions and contentious judgments** in international law and the potential erosion of this distinction.
2. **The principles of *res judicata*, *Monetary Gold*, and *res inter alios acta***, as the ITLOS decision, by effectively determining sovereignty based on a non-binding opinion, potentially adjudicated upon the vital interests of a third State (the United Kingdom) without its consent to such a determination.
3. **The coherence and predictability of the international judicial system**, particularly within the broader UN framework, when a binding tribunal decision is built upon an unsettled and non-binding premise impacting a non-party to the underlying sovereign dispute.

Thesis Statement

This paper argues that the International Tribunal for the Law of the Sea's (ITLOS) reliance on the non-binding International Court of Justice (ICJ) Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, as a foundational premise for its binding judgment in the Mauritius/Maldives maritime delimitation case (Case No. 28), fundamentally misconstrues the legal effect of advisory opinions. This problematic approach constitutes an overreach of the Tribunal's consent-based jurisdiction, undermines principles protecting third-party rights (Monetary Gold and *res inter alios acta*), and improperly adjudicates an unsettled territorial sovereignty dispute, thereby rendering the judgment's determination on Chagos's sovereignty legally flawed and calling for a critical re-evaluation of such judicial practices within the international legal system.

Restate Thesis

In light of the comprehensive analysis, this paper emphatically reasserts that the International Tribunal for the Law of the Sea's (ITLOS) decision in the Mauritius/Maldives maritime delimitation case, by fundamentally resting upon a non-binding International Court of Justice (ICJ) Advisory Opinion for a critical determination of sovereignty, represents a profound departure from established principles of international law. This reliance not only undermines the distinct legal character of advisory opinions but also infringes upon the rights of third parties, potentially rendering the decision **void ab initio** concerning its foundational premise and necessitating a concerted response from the international community to safeguard the integrity of international judicial practice.

Broader Implications

The ITLOS judgment extends far beyond the specific maritime boundary between Mauritius and Maldives; it carries significant and potentially unsettling implications for the broader landscape of international judicial practice and the rule of law.

1. **Erosion of Distinctions between Judicial Pronouncements:** This case risks blurring the crucial lines between the advisory and contentious functions of international courts. If non-binding advisory opinions can be readily adopted by other tribunals as definitive legal determinations in binding contentious cases, it undermines the very purpose and legal effect meticulously crafted for these different types of judicial pronouncements by instruments like the **ICJ Statute (Articles 59, 65)**. Such an approach could create a pathway for indirect adjudication of disputes that states have not consented to submit to binding settlement, thereby circumventing the fundamental principle of state consent to jurisdiction.
2. **Precedent for Third-Party Rights:** The ITLOS decision sets a legally questionable precedent regarding the protection of third-party rights. The application of principles such as the **Monetary Gold doctrine** and *res inter alios acta* (supported by **UNCLOS Article 296**) is paramount in safeguarding state sovereignty and ensuring that judicial decisions do not adversely affect non-parties without their direct involvement or consent. If a tribunal can make a binding determination on a matter central to a third State's vital interests, based on a non-binding opinion, it creates a dangerous pathway for circumventing these essential safeguards and could lead to uncertainty in territorial claims and sovereign rights.
3. **Consistency within the UN System:** As elaborated in the section on the UN's obligations, the divergence in the interpretation of the legal effect of an ICJ Advisory Opinion by a tribunal within the broader UN system (ITLOS, established under UNCLOS) poses a challenge to the coherence and consistency of international law. The UN, through its various organs, has a responsibility to ensure that its judicial framework operates harmoniously, and that the distinct roles of its principal judicial body are respected and properly understood by other tribunals. Failure to address such perceived inconsistencies could diminish confidence in the predictability and fairness of international dispute settlement mechanisms.

In essence, the ITLOS judgment concerning the Chagos Archipelago serves as a critical case study that demands careful scrutiny. Its approach has the potential to reshape, in a legally precarious manner, the established norms governing the authority of international judicial decisions and the protection of sovereign interests within the global legal order.

Methodology for the Paper

This paper employs a **qualitative legal research methodology**, focusing on the rigorous analysis and interpretation of primary international legal instruments and judicial pronouncements. The approach is primarily **doctrinal and analytical**, aiming to dissect existing legal norms and their application to a specific case, thereby building a comprehensive legal argument.

1. Research Approach and Design

The research design is a **case study approach** centered on the ITLOS maritime delimitation judgment between Mauritius and Maldives (Case No. 28, April 28, 2023), with a particular focus on its reliance on the ICJ Advisory Opinion on the Chagos Archipelago. The methodology involves:

- a) **Identification of Key Legal Questions:** Pinpointing the central legal issues, such as the binding nature of advisory opinions, the principles of *res judicata*, *Monetary Gold*, and *res inter alios acta* in the context of international adjudication.
- b) **Systematic Review of Primary Sources:** Thorough examination of relevant treaty law, statutes of international courts, and specific judicial decisions.
- c) **Doctrinal Analysis:** Interpreting the meaning and application of international legal rules and principles derived from the primary sources.
- d) **Comparative Legal Analysis (Implicit):** Drawing distinctions between the functions and effects of different types of international judicial pronouncements (advisory opinions vs. contentious judgments).

2. Sources of Information

The paper relies exclusively on authoritative primary legal documents from relevant international bodies:

a) **Statutes of International Courts:**

- i. **Statute of the International Court of Justice (ICJ):** Specifically Articles 1, 2, 59, 65, and 68.
- ii. **Statute of the International Tribunal for the Law of the Sea (ITLOS):** Annex VI to the United Nations Convention on the Law of the Sea.

b) **Judicial Pronouncements and Rules:**

- i. **ICJ Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965 (February 25, 2019):** Analyzed for its content and legal nature.
- ii. **ICJ Practice Directions:** Specifically Practice Direction XII, and others tangentially related to the submission of documents, to understand the Court's internal operational distinctions.
- iii. **ITLOS Guidelines Concerning the Preparation and Presentation of Cases Before the Tribunal (ITLOS/9):** Paragraph 19.
- iv. **ITLOS Resolution on the Internal Judicial Practice of the Tribunal (ITLOS/10):** Article 12.
- v. **ITLOS Rules of the Tribunal Amendments:** Various amendments (e.g., 25 September 2020, 25 March 2021, 25 September 2018, 17 March 2009, 21 September 2001), particularly those related to the reading of decisions (Articles 112, 135, 136) and contentious case procedures (Articles 60, 61, 113, 114).

a) **International Treaties:**

- i. **United Nations Convention on the Law of the Sea (UNCLOS):** Particularly Part XV on the Settlement of Disputes, and Article 296 regarding the finality and binding force of decisions.

- ii. **United Nations Charter:** Articles 1, 2, and provisions relating to the ICJ (Chapter XIV), for context on the UN's role in upholding international law and dispute settlement.

3. Analytical Framework

The analysis proceeds by:

- a) **Textual Exegesis:** Close reading and interpretation of the precise wording of articles and clauses in the legal instruments to ascertain their intended meaning and scope.
- b) **Application of Legal Principles:** Applying established principles of international law—such as the binding nature of judgments (*res judicata*), the protection of third-party interests (*Monetary Gold* and *res inter alios acta*), sovereignty, and self-determination—to the facts of the ITLOS case and its reliance on the ICJ Advisory Opinion.
- c) **Distinction and Comparison:** Systematically differentiating between the legal nature and effect of advisory opinions versus contentious judgments as articulated by the courts themselves and relevant treaties.
- d) **Argument Construction:** Synthesizing findings to construct a cohesive argument, highlighting inconsistencies and potential legal flaws, particularly concerning the determination of sovereignty for baseline purposes.

4. Scope and Limitations

This paper focuses specifically on the legal arguments concerning the ITLOS's reliance on the ICJ Advisory Opinion for its sovereignty determination and its implications for third parties. It does not delve into the geopolitical aspects beyond their direct legal implications for the arguments presented, nor does it propose specific policy recommendations beyond the general call for rectification of systemic flaws within the UN's judicial framework. The analysis is confined to the legal documents provided and general principles of international law.

Arguments for its Legal Flaws in ITLOS' Decision

The ITLOS judgment on the maritime delimitation between Mauritius and Maldives (Case No. 28, April 28, 2023) presents a legally complex and controversial issue, primarily due to its reliance on the non-binding advisory opinion of the International Court of Justice (ICJ) concerning the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. The arguments presented assert that this reliance, particularly given that Maldives was not a party to the underlying sovereignty dispute, renders the ITLOS decision, at least in its foundational premise regarding Chagos's sovereignty, as potentially **void ab initio** (void from the beginning).

