INTERNATIONAL COURT OF JUSTICE

LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS ARCHIPELAGO FROM MAURITIUS IN 1965

(REQUEST FOR ADVISORY OPINION)

Written Statement of the Republic of Mauritius

VOLUME V

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1 March 2018

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The Creation of States in International Law

SECOND EDITION

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UNIVERSITY PRESS
Great Clarendon Street, Oxford OX2 6DP
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With offices in
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Guatemala Hungary Italy Japan Poland Portugal Singapore
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Published in the United States
by Oxford University Press Inc., New York

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First published 2006

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British Library Cataloguing in Publication Data
Data available
Library of Congress Cataloging in Publication Data
Data available
Typeset by Newgen Imaging Systems (P) Ltd., Chennai, India
Printed in Great Britain
on acid-free paper by
Antony Rowe Ltd., Chippenham, Wiltshire
ISBN 0–19–826002–4 978–0–19–826002–8
1 3 5 7 9 10 8 6 4 2

0219598

plebiscites and the Mandate system, demonstrate the political force of the principle of self-determination in the inter-war period.[49] Nonetheless there was little *general* development of the principle before 1945.[50]

(ii) Self-determination under the United Nations Charter

The Charter uses the term self-determination twice: in Article 1(2) (Purposes and Principles) where one of the purposes of the United Nations is stated to be the development of 'friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples', and in Article 55 where the same formula is used to express the general aims of the United Nations in the fields of social and economic development and respect for human rights.[51] By elaborating upon these rather cryptic references, the General Assembly has sought in a vast number of resolutions to define more precisely the content of the principle.

For example, resolution 545(VI)[52] decided that an article providing that 'All peoples shall have the right of self-determination' would be included in the International Covenants on Human Rights, which were finally adopted in 1966. Common Article 1 of the two Covenants provides as follows:

1. All peoples have the right of self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Convention, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations.[53]

[49] Calogeropoulos-Stratis, *Le Droit des peuples à disposer d'eux-mêmes*, 62–86; Hillgruber, *Aufnahme neuer Staaten*, 173–8 (minority rights guarantees in Poland after 1918).

[50] See the quite favourable discussion, *de lege ferenda*, by Bisschop (1921–2) 2 *BY* 122, 129–30, and the important early study of Redslob, *Le Principe des nationalités*, discussed by Berman (1992–3) 106 *HLR* 1792, 1808–21.

[51] See also the Atlantic Charter of 14 August 1941, 204 LNTS 384, which referred to 'the right of all peoples to choose the form of government under which they will live.' A proposal by China in 1945 to expand the scope of self-determination was rejected at San Francisco: Bedjaoui in Cot & Pellet (eds), *La Charte des Nations Unies*, 1062–63.

[52] 5 February 1952 (42–7:5).

[53] International Covenant on Economic, Social and Cultural Rights, 16 December 1966 (entered into force 3 January 1976), 993 UNTS 3, Art 1; International Covenant on Civil and Political Rights, 16 December 1966 (entered into force 23 March 1976), 999 UNTS 171, Art 1; adopted by GA res

The Colonial Declaration, clause 2, stated that: 'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'[54] The principle has also been affirmed by the Security Council.[55]

In the Friendly Relations Declaration annexed to resolution 2625 (XXV), the Assembly dealt in the following terms with 'The principle of equal rights and self-determination of peoples':

> By virtue of the principle of equal rights and self-determination of peoples enshrined in the Charter... all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter.
>
> The territory of a colony or other non-self-governing territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter... Every State shall refrain from any action aimed at the partial or total disruption of the national unity or territorial integrity of any other State or country.[56]

Of course, the General Assembly is not a legislature. Mostly its resolutions are only recommendations, and it has no capacity to impose new legal obligations on States.[57] No doubt the Assembly has a measure of discretion as to the way in which it interprets and applies the Charter on matters falling within the scope of its responsibilities, including Chapters XI and XII of the Charter. But

2200A, 16 December 1966 (104–0:0). Common Article 1 was referred to in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 Jul 2004, ICJ Rep 2004 p 136, 171–2 (para 88). See also Cassese, *Self-determination of peoples*, 47–62.

[54] GA res 1514 (XV), 14 December 1960 (89–0:9), Declaration on the Granting of Independence to Colonial Countries and Peoples. For the status of the Declaration see Asamoah, *The Legal Significance of the Declarations of the General Assembly*, 164–73; Alston (2004) 15 *EJIL* 457, 478. See also GA res 1541 (XV), 15 December 1960, which Keitner & Reisman describe as 'an authentic explanation of how to grant independence': (2003) 39 *Texas ILJ* 1, 5–6.

[55] E.g., SC resns 301, 20 October 1971 (Namibia); 377, 22 October 1975 (Western Sahara); 384, 22 December 1975 (Portuguese Timor); 1598, 28 April 2005 (Western Sahara). By contrast SC res 1483, 22 May 2003, on Iraq, refers to 'sovereignty and territorial integrity' without reference to 'self-determination'.

[56] 24 October 1970 (adopted without vote).

