

## Questions for Clarifications Telders Case 2020

1. Do any of the parties to the dispute claim a contiguous zone in relation to the Fragrant Archipelago?

**No, neither party claims a contiguous zone in relation to the Fragrant Archipelago.**

2. In relation to the emergence of Chau as per paragraph 12 of the problem - have there been other recent instances of islands or rocks emerging as a result of volcanic activity and, if so, approximately how frequently?

**In the area in question, there has not been any other recent instance of maritime features emerging as a result of volcanic activity, at least not since the separation of Discovia and Quntong in 1931.**

3. Did there occur any volcanic activity in the geological area encompassing the two States (Quntong and Discovia) and the Lamma Sea after the Pleistocene until the appearance of Chau?

**Yes. There is evidence of volcanic activity, but, according to geologists and geographers, that activity last took place centuries ago.**

4. Has the typhoon, which destroyed the fishing village on Chau as per paragraph 16 of the Compromis, created any specific obstacles to the resettling of that fishing village?

**No.**

5. We seek clarification with respect to paragraph 23 of the Compromis, which provides the following:

“...and (iii) as the 1986 Exchange of Notes was terminated by the appearance of the island of Chau in 1991, the EEZ boundary between the Parties remains currently undelimited. According to Discovia, it follows that vessels flying its flag have been fishing lawfully in waters which fall under Discovia’s jurisdiction.”

Do agents for the respondent have to include this line of reasoning in their argumentation? We ask this, since it would seem that there is a contradiction in terms – if the EEZ boundary between the Parties became undelimited after the appearance of Chau in 1991, then it appears impossible also to claim that the fishing took place within Discovia’s jurisdiction.

**Agents for the Respondent are instructed to plead as set out in paragraph 23 of the problem. There is no contradiction in paragraph 23: the statement that Discovian vessels have been fishing lawfully in waters falling under Discovia’s jurisdiction results from Discovia’s claimed sovereignty over Chau, in support of which Agents for the Respondent are required to plead; the statement that the 1986 Exchange of**

**Notes was terminated is the legal basis for Discovia's claim relating to lawful fishing, on which Agents for the Respondent are required to elaborate.**

6. Did the private vessels possess a valid Discovian fishing licence, which indicated the exact territory of fishing on Quntong's side?

**Private fishing vessels captured as stated in paragraph 19 of the problem all possessed a valid Discovian fishing licence. The licence allowed these vessels to fish in Discovia's EEZ, without any further restriction.**

7. After the establishment of the village, were the vessels' master and crew residents of Chau?

**The masters and crews of certain vessels involved in fishing around Chau might have resided on Chau from time to time.**

8. Does 1986 Exchange of Notes represent the amendment to 1935 Treaty or is it a separate international treaty?

**The 1986 Exchange of Notes is an international agreement separate from the 1935 Treaty.**

9. Was 1986 Exchange of Notes ratified by the parties?

**The Note dated 15 January 1986, sent by Discovia, proposed that the rights and obligations set out therein would become binding on both States upon being accepted by Quntong, as communicated by the latter's note of 17 January 1986. Therefore, no need to ratify the 1986 Exchange of Notes has ever arisen, and the 1986 Exchange of Notes became fully binding on 17 January 1986.**

10. Apart from fishing, what were the other economic activities the small fishing village on Chau was involved in?

**Given the small size of the village, fishing was the main economic activity. However, as state in paragraph 16 of the problem, the village's activity included the "shipment of small daily fish cargoes to Discovia's mainland to be traded at the fish market of Victoria, Discovia's capital city on the Lamma Sea". Therefore, the village was involved in a measure of trade with the Discovian mainland.**

11. Did Quntong continue to issue official government maps showing that Chau is part of the Fragrant Archipelago until the time when Quntong initiated the proceedings against Discovia before the ICJ? (Cf. Case, para. 13)

**Yes.**

12. Is the regular position of the fish stocks that nourished the village of Chau in spring and summer inside a 12 nautical miles radius around Chau as the centre point?