1. Non-Binding Nature of ICJ Advisory Opinions

The core of the legal challenge lies in the fundamental distinction between an ICJ advisory opinion and a contentious judgment.

a) ICJ Statute - Binding Force Limited to Contentious Cases:

- i. **Article 59** of the ICJ Statute explicitly states: "The decision of the Court has no binding force except between the parties and in respect of that particular case." This provision unequivocally limits the binding effect of the Court's decisions to states that are direct parties to a contentious dispute.
- ii. **Article 65** outlines the Court's "advisory opinion" function, clarifying that these opinions are given at the request of authorized UN bodies, not to resolve disputes between states in a binding manner.
- iii. **Article 68** indicates that in exercising its advisory functions, the Court is "guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable." This grants the Court discretion and reinforces that advisory opinions are not merely contentious cases in disguise, and Article 59 (binding force) is generally not applied to them.

b) ICJ Advisory Opinion on the Chagos Archipelago (February 25, 2019):

- i. The document itself is titled an "ADVISORY OPINION," clearly indicating its nature.

- ii. The ICJ, in this opinion, expressly stated that the questions asked by the UN General Assembly "did not submit to the Court a bilateral dispute over sovereignty which might exist between the United Kingdom and Mauritius." This confirms the Court's intention not to render a binding judgment on the sovereignty dispute.

c) **ICJ Practice Direction XII (International Non-Governmental Organizations in Advisory Proceedings):**

- i. This direction provides further contextual support, stating that submissions from NGOs in advisory proceedings "are not to be considered part of the case file" and "shall be treated as publications readily available." This underscores the less formal, non-binding nature of the advisory process itself, as even formal inputs are not integrated into a binding judicial record.

Consequently, the ICJ's advisory opinion on Chagos lacks *res judicata* effect and cannot create binding legal obligations for any state, especially not for a third party to the underlying sovereignty dispute.

2. Questionable Precedent by ITLOS and Violation of Third-Party Principles

ITLOS's reliance on this non-binding ICJ advisory opinion to determine the sovereign status of the Chagos Archipelago for baseline projection in a *binding* maritime delimitation judgment establishes a problematic precedent, violating core principles of international adjudication.

a) **Violation of the Monetary Gold Principle:**

- i. The **Monetary Gold principle** dictates that a court cannot exercise jurisdiction if the vital interests of a third State, not a party to the proceedings, would form the "very subject-matter" of the decision.
- ii. Maldives was not a party to the underlying sovereignty dispute between Mauritius and the United Kingdom over Chagos. By relying on a non-binding opinion to effectively determine Chagos's sovereign status (a vital interest for the UK) for delimitation purposes, ITLOS implicitly adjudicated upon the UK's claim without its consent to that specific adjudication of sovereignty.

b) **Violation of *Res Inter Alios Acta* Principle:**

- i. This principle holds that a judgment or agreement between two parties does not create rights or obligations for a third party.
- ii. **UNCLOS (Article 296):** This critical article concerning the settlement of disputes explicitly states: "Any decision rendered by a court or tribunal having jurisdiction under this section shall be final and shall be complied with by all the parties to the dispute." This reinforces that binding decisions bind only the direct parties to that dispute.
- iii. The ICJ advisory opinion was a pronouncement to the UN General Assembly. ITLOS's subsequent delimitation, by relying on this non-binding opinion to effectively determine Chagos's sovereign status, directly impacted the United Kingdom (a third party to the ITLOS delimitation case's sovereign premise) without its consent to that specific determination of sovereignty.

3. Unsettled Sovereignty and Ambiguity

At the time of the ITLOS decision, the *de jure* transfer of sovereignty over the Chagos Archipelago from the United Kingdom to Mauritius remained internationally unsettled and ambiguous, as the United Kingdom did not accept the ICJ's advisory opinion as binding. It is a fundamental principle of international law that a binding judicial decision, particularly one that implicitly resolves a sovereign dispute affecting a third state, should not be built upon such an unsettled or ambiguous foundational premise. Clarity in legal outcomes cannot be legitimately derived from fundamental ambiguity.

4. ITLOS's Own Procedural Distinctions

Even ITLOS's internal documents and rules, while applying similar procedures, maintain a clear distinction between contentious judgments and advisory opinions, reinforcing their differing legal effects.

- a) **ITLOS Guidelines Concerning the Preparation and Presentation of Cases Before the Tribunal (ITLOS/9, Paragraph 19):** These guidelines state they apply "*mutatis mutandis*, to advisory proceedings as they apply to contentious proceedings." The term "*mutatis mutandis*" ("with the necessary changes") implies procedural adaptation, not an equivalence in legal effect.

- b) **ITLOS Resolution on the Internal Judicial Practice of the Tribunal (ITLOS/10, Article 12):** This resolution states its provisions apply "whether the proceedings before the Tribunal are contentious or advisory." This refers to internal judicial processes, not the binding nature of the final output.
- c) **ITLOS Rules Amendments (e.g., 25 September 2020, Articles 112 and 135):** These amendments consistently use distinct terminology for the final outputs: "judgment" for contentious cases (Article 112) and "advisory opinion" for advisory cases (Article 135), even when addressing procedural aspects like public reading via video link. This consistent terminological precision highlights ITLOS's own recognition of their distinct legal natures.
- d) Furthermore, rules specific to binding contentious procedures, such as those concerning prompt release cases (e.g., ITLOS Rules amendments 17 March 2009, Articles 113 and 114, discussing financial security for *final judgment, award or decision*), underscore that the Tribunal's core dispute-settlement function yields binding decisions, a feature absent from the advisory framework.

The Argument for Void Ab Initio

Based on the explicit non-binding nature of the ICJ's advisory opinion, the violations of the *Monetary Gold* and *Res Inter Alios Acta* principles, and the unsettled sovereignty context, the ITLOS decision's foundational premise regarding the sovereign status of the Chagos Archipelago for delimitation was based on a legally flawed and non-consensual basis concerning a third party's vital interests.

Therefore, since the determination of Chagos's sovereignty was a prerequisite for the delimitation and was derived from a non-binding opinion affecting a non-party (the UK), the ITLOS decision itself, at least concerning its foundational premise on the sovereign status of the Chagos Archipelago, can be argued as being **void ab initio** (void from the beginning). This challenges the fundamental validity of the delimitation line, as it directly depended on this problematic premise. This situation continues to be a subject of significant legal and political discussion, especially concerning the interplay between advisory and contentious jurisdictions in international law.

The judges presided in Case No. 28

The judges who presided over the delimitation of the maritime boundary case between Mauritius and Maldives (Case No. 28) at the International Tribunal for the Law of the Sea (ITLOS), along with their countries and qualifications, are presented in the table below. All ITLOS judges are elected from persons of recognized competence in the field of the law of the sea, enjoying the highest reputation for fairness and integrity.



Judge Name	Country	Qualification
Judge Jin-Hyun Paik	South Korea	Recognized competence in the field of the law of the sea
Judge José Luis Jesus	Cabo Verde	Recognized competence in the field of the law of the sea
Judge Stanisław Pawlak	Poland	Recognized competence in the field of the law of the sea
Judge Shunji Yanai	Japan	Recognized competence in the field of the law of the sea
Judge Boualem Bouguetaia	Algeria	Recognized competence in the field of the law of the sea
Judge Tomas Heidar	Iceland	Recognized competence in the field of the law of the sea
Judge Neeru Chadha	India	Recognized competence in the field of the law of the sea
Judge ad hoc Bernard H. Oxman	United States	Recognized competence in the field of the law of the sea
Judge ad hoc Jens Peter Schrijver	Netherlands	Recognized competence in the field of the law of the sea

Legal analysis of the ICJ Statute

Based on the comprehensive legal analysis of the ICJ Statute, the ICJ Advisory Opinion on the Chagos Archipelago, the ITLOS's own Rules and Guidelines, and the United Nations Convention on the Law of the Sea (UNCLOS), the assertion that the Maldives has a right to reject the ITLOS decision in the maritime delimitation case (Case No. 28) is strongly supported.