[57] See further Sloan (1948) 25 *BY* 1; Johnson (1955–6) 32 *BY* 97; Higgins, *Development*, 1–10; Asamoah, *The Legal Significance of the Declarations of the General Assembly*, 169–73; Falk (1966) 60 *AJ* 782; Castañeda, *The Legal Significance of Resolutions of United Nations Organs*, 120–1; Onuf (1970) 64 *AJ* 349. For a stricter view see Judge Fitzmaurice, diss, *Namibia Opinion*, ICJ Rep 1971 p 6, 280–1, and in *Institut de Droit International. Livre du Centenaire*, 268–71. Cf Judge Lauterpacht, sep op, *Voting Procedure Case*, ICJ Rep 1955 p 67, 116.

the resolutions cited are not merely interpretations of Charter texts. Both references to self-determination in the Charter seem to mean something rather different from the usual understanding of 'self-determination'. That term can refer to the sovereign equality of existing States, and in particular the right of the people of a State to choose its own form of government without external intervention. It can also mean the right of a specific territory (or more correctly its 'people') to choose their own form of government irrespective of the wishes of the rest of the State of which that territory is a part. Pre-1945 international law recognized the first but not the second of these, from which it is said that it did not recognize the right of self-determination.[58] The Charter, in referring to 'equal rights and self-determination' in Articles 1(2) and 55, seems to be referring to self-determination in this first and uncontroversial sense.[59] Self-determination in the second sense is not mentioned, though it is implicit in Articles 73(b) and 76(b). In proclaiming a general right of self-determination, and in particular of immediate self-determination, the resolutions cited go beyond the terms of the Charter.

But this does not foreclose the issue of general international law. State practice is just as much State practice when it occurs in the context of the General Assembly as in bilateral forms.[60] The practice of States in assenting to and acting upon law-declaring resolutions may be of probative importance, in particular where that practice achieves reasonable consistency over a period of time. In Judge Petrèn's words, where a resolution is passed by 'a large majority of States with the intention of creating a new binding rule of law'[61] and is acted upon as such by States generally, their action will have quasi-legislative effect. The problem is one of evidence and assessment. For present purposes such an assessment requires two distinct inquiries: whether there exists any criteria for the determination of territories to which a 'right of self-determination' is to be accorded; and whether in its application to those territories self-determination has been treated as peremptory.

[58] Parry, in Sørensen, *Manual*, 1, 19–20.

[59] At the San Francisco Conference, Committee II/4 had this to say on Art 1(2): '[T]he Committee understands that the principle of equal rights of peoples and that of self-determination are two complementary parts of one standard of conduct: that the respect of that principle is a basis for the development of friendly relations and is one of the measures to strengthen universal peace; that an essential element of the principle in question is a free and genuine expression of the will of the people, which avoids cases of the alleged expression of the popular will, such as those used for their own ends by Germany and Italy in later years.' 6 *UNCIO* 955. See also Kaur (1970) 10 *Indian JIL* 479.

[60] See Fitzmaurice in Institut de Droit International, *Livre du Centenaire 1873–1973*, 196, 271–5; Gupta (1986) 23 *Int Stud* 143; Schwebel in Bos and Siblesz (eds), *Essays in Honour of Willem Riphagen*, 203; Rosenne, 1 *Encyclopedia of Public International Law* (1992), 632.

[61] *Fisheries Jurisdiction Case (Second Phase)*, ICJ Rep 1974 p 3, 162 (Judge Petrèn).

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rights, is to be exercised by the people of the relevant unit without coercion and on a basis of equality.[113]

(5) Self-determination can result either in the independence of the self-determining unit as a separate State, or in its incorporation into or association with another State on a basis of political equality for the people of the unit.

(6) By definition, matters of self-determination are not within the domestic jurisdiction of the metropolitan State.

(7) Where a self-determination unit is a State, the principle of self-determination is represented by the rule against intervention in the internal affairs of that State, and in particular in the choice of the form of government of the State.

(2) Statehood and the operation of the principle of self-determination

The relation between the legal principle of self-determination and statehood must now be considered. It has been seen already, in situations such as that found in the Congo, that the principle of self-determination will operate to reinforce the effectiveness of territorial units created with the consent of the former sovereign. However, this only holds good where the new unit is itself created consistently with the principle of self-determination. Where, as with the Bantustans in South Africa a local entity is created in an effort to prevent the operation of the principle to the larger unit, different considerations apply. The same principle holds good in cases of secession. The secession of a self-determination unit, where self-determination is forcibly prevented by the metropolitan State, will be reinforced by the principle of self-determination, so that the degree of effectiveness required as a precondition to recognition may be substantially less than in the case of secession within a metropolitan unit. The contrast between the cases of Guinea-Bissau and Biafra is marked and can be explained along these lines. As a consequence, the rules relating to intervention in the two cases are, it seems, different. These problems will be elaborated further in Chapter 9.

These are, perhaps, ancillary or peripheral applications of the principle. The question remains whether the principle of self-determination is capable of preventing an effective territorial unit, the creation of which was a violation of self-determination, from becoming a State. Practice in this area is not well developed, but in one case, that of Southern Rhodesia, the problem was squarely raised.

[113] See Johnson, *Self-determination with the Community of Nations*, and the early classic studies by Wambaugh, *A Monograph on Plebiscites; Plebiscites since the World War*.