**No. Fish stocks of the kind described in the question were present both within and outside the 12-nm territorial sea around Chau.**

13. Is the regular position of the fish stocks that nourished the village of Chau in spring and summer inside a 200 nautical miles radius around Chau as the centre point?

**As far as the authorities of Discovia and Quntong are aware, yes.**

14. Was the method of archipelagic baselines used for the delimitation of the Fragrant Archipelago under the Territorial Sea Boundary Treaty ("1935 Treaty")?

**No.**

15. When did Quntong commence to issue a number of press releases calling for the immediate cessation of fishing activities of Discovia-flagged private fishing vessels in the area around Chau on Quntong's side of the EEZ boundary agreed between the Parties?

**In the late 1990s, as states in paragraph 17 of the problem.**

16. What is the land area and population of Discovia?

**Discovia has a land area of 76,439 km<sup>2</sup>, and a population of 15 million.**

17. Although the Case states that the military personnel and meteorologists rely on food and water shipped from Discovia, what is the extent of their dependency on these supplies or are there food and water sources present on the island that could sustain them and would have sustained the villagers (apart from the fish they caught) before the village was destroyed?

**Chau did not have any independent freshwater source, apart from the water shipped from the Discovian mainland. However, the villagers endeavoured to purify saltwater from the Lamma Sea in order to make it drinkable. Food was either shipped from the mainland, or came from fishing.**

18. Regarding the Exchange of Notes dated the 15<sup>th</sup> and 17<sup>th</sup> of January 986, did both notes contain identical wording to each other, and who were the signatories for the Parties?

**The Notes were identical in wording. The Discovian Note was signed by the Discovian Minister for Foreign Affairs, and addressed to Quntong's Ambassador to Discovia; Quntong's Note was signed by Quntong's Ambassador and**

**Plenipotentiary to Discovia, and addressed to Discovia's Minister for Foreign Affairs.**

19. What features of Chau's flora and fauna did the villagers rely on for construction of houses?

**The villagers mainly relied on materials sourced from the mainland. However, the little wood available on Chau was also used for construction.**

20. Are Discovian-flagged vessels owned by Discovian nationals; if not, should Discovia be considered as a "flag of convenience" state?

**Discovian-flagged vessels were all owned by Discovian nationals.**

21. Have the 1935 Treaty and the 1986 Exchange of Notes been registered with the League of Nations (according to Art. 18 of the Covenant of the League of Nations) and/or Secretariat of the United Nations Organization (according to Art. 102 of the Charter of the United Nations) respectively?

**Both agreement have been duly registered in accordance with the relevant legal provisions.**

22. What is the content of the termination clause in the 1986 Exchange of Notes?

**The 1986 Exchange of Notes contained no express termination clause.**

23. Who decided to call Chau "Chau"?

**"Chau" was the name given to the maritime feature by the local inhabitants of the Fragrant Archipelago, and subsequently adopted by the authorities of both Discovia and Quntong.**

24. In paragraph 13 of the problem, it is mentioned that "Quntong never attempted to land on Chau, preferring instead to avoid direct confrontation with Discovia". Was this preference ever communicated to the authorities of Discovia?

**No. However, it emerged from Chau's practical approach.**

25. What is the process for obtaining a valid fishing license (paragraph 19 of the facts of the Case) under the domestic Quntongian legislation, and is this process open to Discovian-flagged vessels?

**Yes to both questions.**

26. Were there any locally-obtained goods other than fish traded in Chau's village market (paragraph 16 of the problem), and were the personnel of the meteorological station and the barracks interacting with the said market (paragraphs 13–16 of the problem)?

**See answers to questions 11 and 20. The personnel of the meteorological station and the barracks from time to time interacted with the villagers, including in their village market.**

27. Was the official map distributed and published in Quntong or, alternatively, was it made available to the UN as required by Article 16 UNCLOS?