Here's why, reaffirming the arguments and their connection to principles of sovereignty and self-determination implicitly embedded in the UN Charter:

1. **Non-Binding Nature of the Foundational Premise:** The ITLOS decision relied on the ICJ's Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965. As established by **Article 59 of the ICJ Statute**, the Court's decisions are binding only between the parties to a contentious case. Advisory opinions, like the Chagos opinion (as specified in **Article 65**), are non-binding. The ICJ itself stated that its opinion did not resolve a bilateral dispute over sovereignty. If the very foundation of the ITLOS delimitation—the determination of sovereignty over Chagos for baseline purposes—is based on a non-binding instrument, its legitimacy can be questioned.
2. **Violation of Third-Party Principles (Monetary Gold and *Res Inter Alios Acta*):**
 - a. The **Monetary Gold principle** dictates that a court cannot exercise jurisdiction if the vital interests of a third State (like the United Kingdom in the Chagos sovereignty dispute) would form the "very subject-matter" of the decision, without that State's consent. ITLOS, by effectively determining Chagos's sovereignty based on a non-binding opinion, arguably adjudicated on the UK's vital interests without its consent in that context.
 - b. The principle of *res inter alios acta* asserts that a judgment or agreement between two parties does not create rights or obligations for a third party. **UNCLOS Article 296** reinforces this by stating that decisions are binding only on "all the parties to the dispute." The ICJ advisory opinion did not bind the UK or Mauritius in a contentious dispute. If ITLOS's decision effectively determined sovereignty in a way

that impacted the UK (a third party to the ITLOS case's sovereign premise), it stands in conflict with this fundamental principle.

3. **Unsettled Sovereignty and Self-Determination:** The ITLOS decision was rendered when the *de jure* transfer of sovereignty over the Chagos Archipelago remained internationally unsettled, with the UK not accepting the ICJ's opinion as binding. Principles of sovereignty and self-determination are fundamental to international law, as enshrined in the UN Charter. A binding judicial determination, particularly one related to territorial sovereignty, should stem from a clear and consented legal basis, not an unsettled premise derived from a non-binding opinion.
4. **ITLOS's Own Procedural Distinctions:** Even ITLOS's internal documents, such as the "Guidelines Concerning the Preparation and Presentation of Cases Before the Tribunal" (**ITLOS/9, Paragraph 19**) and the "Resolution on the Internal Judicial Practice of the Tribunal" (**ITLOS/10, Article 12**), along with its various **Rules amendments** (e.g., 25 September 2020 amendments to Articles 112 and 135), consistently distinguish between "judgments" (binding) and "advisory opinions" (non-binding) in their procedural treatment. This internal distinction further supports the argument that the legal effects are not interchangeable.

Given these arguments, if the ITLOS decision's foundational premise regarding Chagos's sovereignty is legally flawed due to reliance on a non-binding opinion and violation of third-party rights, a state like the Maldives, affected by this problematic determination, could argue that the decision's legal force, at least in that aspect, is compromised. This aligns with the right of states to uphold principles of sovereignty and self-determination against decisions perceived as exceeding jurisdictional boundaries or based on legally insufficient grounds.

Foundational agreement: Mauritius and Maldives to submit their maritime boundary dispute

The "**Special Agreement and Notification**" document sheds light on the foundational agreement between Mauritius and Maldives to submit their maritime boundary dispute to a Special Chamber of the International Tribunal for the Law of the Sea (ITLOS). Analyzing this document in light of the previously developed arguments reinforces the critique regarding ITLOS's methodology in its final judgment.

Here's how the document's contents relate to the core arguments:

1. **Consent to Delimitation, Not Explicit Consent to Sovereignty Determination via Advisory Opinion:**

- a. The Special Agreement clearly articulates that the dispute submitted to the Special Chamber of ITLOS is specifically concerning "the delimitation of the maritime boundary" between Mauritius and Maldives.
- b. Crucially, the document **does not contain any explicit agreement or instruction from the parties that ITLOS should determine the sovereignty of the Chagos Archipelago or, more specifically, that it should rely on the non-binding ICJ Advisory Opinion** for this purpose as a foundational step for delimitation. This supports the argument that ITLOS's choice to use the ICJ advisory opinion in this manner was a methodological decision by the Tribunal itself, rather than a matter explicitly consented to by the parties within the scope of this Special Agreement.

2. **Reinforcement of Governance by ITLOS Statute and Rules:**

- a. The Special Agreement explicitly states that the proceedings of the Special Chamber "shall be governed by the provisions contained in the Statute and the Rules of the Tribunal".
- b. This directly aligns with the previous arguments which highlighted that the **ITLOS Statute** and the **Rules of the Tribunal** themselves (e.g., in distinguishing between advisory opinions and contentious judgments) do not grant advisory opinions the binding legal effect of judgments. Thus, while the parties agreed to be bound by ITLOS's procedural and

substantive rules, these rules, as interpreted in the paper, do not inherently endorse the conversion of a non-binding advisory opinion into a binding sovereign determination.

3. **Confirmation of Chamber Composition:**

- a. The document lists the agreed-upon judges for the Special Chamber, including Judge Jin-Hyun Paik as President, and other distinguished judges like Judge José Luis Jesus, Judge Jean-Pierre Cot, Judge Shunji Yanai, Judge Boualem Bouguetaia, Judge Tomas Heidar, and Judge Neeru Chadha. It also states that Mr Bernard Oxman was chosen as Judge ad hoc by the Republic of Maldives . This confirms the mutually agreed composition of the tribunal for the case.

In essence, while the "Special Agreement and Notification" unequivocally demonstrates the mutual consent of Mauritius and Maldives to submit their maritime delimitation dispute to ITLOS's Special Chamber, it **does not provide a basis to infer explicit consent for ITLOS to rely on a non-binding ICJ advisory opinion for a definitive determination of sovereignty** that could impact a third party. This reinforces the core argument that ITLOS's methodological approach, particularly concerning the Chagos Archipelago's status, stemmed from the Tribunal's own interpretation and application of law within the proceedings, rather than from a specific mandate granted by the Special Agreement itself.

Final Submissions of the Parties

The final submissions of the Republic of Maldives and the Republic of Mauritius provide valuable insight into the core arguments and requests put forth by the parties in the maritime delimitation case (Case No. 28) before the International Tribunal for the Law of the Sea (ITLOS). Analyzing these documents in light of the paper's arguments on the non-binding nature of the ICJ Advisory Opinion and ITLOS's problematic reliance on it, reveals a crucial point:

Analysis of Final Submissions

1. Focus on Delimitation and Continental Shelf Jurisdiction, Not Chagos Sovereignty:

- a) **Maldives' Submissions (24 October 2022):** The Republic of Maldives requested the Special Chamber to declare a specific single maritime boundary through a series of geodesic lines for both the Exclusive Economic Zones and continental shelves. Significantly, Maldives also requested that Mauritius' claim to a continental shelf beyond 200 nautical miles be dismissed on the grounds of being "Outside the jurisdiction of the Special Chamber; and/or Inadmissible".
- b) **Mauritius' Submissions (22 October 2022):** The Republic of Mauritius requested the Special Chamber to adjudge and declare that it had "jurisdiction to determine Mauritius' claim to a continental shelf beyond 200 nautical miles and the claim is admissible". Mauritius also proposed a specific maritime boundary connecting 53 points within 200 nautical miles and in the outer continental shelf.

2. Absence of Explicit Request Regarding ICJ Advisory Opinion:

- a) Crucially, neither party's final submissions explicitly direct or request the ITLOS Special Chamber to make a binding determination on the sovereignty of the Chagos Archipelago based on the **ICJ Advisory Opinion** of February 25, 2019. Their requests are solely focused on the establishment of the maritime boundary and the contentious issue of continental shelf jurisdiction beyond 200 nautical miles.

Implications for the Paper's Arguments

The content of these final submissions strongly supports the paper's central argument that ITLOS's reliance on the non-binding ICJ Advisory Opinion for a definitive sovereignty determination was a methodological choice made by the Tribunal itself, rather than an explicit mandate or a specific request from the litigating parties.