From its unilateral declaration of independence (UDI) on 11 November 1965 until the return of a British governor on 12 December 1979,[114] a minority government exercised effective control within the territory of Southern Rhodesia, and, for that period, it was the only government to do so, despite British claims under the Southern Rhodesia Act 1965 and generally. If the traditional tests for independence of a seceding colony were applied, Rhodesia would have been an independent State.[115] However, Southern Rhodesia was not recognized by any State as independent, nor was it regarded as a State by the United Nations or any other organization.[116] The UDI was immediately condemned by the General Assembly[117] and the Security Council, which decided 'to call upon all States not to recognize this illegal racist minority regime in Southern Rhodesia and to refrain from rendering any assistance to this illegal regime.'[118] A further Council resolution of 20 November 1965 stated that the declaration of independence had 'no legal validity' and referred to the Smith government as an 'illegal authority'.[119] Partly, at least, on this basis various types of sanction were authorized against Southern Rhodesia. Notwithstanding the effectiveness of the government in Southern Rhodesia, the United Kingdom was regarded as the administering authority of the territory which remained a non-self-governing territory under Chapter XI.

Against this background, three positions are possible: that Rhodesia was a State, and that action against it, so far as it was based on the contrary proposition, was unlawful; that recognition is constitutive, and in view of its non-recognition Rhodesia was not a State; or that the principle of self-determination in this situation prevented an otherwise effective entity from being regarded as a State. In view of the consistent practice referred to, the first position is unacceptable.[120] Moreover, the Southern Rhodesian government

[114] Slinn (1980) 6 *CLB* 1038, 1050.

[115] Fawcett (1971) 34 *MLR* 417; Coetzee, *The Sovereignty of Rhodesia and the Law of Nations.*

[116] In 1966 the minority government forwarded communications to the Secretary-General and affirmed a right, as a 'state which is not a Member of the United Nations' to participate in proceedings under Article 32 of the Charter. The Secretary-General stated that 'the legal status of Southern Rhodesia is that of a Non-Self-Governing Territory under resolution 1747 . . . and Article 32 of the Charter does not apply . . .' There was no dissent from this view, and the minority government was not invited to participate under Art 32 or otherwise: *SCOR* 1280th mtg, 18 May 1966, 23. For criticism see Stephen (1973) 67 *AJ* 479. On the diplomatic isolation of Southern Rhodesia, see Ford, *Ian Smith's Rhodesia* (dissertation, Harvard, 1989).

[117] GA res 2024 (XX), 11 November 1965 (107–2:1 (Fr)). Two States did not participate.

[118] SC res 216 (1965), 12 November 1965 (10–0:1 (Fr)), para 2.

[119] SC res 217 (1965), 20 November 1965 (10–0:1), para 3.

[120] To the same effect Higgins (1967) 23 *The World Today* 94, 98; it was also the view of Harold Wilson, *The Labour Government 1964–1970*, 966. Contrast Marston (1969) 18 *ICLQ* 1, 33; Verhoeven, *Reconnaissance*, 548.

did not itself dissent from the view that the United Kingdom retained authority with respect to its affairs, since it apparently accepted that any settlement of the situation had to be approved and implemented by the United Kingdom (as indeed happened).[121] The question of recognition has been discussed already, and the conclusion reached that recognition is in principle declaratory. It must be concluded that Southern Rhodesia was not a State because the minority government's declaration of independence was and remained internationally a nullity, as a violation of the principle of self-determination.[122] In Fawcett's words:

> . . . to the traditional criteria for the recognition of a régime as a new State must now be added the requirement that it shall not be based upon a systematic denial in its territory of certain civil and political rights, including in particular the right of every citizen to participate in the government of his country, directly or through representatives elected by regular, equal and secret suffrage. This principle was affirmed in the case of Rhodesia by the virtually unanimous condemnation of the unilateral declaration of independence by the world community, and by the universal withholding of recognition of the new régime which was a consequence. It would follow then that the illegality of the rebellion was not an obstacle to the establishment of Rhodesia as an independent State, but that the political basis and objectives of the régime were, and that the declaration of independence was without international effect.[123]

In Hillgruber's terms, Rhodesia's claim to statehood was defeated by an 'error at birth'.[124]

[121] For the Pearce Commission Report, see *Cmnd* 4904 (1972). The Smith Government consented to the Pearce Commission enquiring as to the acceptability of certain proposals as a basis for a settlement; and subsequently accepted a settlement as structured under United Kingdom guidance and involving an explicit acknowledgment that Southern Rhodesia was part of the British constitutional framework. See further Chapter 14.

[122] The Privy Council in *Madzimabamuto v Lardner-Burke* [1968] 3 WLR 1229, 1250 did not consider this position, arguing instead that Southern Rhodesia was not a State because the legitimate government was still trying to reassert itself. Cf *In re James* [1977] 2 WLR 1 (CA); (1977) 81 *RGDIP* 1189; SC res 423, 14 March 1978.

[123] (1965–6) 41 *BY* 103, 112–13, citing the Universal Declaration, the Colonial Declaration and GA res 648 (VII), 10 December 1952. Brownlie regarded the status of Rhodesia as flowing from 'particular matters of fact and law' without further elaboration: *Principles* (4th edn), 98; cf his later formulation (6th edn), 95. Marshall (1968) 17 *ICLQ* 1022, 1033 argued that, because Rhodesia remained a monarchy but the Queen refused to act, there was 'no legal entity which can be recognized'. But this is an inadequate explanation: the proclamation of a Republic in 1970 did not alter Rhodesia's international status. Okeke, *Controversial Subjects of Contemporary International Law*, 88 referred to Fawcett's position with apparent approval but paradoxically concluded that 'Rhodesia ranks among the entities which are endowed with statehood under international law' (ibid, 104–5).