**The official map was part of the official publications of the Government of Quntong, and was made available pursuant to Article 16 of UNCLOS.**

28. Were the fish cargoes allegedly caught in Quntong's EEZ only expelled and confiscated or did Quntong take further measures, namely initiated a judicial process against those cargoes?

**No judicial measures were taken against the cargoes.**

29. Were the fishers on "Chau" able to purchase the missing necessities in autumn and winter with the revenues from spring and summer?

**Yes. However, in autumn and winter inhabitants of Chau relied on shipments from the Discovian mainland more heavily than during the spring and summer.**

30. Concerning the fourth issue: is the term "attributable" to be understood in a narrow sense as enshrined in the Articles on State Responsibility or is it meant to encompass a broader meaning in the sense of a state's liability?

**"Attributable" is to be understood as used in the Draft Articles on Responsibility of States for Internationally Wrongful Acts of the International Law Commission adopted in 2001.**

31. Which other ways to maintain its position as a lawful sovereign over Chau has Quntong expressed apart from issuing official government maps as mentioned in paragraph 13 of the problem?

**Official speeches, press releases and governmental documents known to the public.**

32. Are both parties in possession of one Note each?

**Yes. Both States are in possession of identical copies of the original Notes.**

33. Is Chau considered to be a far-away island?

**It is for the Agents of the parties to argue whether Chau is an island, and which other status it may have as such.**

34. Was Chau already existent underwater when the 1935 Treaty was concluded and it came about above sea water in 1991, if not, what are Chau's geological features that are different from the Fragrant Archipelago?

**There was no notion of Chau's existence since 1991. Chau is geologically comparable to other features of the Fragrant Archipelago.**

35. Is Discovia suffering from fishing/food shortages since 1991?

**No.**

36. How did Discovia initiate the establishing of the small fishing village on Chau?

**Discovian authorities only tacitly consented to the establishment of the village.**

37. Why did it almost take a week for Quntong (after the discovery of Chau) to issue a press release proclaiming its sovereignty?

**Quntong's authorities issued a press release after having studied the implications and the legal basis for its claim to sovereignty.**

38. Are there any "other maritime features" mentioned in the 1935 Treaty between East Isle and Chau?

**Not expressly.**

39. Has Discovia recognized the sovereignty of Quntong over all maritime features that have been part of the Fragrant Archipelago before the Territorial Sea Boundary Treaty entered into force, or over future maritime features of the Fragrant Archipelago as well?

**This is a matter for the Agents of the parties to plead.**

40. Given the maritime delimitations detailed in the written document and displayed in the map, as well as the provisions included in the UNCLOS regarding specific characteristics

that have to be met by a maritime feature in order to be part of an archipelago, is Chau located east of the 21st meridian and west of the 19th meridian? Consequently, due to its size, is therefore Chau part of the Fragrant Archipelago?

**See the map in relation to the first question. The second question is one on which the Agents of the parties may wish to make oral arguments.**

41. Since the ratification of the 1935 Treaty and until the intervention in the late 1990s of the Discovia-flagged private fishing vessels on Quntong's side of the EEZ boundary, have any political, economic or social changes occurred within the state of Discovia so that a sudden necessity to exploit fishing resources in the area could justify its illicit action?

**No.**

42. What is the distance, in nautical miles, from Chau to the EEZ Boundary?

**The shortest distance from Chau to the EEZ boundary is approximately 26 nm.**

43. What is the distance, in nautical miles, from the EEZ Boundary to the furthest location where Discovian vessels were found in Quntong's EEZ?

**Approximately 90 nm.**

44. Were the barracks and meteorological station also destroyed when the Typhoon hit Chau and if they were not, are they still in use?

**They were not destroyed and are still in use.**

45. Did the 1986 Exchange of Notes specify anything about the creation of new islands within the Fragrant Archipelago?

**No.**

46. Is there human habitation existing on features of Fragrant Archipelago?

**Yes, they have all been settled and are currently inhabited.**

47. Was Quntong informed of the activities developed by Discovia's authorities on Chau?

**Yes, whether directly or indirectly.**