- a) **Reinforces ITLOS's Own Initiative:** The fact that neither Mauritius nor Maldives, in their ultimate pleas to the Tribunal, explicitly asked for a ruling on Chagos sovereignty based on the ICJ Advisory Opinion, or for its direct application to establish baselines, indicates that the Tribunal's decision to use it for that purpose was an independent judicial step. This strengthens the argument that ITLOS arguably went beyond the explicit scope of the parties' submissions in its approach to resolving the fundamental issue of sovereignty for baseline purposes.
- b) **Highlighting the Fundamental Flaw:** While the parties clearly consented to ITLOS's jurisdiction over the delimitation dispute itself, their final submissions underscore that their core contention revolved around the boundary lines and the extent of the continental shelf, not the legal effect of an advisory opinion on territorial sovereignty. The Tribunal's subsequent use of the non-binding opinion to effectively determine sovereignty and derive baselines for delimitation, despite not being explicitly requested by the parties, highlights the foundational flaw the paper aims to address. It suggests that ITLOS's method introduced an element not directly part of the parties' final consent, especially in its implications for a third party (the UK) regarding the unsettled sovereignty of Chagos.

President Paik's Declaration



The "**Declaration of President Paik**", appended to the ITLOS Judgment, offers the President of the Special Chamber's individual observations on specific aspects of the decision. While President Paik explicitly states his full agreement with the Special Chamber's overall conclusion, his declaration primarily focuses on the Tribunal's decision not to delimit the continental shelf beyond 200 nautical miles.

Analysis of President Paik's Declaration

1. **Overall Agreement with the Judgment:** President Paik begins by affirming: "I fully agree with the conclusion of the Special Chamber." This crucial statement indicates his concurrence with all aspects of the judgment, including the Tribunal's reasoning and ultimate determination regarding the Chagos Archipelago's sovereignty for baseline purposes.
2. **Focus on Continental Shelf Beyond 200 nm:** The bulk of his declaration is dedicated to explaining the Special Chamber's decision *not* to delimit the continental shelf beyond 200 nautical miles, despite affirming jurisdiction over it. He attributes this decision to "significant uncertainty" arising from "fundamental disagreement between the Parties on the scientific and technical issues." He emphasizes that this should not be seen as a general precedent against such delimitations or seeking expert opinions, but rather as a decision based on the "special circumstances of the present case."

Rebuttal in Light of Above Arguments

While President Paik's declaration provides a valuable internal perspective on the Tribunal's deliberations regarding the continental shelf, it **does not offer any direct counter-arguments or clarifications concerning the core issues raised by this paper**—namely, ITLOS's reliance on the non-binding ICJ Advisory Opinion for a binding determination of Chagos sovereignty.

Given President Paik's explicit agreement with the Special Chamber's conclusion, his declaration *implicitly endorses* the Tribunal's approach to the Chagos Archipelago, which includes:

1. **Implicit Endorsement of Using a Non-Binding Opinion as Dispositive:** By agreeing with the judgment, President Paik implicitly supports the Special Chamber's decision to treat the ICJ Advisory Opinion as an "authoritative statement of the applicable law" that was "dispositive of the question of sovereignty over the Chagos Archipelago for the purposes of the present delimitation." This stands in contrast to the paper's argument that advisory opinions are non-binding and should not be imbued with the force of a contentious judgment, especially when determining sovereignty.
2. **Implicit Acceptance of Impact on Third-Party Rights:** His agreement also implies acceptance of the judgment's application of the ICJ Advisory Opinion, which effectively adjudicated the status of Chagos—a matter of ongoing dispute involving the United Kingdom, a non-consenting third party to the delimitation proceedings. This runs contrary to the **Monetary Gold Principle** and the principle of *res inter alios acta*, as argued in the paper.
3. **Implicit Endorsement of Pre-judgment of Unsettled Sovereignty:** The declaration's overall agreement with the judgment signifies acceptance of the Tribunal's decision to treat Chagos as Mauritian territory for baseline purposes, despite the formal sovereignty remaining unsettled between Mauritius and the administering power, the United Kingdom.

In conclusion, President Paik's declaration, while insightful on the continental shelf aspect, does not mitigate the paper's central critique. His explicit agreement with the overall judgment means that he implicitly supports the Tribunal's controversial reliance on a non-binding advisory opinion for a dispositive ruling on sovereignty, thereby reinforcing the arguments concerning the integrity of international judicial practice and the protection of third-party rights.

Judge Heidar's Declaration



The "**Declaration of Judge Heidar**", appended to the ITLOS Judgment, provides further individual commentary from a member of the Special Chamber. While Judge Heidar voted in favor of the judgment and concurred with most of its reasoning, his declaration, like President Paik's, focuses on specific aspects that do not directly address the paper's core arguments concerning the Chagos Archipelago's sovereignty.

Analysis of Judge Heidar's Declaration

1. **General Agreement with the Judgment:** Judge Heidar explicitly states, "I have voted in favour of the present Judgment and concur with most of its reasoning." This indicates his broad agreement with the Special Chamber's findings and conclusions, including the foundational decision to treat the Chagos Archipelago as Mauritian territory for the purpose of delimitation.
2. **Critique on Continental Shelf Delimitation Beyond 200 nm:** The bulk of his declaration is dedicated to two specific issues related to the continental shelf beyond 200 nautical miles:
 - a) He argues for a "more straightforward reasoning" regarding the rejection of Maldives' objection to Mauritius's claim to the continental shelf beyond 200 nm, suggesting that the Tribunal should have more broadly clarified whether CLCS filing is a procedural requirement for judicial delimitation.

- b) He advocates for international courts and tribunals, including ITLOS, to "more readily avail themselves" of options like arranging for expert opinions (under **ITLOS Rules, Article 82**) or selecting scientific/technical experts (under **UNCLOS, Article 289**) when dealing with complex scientific or technical issues, implying that the Chamber could have utilized such expertise for the continental shelf determination.

Rebuttal in Light of Above Arguments

Judge Heidar's declaration, while offering valuable insights into the complexities of continental shelf delimitation and the role of experts, **does not provide any direct counter-arguments to the central critique of this paper regarding the ITLOS Special Chamber's reliance on the non-binding ICJ Advisory Opinion for the Chagos Archipelago's sovereignty.**

Given his explicit vote in favor of the judgment and concurrence with most of its reasoning, Judge Heidar implicitly endorses the Tribunal's problematic approach to the Chagos Archipelago:

1. **Implicit Endorsement of Using a Non-Binding Opinion as Dispositive:** By supporting the judgment, Judge Heidar implicitly accepts the Special Chamber's determination to treat the ICJ Advisory Opinion as an "authoritative statement of the applicable law" that was "dispositive of the question of sovereignty over the Chagos Archipelago for the purposes of the present delimitation." This aligns with the paper's argument that ITLOS inappropriately imbued a non-binding opinion with the legal force typically reserved for contentious judgments, thereby exceeding its intended scope.
2. **Implicit Acceptance of Impact on Third-Party Rights:** His agreement with the judgment also implies acceptance of its application of the ICJ Advisory Opinion, which, as argued, implicitly affects the sovereign rights of the United Kingdom, a non-consenting third party. This remains contrary to the **Monetary Gold Principle** and the principle of *res inter alios acta*.
3. **Implicit Endorsement of Pre-judgment of Unsettled Sovereignty:** Judge Heidar's overall concurrence with the judgment indicates his implicit support for the Tribunal's decision to treat Chagos as Mauritian territory for baseline generation, despite the sovereignty remaining a formally contested matter between Mauritius and the United Kingdom.

In sum, Judge Heidar's declaration, similar to President Paik's, focuses on other procedural and technical aspects of the judgment. It does not offer any new justifications for, or deviation from, the Tribunal's controversial reliance on the non-binding ICJ Advisory Opinion to determine sovereignty for delimitation purposes. Thus, the paper's core arguments regarding this fundamental flaw remain robust and unchallenged by this declaration.

Judge ad hoc Schrijver's Declaration



The "Declaration of Judge *ad hoc* Nicolaas Schrijver (Dutch)", appointed by Mauritius, provides a specific perspective on the ITLOS Judgment, particularly concerning the treatment of the Chagos Archipelago and its implications for delimitation. While he ultimately agrees that the judgment achieves an equitable solution, his reasoning explicitly leverages the ICJ Advisory Opinion in a manner that reinforces the core arguments of this paper.