[124] Hillgruber, *Aufnahme neuer Staaten*, 601. Generally on Rhodesia see ibid, 554–602.

This view was contested by Devine, who moved from a quasi-declaratory[125] to a firmly constitutive view[126] of recognition by his consideration of the Rhodesian affair. His position was to some extent vitiated by his misreading of Fawcett's criterion as one of 'good government'.[127] Good government was not then (and is not now) a criterion for statehood, but Fawcett did not suggest otherwise. Statehood is a predicate for governmental authority, whether exercised well or badly; if badly the State is internationally responsible, e.g., for breaches of fundamental human rights of its citizens; while such actions may delegitimize the government, they do not affect the State as such. Fawcett's position was a more limited one: that where a particular people has a right of self-determination in respect of a territory, no government will be recognized which comes into existence and seeks to control that territory as a State in violation of self-determination.[128] It may be concluded that an entity may not claim statehood if its creation is in violation of an applicable right to self-determination.

3.3 Entities created by the unlawful use of force[129]

Article 2 paragraph 4 of the Charter prohibits the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the purposes of the United Nations. This prohibition does not affect the right of self-defence against armed attack under Article 51. These rules concerning the use of force are a clear case of peremptory norms.[130] Moreover the principle that territory may not be validly acquired by the use of force is well established.[131] The principles of State succession do not, it seems,

[125] [1967] *Acta Juridica* 39.

[126] [1973] *Acta Juridica* 1, 142–5; also McDougal and Reisman (1968) 62 *AJ* 1, 17. Cf Devine (1969) 2 *CILSA* 454; Richardson (2000) 45 *Villanova LR* 1091, 1125–6.

[127] (1971) 34 *MLR* 410; cf [1973] *Acta Juridica* 83–6.

[128] Devine accepted that UDI was a violation of self-determination in a political sense: [1973] *Acta Juridica* 67. But he regarded self-determination as 'too controversial, unaccepted and vague to be used by the Rhodesians as a shield or by anyone else as a sword against them': ibid, 77. Cf Devine (1971) 34 *MLR* 415, and Fawcett's reply, ibid, 417. On the so-called 'failed States' see further pp 719–23.

[129] The literature on statehood and the use of force remains sparse. There is a characteristic contribution by Baty (1926–7) 36 *Yale LJ* 966 (based on the old regime of rules relating to the use of force). The relation between State extinction and the use of force has been more extensively discussed: see Chapter 17.

[130] Vienna Convention on the Law of Treaties, Arts 52 and 53. Article 52 was reaffirmed in the *Icelandic Fisheries Case (First Phase)*, ICJ Rep 1973 p 3, 19.

[131] Whiteman, 5 *Digest* 874–965 and authorities there cited. See also *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina*

resolution in more-or-less common form, '[r]ecognizes the legitimacy of the struggle by the peoples under colonial rule to exercise their right to self-determination and independence and invites all States to provide material and moral assistance to the national liberation movements in colonial Territories.'[153] Resolution 2795 (XXVI) ('Question of Territories under Portuguese Administration'), by clause 13

> [r]equest[ed] all States... in consultation with the Organization of African Unity, to render to the peoples of the Territories under Portuguese domination, in particular the population in the liberated areas of those Territories, all the moral and material assistance necessary to continue their struggle for the restoration of their inalienable right to self-determination and independence.[154]

Resolutions in this form request what would otherwise be intervention against the established government in civil wars. Has the rule of non-intervention in civil wars ceased to apply in the case of colonial wars? Certainly that has been the contention of many Third World governments.[155] For present purposes, however, the lawfulness of military assistance or civil aid to insurgents in non-self-governing or other self-determination territories is of peripheral importance. What is clear is that the receipt of such assistance is not regarded as relevant where the local unit achieves effective self-government by military or other means. The fact that large amounts of aid were given to the PAIGC in Guinea-Bissau did not prevent general recognition of Guinea-Bissau as a State prior to Portuguese recognition.[156]

(ii) Military intervention to procure self-determination

Where on the other hand the emergence of local self-government in a self-determination unit is the result not of insurgency but of external military intervention, the situation is quite different. With this situation must be considered the fourth case mentioned above; that is, the emergence of an effective self-governing entity as a result of military intervention in violation of self-determination. Three possibilities exist. First, it may be that the effectiveness of the emergent entity prevails, so that its illegality of origin—however

[153] GA res 2105(XX), 20 December 1965 (74–6:15).

[154] GA res 2795(XXVI), 10 December 1971 (105–8:5).

[155] For discussion of this view in the General Assembly see Dugard in Orkin (ed), *Sanctions Against Apartheid*, 113.

[156] On national liberation movements generally, see Verwey (1981) 75 *AJ* 69; Wilson, *International Law and the Use of Force by National Liberation Movements*, esp chs 5 and 6; Gandolfi, *Les mouvements de liberation nationale*; Brietzke (1994) 13 *Wisc ILJ* 1. On SWAPO see Theodoropoulos (1979) 26 *Africa Today* 39; Ginther (1982) 32 *ÖZöRV* 131.

serious—will not impede recognition as a State. Secondly, it may be that in both cases the illegality of origin should be regarded as paramount in accordance with the maxim *ex injuria non oritur jus*. Or thirdly, it may be that, in the self-determination situation, the status of the local entity and the legality of the use of force ought to be regarded as separate issues so that the illegality of the intervention should not prejudice the pre-existing right of the local unit to self-determination.

Earlier practice in the cases of Hyderabad and Goa was equivocal, given the character of those post-colonial situations. They certainly showed the conflicts of political interest in situations of this type, which threaten to overwhelm considerations of principle. On the other hand, many areas of State practice that are in principle regulated by international law are also politicized, sometimes highly so. Moreover, there do exist accepted principles that regulate the legal effects of State conduct in closely related areas. For example, if State personality is preserved despite effective but illegal annexation by force (Ethiopia, Czechoslovakia, Albania, Baltic States, Kuwait), why cannot statehood not be denied to an entity *created* by external illegal force? If the rule regulating the use of force in international relations is sufficiently important to outweigh the principle of effectiveness in the one situation, there is no reason why it should not have a similar effect in the other situation. Equally if a State cannot acquire territory by the use of force, it should not be able to achieve the same result in practice by fomenting, and then supporting, insurrection.[157] This was an important factor in the Manchurian crisis, although, as we have seen, the lack of independence of 'Manchukuo' enabled the situation to be dealt with, at least in form, within the structure of the legal rules deriving from the principles of effectiveness and *de facto* independence.

Analysis of this problem must then centre on an assessment of two cases, contrasting in their outcome: Bangladesh and the putative Turkish State in northern Cyprus.

Briefly the situation in Bangladesh was as follows.[158] East Pakistan, a part of the geographically divided State of Pakistan created at partition in 1947, had suffered relatively severe and systematic discrimination from the central government based in Islamabad. However, in December of 1970 elections were held throughout Pakistan for a constituent Assembly. East Pakistan

[157] Baty (1926–7) 36 *Yale LJ* 966, 979–82; Hsu, 1949 *ILC Ybk* 112–13.

[158] There is a useful though hardly impartial study by Chowdhury, *The Genesis of Bangladesh*. The factual material presented by Chowdbury is largely corroborated in *ICJ Review* no 8 (June 1972), 23. The best analysis is that by Salmon, in *Multitudo legum*, vol I, 467. See also Franck and Rodley (1972) 2 *Israel YBHR* 142; Nanda (1972) 66 *AJ* 321; Franck and Rodley (1973) 67 *AJ* 275; Salzberg (1973) 27 *Int Org* 115–28; Dugard (1987) 75–6.

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elected 167 Awami League representatives out of a total of 169 seats allocated to it. The Awami League thus had an absolute majority in the 313-seat National Assembly. The League's leader was Sheikh Mujibur Rahman, and its programme was based on provincial autonomy. However, the Assembly was indefinitely suspended on 1 March 1971. On 25 March 1971 the central government instigated a period of martial rule in East Pakistan, which involved acts of repression and even possibly genocide and caused some ten million Bengalis to seek refuge in India. The Awami League proclaimed the independence of Bangladesh on 10 April 1971 but, although it retained the support of the people of East Pakistan it was reduced to a form of guerrilla warfare against the occupying forces. On 3 December 1971, large-scale war broke out between India and Pakistan on both eastern and western borders, and lasted until 17 December when the Pakistan army in East Bengal surrendered, and India declared a unilateral ceasefire on the western border. Meanwhile India and Bhutan had recognized Bangladesh on 6 and 7 December respectively. The Awami League substantially controlled East Bengal very shortly after the ceasefire, with the assistance of Indian troops. The continued presence of those troops was not regarded as sufficiently important to preclude recognition of the new State. Twenty-eight states had recognized Bangladesh *de jure* by 4 February 1972, and a further five states had extended *de facto* recognition. Recognition by Pakistan was, however, delayed until 22 February 1974.[159]

It is clear that Indian intervention was decisive in effecting the emergence of Bangladesh. There was substantial local support for autonomy or, if that could not be obtained, for independence: there was also a reasonably substantial local insurgency. But there can be no doubt that Indian intervention was the dominant factor in the success of the independence movement. Yet Bangladesh, despite Indian intervention, was rapidly and widely recognized as a State.[160] Indian intervention was criticized by many governments as a violation of the Charter,[161] but that illegality was not regarded as derogating from the status of East Bengal, or as affecting the propriety of recognition. Indeed, not even the fact that Indian troops remained in Bangladesh for a time was regarded as detracting from independence, despite the presumption against independence in such circumstances which has been consistently applied elsewhere.[162]

The question whether East Bengal in 1971 was a self-determination unit thus becomes important. If not, or if recognition was given simply on the basis of effectiveness without regard to the legality of Indian intervention or to any

[159] (1974) 78 *RGDIP* 1171–4. [160] Salmon, 'Naissance et Reconnaissance' 478–9.
[161] Okeke, *Controversial Subjects of International Law*, 142–57.
[162] Cf [1974] *Rbdi* 348–50.

denial of right to the people of East Bengal, then there would appear to be no criterion of legality regulating the creation of States by the use of external illegal force.[163]