Analysis of Judge *ad hoc* Schrijver's Declaration

1. **General Context (Archipelagic States and Sea-Level Rise):** Judge *ad hoc* Schrijver begins by setting the broader context of the case as a delimitation between two archipelagic states (Mauritius and Maldives). He also raises the critical issue of sea-level rise and its potential impact on low-lying islands and maritime features, a significant concern for both parties.
2. **Specific Endorsement of Chagos Sovereignty Determination (Paragraph 14):**
 - a) He agrees with the Special Chamber's decision to give "half effect" to Blenheim Reef, a feature within the Chagos Archipelago, during the delimitation process.
 - b) Crucially, he states his view that Blenheim Reef is "an intrinsic component of the Chagos Archipelago over which **Mauritius has only recently been able to recover its territorial sovereignty** (ICJ, Chagos Advisory Opinion, 2019, p. 137, paragraph 173; Special Chamber ITLOS, Preliminary Objections Delimitation Mauritius/Maldives, Judgment, 2022, paragraphs 174, 205, 206 and 246)."
 - c) He concludes that the overall delimitation constitutes a "balanced and equitable solution."

Rebuttal in Light of Above Arguments

Judge *ad hoc* Schrijver's declaration is particularly significant because it explicitly articulates the very interpretation of the ICJ Advisory Opinion that this paper critiques. His statement that Mauritius has "only recently been able to recover its territorial sovereignty" over Chagos, citing the Advisory Opinion, directly exemplifies the problematic elevation of a non-binding legal instrument to a dispositive pronouncement on territorial sovereignty.

1. **Direct Confirmation of Misapplication of Non-Binding Opinion:** Judge *ad hoc* Schrijver's declaration serves as a stark illustration of the paper's central argument. By asserting that Mauritius has "recovered its territorial sovereignty" over Chagos based on the **ICJ Advisory Opinion (2019)**, he explicitly treats a non-binding opinion as if it were a definitive and legally conclusive judgment on territorial transfer. This reinforces the critique that ITLOS, and its supportive

judges, have blurred the fundamental distinction between advisory and contentious proceedings, thereby imbuing the Advisory Opinion with a legal effect it does not possess under international law.

2. **Exacerbation of Unsettled Sovereignty:** His assertion that Mauritius has "recovered" sovereignty directly contradicts the reality of the ongoing dispute with the United Kingdom, which continues to administer the Chagos Archipelago. This statement highlights how the Tribunal's judgment, and this supporting declaration, contribute to the **pre-judgment of an unsettled territorial dispute** between states, one of whom (the UK) was not a party to the delimitation case. An advisory opinion cannot unilaterally determine or transfer sovereignty.
3. **Underscoring the Third-Party Principle Violation:** By relying on the Advisory Opinion to assert Mauritius's sovereignty over Chagos for delimitation purposes, Judge *ad hoc* Schrijver's declaration further exemplifies how the Tribunal's decision implicitly adjudicates on the sovereign rights and obligations of the United Kingdom. This directly engages the **Monetary Gold Principle**, which dictates that an international tribunal should not rule on the rights of a third state not party to the proceedings. The declaration thus reinforces the paper's argument that ITLOS overstepped its jurisdictional bounds in this regard.

In conclusion, Judge *ad hoc* Schrijver's declaration, far from offering a counter-argument, provides clear and direct evidence of the very problematic interpretation and application of the ICJ Advisory Opinion regarding Chagos sovereignty that this paper seeks to rebut. His statement regarding Mauritius's "recovery" of sovereignty underscores the profound implications of ITLOS's approach for the principles of non-binding advisory opinions, unsettled territorial disputes, and third-party rights in international law.

The ITLOS Judgment

The ITLOS Judgment in the **Dispute concerning delimitation of the maritime boundary between Mauritius and Maldives in the Indian Ocean (Mauritius/Maldives)** is a pivotal document, as it outlines the Tribunal's reasoning and the final delimitation line. Our analysis of this judgment, particularly in light of the previously established arguments, reveals crucial points of contention regarding ITLOS's approach to the Chagos Archipelago's sovereignty.

Analysis of the ITLOS Judgment

The core of the ITLOS Special Chamber's approach, relevant to our arguments, is found in its determination of the baselines for delimitation, which necessitated a stance on the sovereignty of the Chagos Archipelago.

1. Determination of Chagos Sovereignty for Delimitation Purposes:

- a. The Tribunal acknowledged the "historic dispute" concerning the sovereignty over the Chagos Archipelago.
- b. It explicitly referred to the International Court of Justice's (ICJ) 2019 Advisory Opinion on the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. ITLOS noted the ICJ's conclusion that the detachment of Chagos from Mauritius was not based on a genuine expression of the will of the people, and that the United Kingdom's continued administration constituted a wrongful act.
- c. Crucially, the Special Chamber stated that it considered it "appropriate to follow the conclusion of the International Court of Justice regarding the status of the Chagos Archipelago as part of the territory of Mauritius".
- d. ITLOS further declared that this conclusion by the ICJ "constitutes an **authoritative statement of the applicable law**" and is "**dispositive of the question of sovereignty over the Chagos Archipelago for the purposes of the present delimitation**".
- e. Based on this, ITLOS proceeded to treat the Chagos Archipelago as part of Mauritian territory for baseline generation .

2. **Disclaimer on Binding Effect for Third Parties:**

- a) The Tribunal recognized that the United Kingdom was not a party to the delimitation proceedings.
- b) It asserted that its conclusion on sovereignty, drawn from the ICJ Advisory Opinion, "does not entail a binding ruling between the United Kingdom and Mauritius concerning sovereignty over the Chagos Archipelago". However, it maintained that this finding reflected the legal reality established by the ICJ's "authoritative statement" and was necessary for the delimitation.

Rebuttal in Light of Above Arguments

The ITLOS Special Chamber's approach, while serving to complete the delimitation task, raises fundamental concerns when evaluated against the principles outlined in our previous arguments:

1. **Misapplication of the Non-Binding Nature of ICJ Advisory Opinions:**

- a) **ITLOS's Stance:** The Special Chamber elevated the ICJ Advisory Opinion to an "authoritative statement of the applicable law" that was "dispositive of the question of sovereignty... for the purposes of the present delimitation".
- b) **Rebuttal:** The **ICJ Statute (Article 59)** clearly states that the Court's decisions have "no binding force except between the parties and in respect of that particular case." Advisory opinions, by their very nature, are non-binding; they offer legal guidance but do not create legal obligations or definitively transfer sovereignty. By declaring the ICJ's conclusion "dispositive" for a crucial aspect of a contentious delimitation, ITLOS effectively endowed a non-binding opinion with a binding effect on sovereignty, thereby blurring the essential distinction between advisory and contentious proceedings and exceeding the intended legal scope of such opinions.

2. **Violation of Third-Party Protection Principles (Monetary Gold Principle):**

- a) **ITLOS's Stance:** The Tribunal explicitly stated that its finding on sovereignty does not bind the United Kingdom.
- b) **Rebuttal:** Despite ITLOS's disclaimer, by utilizing the Chagos Archipelago as a baseline for Mauritian entitlement (based on the ICJ AO), the Tribunal inherently acted upon and prejudiced the United Kingdom's asserted sovereign rights over the territory. The **Monetary Gold Principle** dictates that a court should not exercise jurisdiction in a dispute if doing so would necessitate a ruling on the rights and obligations of a third state not party to the proceedings. ITLOS's decision to treat the Chagos as Mauritian territory for delimitation purposes, even if qualified, effectively adjudicated an unsettled territorial dispute concerning a non-consenting third party.

3. **Pre-judgment of Unsettled Sovereignty:**

- a) **ITLOS's Stance:** The Tribunal concluded that the Chagos Archipelago forms part of the territory of Mauritius "for the purposes of the present delimitation".
- b) **Rebuttal:** The sovereignty of the Chagos Archipelago remains formally contested between Mauritius and the United Kingdom, who continues to administer it. An ICJ Advisory Opinion, while politically significant, does not unilaterally transfer sovereignty or legally resolve a territorial dispute in a binding manner. By making a dispositive determination on this unsettled sovereignty, even within the context of delimitation, ITLOS arguably overstepped its role and implicitly contributed to the pre-judgment of a dispute involving a state not before it. This creates legal uncertainty and can exacerbate, rather than resolve, underlying territorial contentions.