East Pakistan was not at any time after 1947 formally a non-self-governing territory. It would have been classified as 'metropolitan' and so outside the ambit both of Chapter XI of the Charter and (but for exceptional circumstances) the customary right of self-determination. However, its status, at least in 1971, was not so clear, for several reasons. In the first place, East Bengal qualified as a Chapter XI territory in 1971, if one applies the principles accepted by the General Assembly in 1960 as relevant in determining the matter.[164] According to Principle IV of resolution 1541 (XV), a territory is prima facie non-self-governing if it is both geographically separate and ethnically distinct from the 'country administering it'. East Pakistan was both geographically separate and ethnically distinct from West Pakistan: moreover by 1971 the relation between West and East Pakistan, both economically and administratively, could fairly be described as one which 'arbitrarily place[d] the latter in a position or status of subordination'.[165] It is scarcely surprising then that the Indian representative described East Bengal as, in reality, a non-self-governing territory.[166] In any case, and this point is perhaps as cogent, it is hard to conceive of any non-colonial situation more apt for the description *'carence de souveraineté'* than East Bengal after 25 March 1971. Genocide is the clearest case of abuse of sovereignty, and this factor, together with the territorial and political coherence of East Bengal in 1971, qualified East Bengal as a self-determination unit within the third, exceptional, category discussed above, even if it was not treated as a non-self-governing territory. The view that East Bengal had, in March 1971, a right to self-determination has received juristic support.[167] Moreover, the particular, indeed the extraordinary, circumstances of East Bengal in 1971 to 1972 were undoubtedly important factors in the decisions of other governments to recognize, rather than oppose, the secession: by its conduct the Pakistan army had disqualified itself, and the State, from any further role in East Bengal. The comparison with international opposition to secession in other cases is marked, as shown in Chapter 9.

[163] This position is suggested by the *Restatement (Third)* (1987), §202, Reporters' Note 5, 81–2: 'In most instances the issue is not subject to authoritative determination.'

[164] GA res 1541 (XV), 15 December 1960 (89–2:21). India and Pakistan both voted in favour.

[165] GA res 1541 (XV), Annex, Principle V. See Chapter 14.

[166] *SCOR* 1606th mtg, 4 December 1971, para 185.

[167] Chowdhury, *Genesis*, 188 ff; Okeke, *Controversial Subjects*, 131–41; Mani (1972) 12 *Indian JIL* 83; Nawaz (1971) 11 *Indian JIL* 251; Nanda (1972), 66 *AJ* 321; cf Nanda (1972) 49 *Denver LJ* 53. Contrast (1972) *ICJ Review* no 8, 51–2.

Thus, Salmon, after a cautious and reasoned assessment, concludes:

> La même idée qui si l'acte de force créant le Bangla-Desh fut illicite, le résultat ne l'est pas—car il fait suite à une autre violence qui empêchait ce peuple à disposer de lui-même—explique que n'ont point joué ici les règles qui interdisent de reconnaître une situation lorsque la reconnaissance constitue une intervention dans les affaires intérieures des autres États ou lorsqu'il s'agit d'une acquisition territoriale obtenue par la menace ou l'emploi de la force.[168]

The situation of Bangladesh may be compared with that in Cyprus. In Cyprus, too, external intervention was the decisive factor in establishing a new local administration, effective in a certain territorial sphere. Other aspects of the case, however, were in sharp contrast to Bangladesh, including assessments of the legality of the situation as it evolved.

A set of agreements reached in 1959 and 1960 between the administering power, Great Britain, and the two constituent communities in Cyprus, Greek and Turkish, included a constitution for the Republic of Cyprus and provided for its independence. Greece and Turkey were also parties. A 'Treaty of Guarantee' designated Great Britain, Greece and Turkey 'guaranteeing powers' undertaking to maintain the constitutional structures of Cyprus as set out in 1960.[169] The Constitution established institutions designed to assure the rights of the Greeks and Turks as separate communities within the State.[170] It guaranteed the territorial integrity of Cyprus and prohibited '[t]he integral or partial union of Cyprus with any other State or the separatist independence' of any part of the republic.[171]

The arrangement prescribed in the 1960 Constitution quickly proved unworkable.[172] Inter-communal frictions paralyzed institutions at the

[168] Salmon, 'Naissance et Reconnaissance', 490.

[169] Treaty of Guarantee, 16 August 1960, 382 UNTS 475, app B Art IV provided that '[i]n the event of a breach of the provisions of the present Treaty, Greece, Turkey and the United Kingdom undertake to consult together with respect to the representations or measures necessary to ensure observance of those provisions.' 'In so far as common or concerted action may not prove possible, each of the three guaranteeing powers reserves the right to take action with the sole aim of re-establishing the state of affairs created by the present Treaty.'

[170] See Republic of Cyprus Constitution, app D; 382 UNTS 5475; 397 UNTS 5712. Among these structures were two communal legislative chambers; separate electoral rolls for Greeks and Turks; and a House of Representatives in which a simple majority of delegates of either community could veto legislative initiatives. See Republic of Cyprus Constitution, Arts 61, 62, 67, 77. Articles 87 and 89 defined extensive competences belonging to the Communal Chambers.

[171] Constitution, Art 185.

[172] Ehrlich (1966) 18 *Stanford LR* 1021, 1040–7; Wippman (1996) 31 *Texas ILJ* 141, 146–7. Writers after the fact said that a breakdown had been inevitable: Anthias and Ayres in *Race and Class*, 70; Hitchins, *Cyprus*, 49. But see Ehrlich (1966) 18 *Stanford LR* 1021, 1040; Ehlrich, *Cyprus 1958–1967*, 36–60. Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn), 20–6.

national level,[173] and by 1963 the Turkish community existed within its own enclaves, effectively self-administering.[174] On 15 July 1974, the president of Cyprus, Archbishop Makarios III, was overthrown by Greek Cypriot national guardsmen supported by the government of Greece, and Nikos Sampson, an advocate of 'enosis' (union of Cyprus with Greece) was declared president.[175] Invoking Article IV of the Treaty of Guarantee, Turkey deployed military forces to the north of Cyprus in July and August 1974.[176] The situation was deplored by the General Assembly, which called for the withdrawal of all foreign forces.[177] Nonetheless Turkish Cypriots consolidated their administration in the north of the island under the aegis of the Turkish army.

The northern administration declared a Turkish Federated State of Cyprus on 13 February 1975.[178] This was followed on 15 November 1983 with the declaration of an independent Turkish Republic of Northern Cyprus (TRNC). Security Council resolution 541 of 18 November 1983 'deplore[d] the declaration of the Turkish Cypriot authorities of the purported secession of part of the Republic of Cyprus' and called upon 'all States not to recognize any Cypriot State other than the Republic of Cyprus'.[179] Turkey was and remains the only State to extend recognition to the TRNC, a measure condemned by the Security Council.[180] There were substantial refugee movements, expelled Greek Cypriots moving south, Turkish Cypriots to the north.[181] Thus a putative State emerged in northern Cyprus with the assistance of foreign military intervention.

[173] The Greek community in 1963 proposed a set of thirteen changes to the constitution of Cyprus, but these were rejected by the Turkish community on the grounds that such amendment would violate Art 182(1) of the constitution, forbidding changes to certain 'basic Articles' of the constitution. On the 1963 proposals, see Rossides (1991) 17 *Syracuse JILC* 21, 32 n48.

[174] The Secretary-General in his report to the Security Council of 11 March 1965 noted the physical separation of the two communities. S/6228, paras 50–5.

[175] See Hart, *Cyprus*, 129–30.

[176] See Wippman (1996) 31 *Text ILJ* 141, 148–65.

[177] GA res 3212, 1 November 1974 (117:0:0), para 2: 'urg[ing] the speedy withdrawal of all foreign armed forces and foreign military presence and personnel from the Republic of Cyprus and the cessation of all foreign interference in its affairs.'

[178] SC res 376, 12 March 1975.

[179] SC res 541, 18 November 1983 (13–1:1) (Pakistan against, Jordan abstaining). This was reiterated in resolution 550 of 11 May 1984.

[180] SC res 550, para 2, 11 May 1984 (13–1:1) (Pakistan against, US abstaining). For the Turkish position on recognition and diplomatic relations, see Statement of Foreign Minister, 15 November 1983, A/38/602, 23 November 1983.

[181] Necatigil indicates that 200,000 Greeks left for the South. Necatigil, *Cyprus Question* (2nd edn), 136. An estimated 37,000 to 65,000 Turkish Cypriots resettled in the North: Pegg, *International Society and the De Facto State*, 98–9. See also Cooper and Berdal (1992) 35 *Survival* 118, 120; McDonald, *The Problem of Cyprus* (1988–9) Adelphi Papers, no 234, 10–11; Oberling, *Road to Bellapais*, 63–5. Provision for population exchange was made early in the process. See Population Exchange Agreement, 2 August 1975, S/11789.

There were important differences between the situation of Bangladesh and Turkish Cyprus. Though never formally declared a non-self-governing territory, the geographic separation of Bangladesh from the administering State, its ethnic distinctness and the arbitrary subordination of the territory to Pakistani rule built the case for its special status. Gross abuses amounting to genocide or crimes against humanity effectively made the separation irreversible. Moreover, the geography of the two cases was very different. The Turkish Cypriot community, though preponderantly in the north of the island, existed in the south as well, and members of the Greek community were to be found throughout Cyprus.

But the distinctions are not so plain as to speak for themselves. Unlike Bangladesh, Cyprus possessed domestic constitutional instruments formally acknowledging special rights in the seceding community (supported internationally by the guarantee of the former administering power, Britain, as well as by Greece and Turkey). The breakdown of any process within the framework of the 1960 institutions raised serious questions as to whether the Turkish Cypriot community could maintain its identity and rights.

The two dominant considerations, however, were the international guarantee of the unity of Cyprus, a condition of independence, and the external use of force, avowedly pursuant to a vague reservation of rights under Article IV of the Treaty of Guarantee but in fact aimed at partition. The TRNC declaration of independence of 15 November 1983 was clearly expressed to establish a new State on territory once part of the Republic of Cyprus. According to Necatigil:

> The aim of the Turkish Cypriots in declaring, on 15 November 1983, an independent state, *i.e.*, the Turkish Republic of Northern Cyprus, was to assert their status as co-founders of the future federal republic of Cyprus and to ensure that the sovereignty of that republic will derive from the existing two states joining together as equals to form the future federal republic.[182]

The declared openness of Turkish Cypriot negotiators to some form of federal republic may imply an ambiguity in the nature of the TRNC.[183]

[182] Necatigil, *Cyprus Question*, 203–4, 318. See also Letter dated 16 November 1983 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General, A/38/602, 23 November 1983 ('independence does not necessarily mean that the island will remain divided forever and that they are determined not to unite with any State, unless it be in a federation with the Greek Cypriots').