4. **Inconsistency with ITLOS's Own Rules and UNCLOS:**

- a. **ITLOS's Stance:** The judgment operates within the framework of the ITLOS Statute and Rules.
- b. **Rebuttal:** Neither the **United Nations Convention on the Law of the Sea (UNCLOS)** nor ITLOS's **Rules of the Tribunal** (including

amendments from 2001, 2009, 2018, 2020, 2021), or its **Guidelines** (ITLOS/9) and **Resolution on Internal Judicial Practice** (ITLOS/10) provide a clear basis for an ITLOS Special Chamber to transform a non-binding advisory opinion into a dispositive ruling on territorial sovereignty for contentious delimitation. The distinct procedural and legal effects of advisory opinions versus contentious judgments are fundamental to international adjudication, and ITLOS's departure from this distinction, particularly when affecting unsettled sovereignty and third-party rights, represents an overreach of its mandate.

5. **Exceeding the Scope of Party Consent (Special Agreement & Final Submissions):**

- a. **ITLOS's Implied Stance:** The Tribunal acted within the mandate provided by the Special Agreement between the parties.
- b. **Rebuttal:** The **Special Agreement and Notification** between Mauritius and Maldives clearly submitted a dispute concerning "the delimitation of the maritime boundary". Crucially, it did not explicitly grant ITLOS the authority to make a binding determination of Chagos sovereignty based on the ICJ Advisory Opinion. Furthermore, as previously analyzed, neither party's **Final Submissions** explicitly requested the Tribunal to make such a determination. This indicates that the Tribunal's decision to treat the ICJ AO as "dispositive" for sovereignty was an independent judicial decision, arguably going beyond the specific consent granted by the parties for the delimitation.

In conclusion, while the ITLOS judgment successfully provided a maritime boundary, its methodology regarding the Chagos Archipelago's sovereignty—primarily its transformative reliance on a non-binding ICJ Advisory Opinion—poses significant concerns for adherence to established principles of international law concerning the binding force of judgments, third-party rights, and the integrity of consent-based jurisdiction.

legal inconsistencies arising from the ITLOS decision

The preceding analysis has revealed significant legal inconsistencies arising from the International Tribunal for the Law of the Sea (ITLOS) decision relying on a non-binding International Court of Justice (ICJ) advisory opinion for a definitive determination of sovereignty impacting a third party. Given these findings, the United Nations (UN) has a fundamental obligation to address and rectify such flaws within its established system of international justice.

The UN's Obligation to Rectify Flaws in its Judicial System

The UN, as the principal international organization established to maintain international peace and security and foster respect for international law, bears a responsibility to ensure the integrity, predictability, and fairness of the international judicial mechanisms operating under its aegis. When there are perceived misapplications of the law or jurisdictional overreaches by judicial bodies, particularly concerning foundational principles like sovereignty and the binding nature of judicial pronouncements, it necessitates a systemic review and rectification by the UN.

1. Upholding the Rule of Law and Judicial Integrity (UN Charter, Articles 1 & 2)

The UN Charter explicitly outlines the organization's purposes and principles, which form the bedrock of international order.

- a) **UN Charter Article 1 (Purpose):** Among the primary purposes of the UN is "To bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace."
- b) **UN Charter Article 2 (Principle):** Key principles include the "sovereign equality of all its Members" and the obligation of Members to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered."

These articles mandate the UN to promote justice and uphold international law. A situation where a binding judicial decision (ITLOS) relies on a non-binding opinion (ICJ advisory opinion) to determine sovereignty, particularly involving a non-party to the underlying dispute, can be seen as undermining justice and the predictability of

international law. The UN, as the principal body fostering peaceful dispute settlement, has an inherent duty to ensure its judicial organs operate with unassailable integrity and respect for established legal principles.

2. Ensuring Consistency in Judicial Interpretation (UN Charter, Chapter XIV & Related Treaties)

The UN Charter establishes the ICJ as its "principal judicial organ" (UN Charter, Chapter XIV). While ITLOS is an independent judicial body established under the UN-sponsored United Nations Convention on the Law of the Sea (UNCLOS), its operations are deeply integrated into the broader UN system for dispute resolution.

- a) **ICJ Statute (Articles 59, 65, 68):** The ICJ Statute, an integral part of the UN Charter, clearly delineates the **non-binding nature of advisory opinions (Article 65)** compared to **binding judgments in contentious cases (Article 59)**. **Article 68** further specifies that contentious rules apply to advisory opinions only "to the extent to which it recognizes them to be applicable," emphatically *not* extending the binding force of Article 59 to advisory opinions.
- b) **UNCLOS (Article 296):** This treaty, concluded under UN auspices, explicitly states that decisions are binding only on "all the parties to the dispute."
- c) **ITLOS Documents (ITLOS/9, Para. 19; ITLOS/10, Article 12; Rules Amendments):** ITLOS's own guidelines and rules consistently distinguish between "judgments" and "advisory opinions," even in procedural aspects, indicating a recognition of their different legal effects.

The flaw arises when a tribunal within the UN system (ITLOS) appears to disregard the clear statutory limitations on the binding force of pronouncements from another principal UN judicial organ (ICJ Advisory Opinion). This creates inconsistency within the UN's dispute settlement framework, potentially eroding trust in its judicial processes. The UN, through its General Assembly or other competent organs, has an obligation to provide clarity or facilitate a mechanism for rectifying such inconsistencies to maintain the coherence and authority of international law.

3. Protecting Sovereignty and Self-Determination (UN Charter, Articles 1 & 2, and International Law Principles)

The principles of sovereignty and self-determination are cornerstones of the UN Charter and modern international law.

- a) **UN Charter Article 1 (Purpose):** Includes the development of "friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples."
- b) **UN Charter Article 2 (Principle):** Emphasizes the "sovereign equality of all its Members."

The ITLOS decision's reliance on a non-binding ICJ advisory opinion to effectively determine the sovereignty of the Chagos Archipelago for delimitation purposes, thereby impacting the United Kingdom (a non-party to the underlying sovereignty dispute) and potentially undermining its sovereign claims without direct consent to such an adjudication, raises profound concerns. This implicates the **Monetary Gold principle** and the principle of *res inter alios acta*, which protect third-party interests in international adjudication.

When judicial processes appear to implicitly determine sovereignty or impinge on self-determination without the explicit consent of the affected state or a clear binding legal basis, it poses a direct challenge to these fundamental UN Charter principles. The UN has a responsibility to ensure that its judicial mechanisms do not inadvertently undermine these core tenets through their interpretative practices. This could involve, for instance, a call for a review of the application of advisory opinions in contentious settings or a reaffirmation of the strict non-binding nature of such opinions regarding third-party sovereign rights.

Violation of natural justice principles

The point raised here regarding the violation of natural justice principles, particularly that "absence of a law is not an excuse to bypass natural justice," resonates with the core arguments previously discussed concerning the ITLOS Special Chamber's judgment on the Mauritius/Maldives maritime delimitation.

As established through the analysis of the various documents:

1. **Non-Binding Nature of Advisory Opinions:** The International Court of Justice (ICJ) itself states that its advisory opinions are not binding. The ITLOS Special Chamber's decision to treat the ICJ Advisory Opinion as "dispositive of the question of sovereignty over the Chagos Archipelago" for a binding delimitation is a central point of concern. This approach has been argued to stretch the legal effect of an advisory opinion beyond its intended scope.
2. **Consent and Jurisdiction:** International courts, including ITLOS, operate on the principle of consent. The Special Agreement between Mauritius and Maldives did not explicitly grant the Tribunal the mandate to make a binding determination on the sovereignty of the Chagos Archipelago. The judgment, by effectively doing so, has been critiqued for potentially overstepping the agreed-upon jurisdictional boundaries.
3. **Third-Party Rights (Monetary Gold Principle):** A fundamental principle of natural justice in international adjudication is that a court should not rule on the rights and obligations of a third State not a party to the proceedings (the *Monetary Gold* principle). The judgment, by determining the status of Chagos for delimitation purposes, implicitly affects the rights of the United Kingdom, which maintains its claim to the territory and was not a party to the delimitation case.
4. **Unsettled Sovereignty:** The issue of sovereignty over the Chagos Archipelago remains a contentious bilateral dispute between Mauritius and the United Kingdom. The Tribunal's judgment has been seen as prematurely and definitively resolving this unsettled matter in a forum not specifically mandated for that purpose by all relevant parties.

Therefore, the arguments developed in the analysis indeed highlight a systemic concern where established legal principles, which can be seen as foundational to

natural justice, were arguably bypassed or interpreted in a manner that has raised significant questions about the judgment's robustness in this particular aspect.

The Problematic Approach of the ITLOS Special Chamber

The core of the problematic approach, as highlighted by this research, is the ITLOS Special Chamber's decision to treat the **ICJ Advisory Opinion on the Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965** as "dispositive of the question of sovereignty over the Chagos Archipelago for the purposes of the present delimitation." This approach is deemed problematic for several reasons:

1. **Elevating a Non-Binding Instrument:** Advisory opinions, by their very nature as confirmed by the ICJ itself, are non-binding. The Tribunal's decision effectively elevated the legal force of an advisory opinion to that of a binding judgment concerning territorial sovereignty.
2. **Overstepping Jurisdictional Mandate:** The Special Agreement between Mauritius and Maldives conferred jurisdiction on ITLOS for maritime delimitation, not for a binding determination of sovereignty over Chagos. The Tribunal's action is seen as exceeding this specific consent-based mandate.
3. **Disregarding Third-Party Rights:** By implicitly adjudicating sovereignty over Chagos, the Tribunal's judgment impacts the sovereign rights of the United Kingdom, a State not party to the delimitation proceedings, thereby potentially violating the **Monetary Gold Principle**.
4. **Prejudging an Unsettled Dispute:** The sovereignty of the Chagos Archipelago remains a bilateral dispute between Mauritius and the United Kingdom. The Tribunal's approach is criticized for pre-judging and effectively settling this unresolved territorial issue in a forum not designed for such a contentious resolution involving all affected parties.

Presenting Rebuttals to this Approach

The research systematically presents rebuttals by analyzing various legal documents and highlighting discrepancies between the court's approach and established principles of international law:

1. **Analysis of the ICJ Advisory Opinion:** The research directly leverages the ICJ's own text to show that advisory opinions are explicitly non-binding. This serves as a direct rebuttal to ITLOS's characterization of the opinion as "dispositive."
2. **Examination of ITLOS Rules and Practice:** By referring to ITLOS's own rules and internal practices, the research demonstrates the clear distinction between contentious proceedings (leading to binding judgments) and advisory proceedings (leading to non-binding opinions). This provides an internal critique of the Tribunal's inconsistent application of its own framework.
3. **Interpretation of the Special Agreement:** The research scrutinizes the Special Agreement, emphasizing that it did not explicitly grant ITLOS the authority to make a binding determination on Chagos sovereignty. This forms a rebuttal based on the principle of consent-based jurisdiction, arguing that the Tribunal acted *ultra vires* in this specific aspect.
4. **Critique of Judicial Declarations:**
 - a) **President Paik and Judge Heidar's declarations** are analyzed to show that while they concurred with the judgment, their specific comments focused on other aspects (e.g., continental shelf beyond 200 nm), implicitly confirming the Tribunal's problematic stance on Chagos sovereignty. The absence of explicit justification for the sovereignty determination in their declarations, despite their overall agreement, highlights a lacuna in the court's reasoning.
 - b) **Judge *ad hoc* Schrijver's declaration** is particularly crucial. His explicit statement that Mauritius "has only recently been able to recover its territorial sovereignty" over Chagos, citing the ICJ Advisory Opinion, directly exemplifies the problematic elevation of the non-binding opinion that the research critiques. This serves as direct evidence of the very argument being rebutted.

5. **Review of Mauritius's Final Submissions:** The research points out that Mauritius's formal submissions did not explicitly request ITLOS to make a binding declaration of sovereignty over Chagos. This omission is used as a rebuttal to argue that the Tribunal's decision was a *proprio motu* overreach, going beyond the explicit requests of the parties involved in the delimitation.

In summary, the research effectively deconstructs the ITLOS Special Chamber's approach to Chagos sovereignty by systematically presenting evidence from the relevant legal instruments and judicial pronouncements. It directly challenges the Tribunal's reasoning based on fundamental principles of international law, thereby offering comprehensive rebuttals to the problematic aspects of the judgment.

The essence of the critiques and rebuttals

The essence of the critiques and rebuttals developed through the analysis of the ITLOS Mauritius/Maldives case, particularly concerning the treatment of the Chagos Archipelago.

The research has highlighted instances where the Special Chamber's approach could be interpreted as:

1. **Disregarding what was explicitly submitted:** The analysis of Mauritius's Final Submissions confirmed that an explicit request for a binding declaration on Chagos sovereignty was absent. This strengthens the argument that the Tribunal's decision to treat the ICJ Advisory Opinion as "dispositive" for sovereignty went beyond the specific mandate provided by the parties through the Special Agreement and their submissions.
2. **Reliance on a flexible interpretation of procedures over strict adherence to pre-written rules:** While courts have inherent powers of interpretation, the core argument is that the Tribunal's treatment of a non-binding advisory opinion as a binding basis for a sovereignty determination, especially affecting a non-consenting third party, stretched the established legal framework for advisory opinions and contentious jurisdiction. This suggests a prioritization of an outcome-oriented interpretation over a strict adherence to the defined legal effects of different types of international judicial pronouncements and the principle of consent.

Therefore, your statement effectively synthesizes the problematic aspects identified in the Tribunal's approach, where its judgment, in this particular regard, appears to

deviate from what was formally submitted and from established principles governing the nature and effect of international judicial instruments.

Impact of Arguments if submitted

If the Maldives Government had explicitly submitted the arguments critiquing the ITLOS Special Chamber's approach to Chagos Archipelago sovereignty—specifically, arguments regarding the non-binding nature of the ICJ Advisory Opinion, the violation of third-party rights, the unsettled sovereignty, and the Tribunal's potential overreach of its consent-based jurisdiction—the impact on the ITLOS case could have been significant in several ways:

1. **Forced Direct Engagement on Sovereignty:**

- **What happened:** The Tribunal largely treated the ICJ Advisory Opinion as dispositive for Chagos sovereignty without extensive direct challenge from Maldives on this specific legal point within the context of contentious delimitation. Maldives' actual final submissions focused on challenging Mauritius's continental shelf claim beyond 200 nm on jurisdictional and admissibility grounds, and proposing its own maritime boundary.
- **Potential Impact:** Had Maldives explicitly challenged the legal basis for incorporating Chagos into Mauritius's baselines, it would have compelled the Special Chamber to directly and robustly address the legal status of the ICJ Advisory Opinion in a contentious, binding delimitation case. This would have required a more explicit and detailed legal justification (or rejection) of how a non-binding opinion could definitively establish sovereignty for baseline purposes.

2. **Strengthening of Maldives' Legal Position and Baselines:**

- **What happened:** The judgment effectively recognized Mauritius's sovereignty over Chagos, influencing the baselines from which the maritime boundary was drawn and ultimately impacting the delimitation line.

- **Potential Impact:** If Maldives had successfully argued that the ICJ Advisory Opinion was non-binding and therefore insufficient to definitively establish Mauritian sovereignty over Chagos for delimitation, it could have altered the determination of relevant baselines. The Tribunal might have been forced to disregard or give less effect to features within the Chagos Archipelago as Mauritian territory, potentially shifting the provisional equidistance line in Maldives' favor or requiring a different approach to equitable delimitation.

3. Heightened Scrutiny on ITLOS's Jurisprudence:

- **What happened:** While the judgment has been criticized by scholars, a direct challenge from a party to the case would have brought the issues of consent, third-party rights (Monetary Gold Principle), and the distinction between advisory and contentious proceedings into sharper focus during the legal proceedings themselves.
- **Potential Impact:** This explicit challenge would have elevated the discussion on these fundamental principles of international law, potentially leading to a more cautious or nuanced approach from the Tribunal. It might have also led to more detailed separate or dissenting opinions from judges who already had reservations about the court's reasoning on other aspects (like President Paik or Judge Heidar), or a stronger articulation of the dissenting view from Judge *ad hoc* Schrijver, if he had disagreed.

4. Influence on Future Cases:

- **What happened:** The judgment, by relying on the ICJ Advisory Opinion, sets a precedent for how non-binding advisory opinions might be treated in other contentious cases involving territorial disputes.
- **Potential Impact:** If Maldives had forcefully presented these arguments, and the Tribunal had been persuaded, it could have set a different precedent, reinforcing the strict distinction between advisory and contentious proceedings and emphasizing the enduring importance of consent and third-party rights in territorial matters.

In essence, an explicit submission of these "problematic approach" arguments by Maldives would have transformed the legal discourse within the ITLOS case, potentially

leading to a different outcome or at least a more direct and legally robust engagement with the contentious issue of Chagos sovereignty as it pertained to maritime delimitation.

A flaw or omission in a state's submissions

A flaw or omission in a state's submissions in a specific maritime delimitation case would generally **not** be considered a reason to undermine its fundamental right to self-determination or the inherent sovereignty of the state itself.

Here's why:

1. Nature of Self-Determination and Sovereignty:

- a) The right to **self-determination** is a fundamental principle of international law, often associated with the decolonization process and the right of peoples to freely determine their political status and pursue their economic, social, and cultural development. The Maldives is an independent and sovereign state, having exercised its right to self-determination.
- b) **Sovereignty** refers to the supreme authority of a state over its territory and internal affairs, independent of external control. The Maldives' sovereignty over its land territory and existing maritime zones is recognized.

2. Scope of a Delimitation Case:

- a) A maritime delimitation case, such as the one between Mauritius and Maldives before ITLOS, is concerned with defining the precise boundaries of **maritime zones** (like the exclusive economic zone and continental shelf) between two states.
- b) While the outcome of such a case directly impacts the **extent** of a state's maritime entitlements and the exercise of its sovereign rights and jurisdiction *within those maritime zones*, it does not typically determine or undermine the fundamental existence, self-determination, or territorial sovereignty of the independent states involved.

3. **Impact of Maldives' Submissions:**

- a) As previously discussed, Maldives' submissions primarily focused on challenging the jurisdiction and admissibility of Mauritius's continental shelf claim beyond 200 nautical miles, and proposing its own specific maritime boundary.
- b) The "flaw" or omission from the perspective of this research's critique was Maldives' decision not to explicitly and robustly challenge the legal premise of Mauritius's sovereignty over the Chagos Archipelago (derived from the non-binding ICJ Advisory Opinion) as a foundational issue for delimitation baselines.
- c) The **impact** of this omission was primarily on the delimitation line itself, as the Tribunal proceeded to consider Chagos as Mauritian territory for baseline purposes. This affected the spatial extent of the maritime boundary, not the fundamental sovereignty or right to self-determination of the Maldives as a nation.

In conclusion, while the specific arguments presented (or not presented) in a complex international legal case can significantly influence the outcome regarding maritime boundaries and rights, these procedural or strategic choices in a delimitation dispute are distinct from and do not undermine the fundamental, inherent right to self-determination or the established sovereignty of an independent state like the Maldives.

Conclusion

This paper has meticulously demonstrated the profound legal challenges inherent in the International Tribunal for the Law of the Sea's (ITLOS) judgment in the **Mauritius/Maldives maritime delimitation case (Case No. 28)**, particularly stemming from its unprecedented reliance on a non-binding advisory opinion of the International Court of Justice (ICJ) for a binding sovereignty determination. Our analysis has established several critical findings, highlighting a problematic approach that undermines fundamental principles of international adjudication.

Summary of Key Findings

1. **The Non-Binding Nature of ICJ Advisory Opinions was Disregarded:** We have consistently highlighted that ICJ advisory opinions, including the one on the Chagos Archipelago, are inherently non-binding. This fundamental legal distinction is unequivocally confirmed by the **ICJ Statute (Articles 59, 65, 68)**, the ICJ's own pronouncements within the **Chagos Advisory Opinion** itself, and its internal procedural rules like **Practice Direction XII**. These instruments unequivocally underscore that advisory opinions do not create *res judicata* or binding legal obligations for states in the same manner as contentious judgments, making ITLOS's treatment of the Chagos opinion as "dispositive" a significant deviation.
2. **Violation of Third-Party Principles and Undermining Judicial Integrity:** The ITLOS Special Chamber's use of a non-binding ICJ opinion as a foundational premise for a binding determination of sovereignty (for baseline purposes) directly contravenes established principles of international adjudication. This approach violates the **Monetary Gold principle**, by effectively adjudicating upon the vital interests of the United Kingdom—a non-party to the underlying sovereignty dispute—without its consent. Furthermore, it runs contrary to the principle of *res inter alios acta*, reinforced by **UNCLOS Article 296**, which limits the binding effect of judgments to the direct parties, thereby ensuring that decisions do not create obligations for, or prejudice the rights of, third parties.
3. **Ambiguity and Instability from Unsettled Sovereignty:** The ITLOS delimitation was concluded at a time when the *de jure* transfer of sovereignty over the Chagos Archipelago remained internationally unsettled and ambiguous. Crucially, the United Kingdom had explicitly not accepted the ICJ's advisory opinion as binding. Basing a definitive, binding judicial decision on such an internationally contested and non-consented premise introduces profound legal ambiguity, undermines the very predictability and certainty that international law aims to provide, and risks creating rather than resolving disputes.
4. **Inconsistency with ITLOS's Own Distinctions:** Even ITLOS's internal documents and rules—such as its **Guidelines (ITLOS/9, Para. 19)**, the **Resolution on Internal Judicial Practice (ITLOS/10, Article 12)**, and its various **Rules amendments** (e.g., 25 September 2020)—consistently maintain clear procedural and terminological distinctions between advisory opinions and

contentious judgments. This internal consistency implicitly reinforces the argument that procedural commonalities do not equate to differences in legal effect. By blurring this distinction in its judgment, ITLOS demonstrated an inconsistency with its own established understanding of international judicial processes.

Recommendations / Call to Action

Based on the identified systemic flaws in international judicial practice, particularly concerning the ITLOS judgment and the interpretation of non-binding advisory opinions, the following concrete recommendations and calls to action are crucial for safeguarding the integrity of international law and protecting state sovereignty:

1. Call for Review or Clarification of the Legal Effect of Advisory Opinions

- **Action:** Relevant international bodies, particularly the **International Court of Justice (ICJ)** itself, the **International Law Commission (ILC)**, or an ad hoc expert group under the auspices of the United Nations, should be urged to undertake a comprehensive review or issue a formal clarification regarding the precise legal effect of advisory opinions in subsequent contentious proceedings.
- **Justification:** This review should explicitly reconfirm that while advisory opinions are authoritative statements of law, they do not possess the binding force of contentious judgments (**ICJ Statute, Article 59**) and cannot be unilaterally transformed into *res judicata* to determine territorial sovereignty or any other matter of vital interest in a manner binding on third parties not consenting to that specific adjudication.

2. Reaffirmation of Non-Binding Nature by UN Principal Organs

- **Action:** The **United Nations General Assembly (UNGA)**, as the body that frequently requests ICJ advisory opinions, and potentially the **UN Security Council (UNSC)**, should be called upon to issue a resolution or declaration.

- **Justification:** This resolution should unequivocally reaffirm the non-binding nature of ICJ advisory opinions, particularly emphasizing that such opinions cannot serve as the sole or primary basis for a binding determination of territorial sovereignty by other international tribunals in a manner that binds or infringes upon the rights of third parties who have not consented to that specific dispute's resolution. This would ensure consistency in the interpretation of the **UN Charter (Chapter XIV)** and the **ICJ Statute**.

3. Diplomatic Avenues for Addressing Implications for Affected States

- **Action:** Affected states, such as the Maldives and the United Kingdom, should be encouraged to pursue diplomatic avenues, including bilateral negotiations or multilateral discussions within relevant fora (e.g., the Commonwealth, the UN), to address the profound implications of the ITLOS decision's reliance on the non-binding advisory opinion for territorial sovereignty.
- **Justification:** This approach acknowledges that while legal arguments are paramount, diplomatic solutions can mitigate the practical consequences of judicially created ambiguities and uphold the principles of peaceful dispute resolution and mutual respect for sovereignty.

4. Emphasizing Strict Adherence to Consent-Based Jurisdiction and Third-Party Protection

- **Action:** International tribunals, including ITLOS and future arbitral tribunals, must be strongly urged to strictly adhere to the fundamental principles of **consent-based jurisdiction** and **third-party protection** (e.g., the **Monetary Gold principle** and *res inter alios acta*, as reflected in **UNCLOS, Article 296**).
- **Justification:** This re-emphasis is critical to prevent future judicial overreach where a tribunal might implicitly adjudicate upon the rights of non-consenting states or rely on non-binding instruments to create binding obligations related to sovereignty. Upholding these principles is essential for maintaining the legitimacy, fairness, and universal acceptance of international judicial decisions.

By implementing these recommendations, the international community can work towards strengthening the rule of law, clarifying jurisdictional boundaries, and ensuring that international judicial practice operates with the highest degree of integrity and respect for the sovereign equality of all states.

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