[183] According to the Secretary-General's Set of Ideas, agreed to in August 1992:'[The process] will result in a new partnership and a new constitution for Cyprus that will govern the relations of the two communities on a federal basis that is bi-communal as regards the constitutional aspects and bi-zonal as regards the territorial aspects . . . The overall framework agreement ensures that the Cyprus

Bangladesh, by contrast, was no mere legal feint toward statehood; in light of the events that had occurred, no federal solution was remotely practical. It was also significant that the putative Turkish Cypriot State continued to depend upon the presence of Turkish military forces for its existence. The use of force to change the legal status of territory is excluded by a peremptory norm of general international law, and applies to *all* uses of force in international relations (including in self-defence)—*a fortiori* where the use of force is of doubtful legality. Thus States, the Security Council,[184] the General Assembly,[185] the Council of Europe,[186] the Commonwealth,[187] the European Union,[188] the European Court of Justice[189] and the European Court of Human Rights[190]

settlement is based on a State of Cyprus with a single sovereign and international personality and a single citizenship.' Set of ideas on an overall framework agreement on Cyprus, Annex, paras 2, 4, S/24472, 21 August 1992.

[184] See, e.g., SC resns 365, 13 Dec 1974, para 1; 367, 12 March 1975, para 2 ('Regret[ing] the unilateral decision of 13 February 1975 declaring that a part of the Republic of Cyprus would become "a Federated Turkish State" '); 541, 18 Nov 1983, paras 2, 7 ('Consider[ing] the declaration [of independence of the "Turkish Republic of Northern Cyprus"] invalid and call[ing] for its withdrawal' and '[c]all[ing] upon all States not to recognize any Cypriot State other than the Republic of Cyprus'); 544, 15 Dec 1983 (noting agreement of 'Government of Cyprus' that extension of the UNFICYP mandate was necessary); 550, 11 May 1984, para 3 ('Reiterat[ing] the call upon all States not to recognize the purported State of the "Turkish Republic of Northern Cyprus" ').

[185] See, e.g., GA res 3212 (XXIX), 1 Nov 1974, para 1 (calling on all States to respect the territorial integrity of the Republic of Cyprus).

[186] See CE Parl Ass rec 974(83), 9 Dec 1983 ('Deploring the unilateral proclamation ... of the secession of a part of the Republic of Cyprus'). The Committee of Ministers 'decided that it continued to regard the government of the Republic of Cyprus as the sole legitimate government of Cyprus'; quoted in *Cyprus v Turkey*, 35 EHRR 30, 762 (120 ILR 12, 23–24, para 14).

[187] The Commonwealth Heads of Government indicated in a communiqué at New Delhi, 23–9 Nov 1983: '[The] Heads of Government condemned the declaration by the Turkish Cypriot authorities issued on 15 November 1983 to create a secessionist state in northern Cyprus, in the area under foreign occupation. Fully endorsing Security Council Resolution 541, they denounced the declaration as legally invalid and reiterated the call for its non-recognition and immediate withdrawal. They further called upon all States not to facilitate or in any way assist the illegal secessionist entity. They regarded this illegal act as a challenge to the international community and demanded the implementation of the relevant UN Resolutions on Cyprus.' Quoted in *Loizidou v Turkey*, ECHR (1997) 23 *EHRR* 513, 521 (Application 15318/89), Judgment of 18 Dec 1996, para 23.

[188] See, e.g., Common Statement of the 10 States Members of the European Community on the situation in the Republic of Cyprus issued in Athens on 16 Nov 1983, S/16155, Annex, 17 Nov 1983 ('continu[ing] to regard the Government of President Kyprianou as the sole legitimate Government of the Republic of Cyprus'); European Parliament resolution on state of accession negotiations with Cyprus, 5 Sept 2001, OJ 2002 C72E/77 (indicating that there would be 'no question either of accession for two Cypriot States or of accession of the northern part of the island upon Turkish accession').

[189] *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd and others* [1994] ECR I-3087, Judgment of 5 July 1994, paras 40, 47.

[190] *Loizidou v Turkey* (1997) 23 *EHRR* 513, 526, 527, paras 42, 43: '[I]t is only the Cypriot government which is recognised internationally as the government of the Republic of Cyprus in the

have consistently declined to accept the statehood of the TRNC.[191] United Nations plans for a resolution of the Cyprus conflict have had as their premiss the continued existence of a single federal State.[192] Cyprus was admitted to the European Union on 1 May 2004, although the *acquis communautaire* does not apply to the north pending a resolution of the conflict.[193]

(2) Conclusions

The position, consistent with general principle and with a now substantial body of practice, is as follows.

(1) The use of force against a self-determination unit by a metropolitan State is a use of force against one of the purposes of the United Nations, and a violation of Article 2 paragraph 4 of the Charter. Such a violation cannot effect the extinction of the right.

(2) The annexation of a self-determination unit by external force in violation of self-determination also does not extinguish the right, except, possibly, in the controversial case of the 'colonial enclave', where the annexing State is the enclaving State and where the local population acquiesces in the annexation.

(3) Assistance by States to local insurgents in a self-determination unit may be permissible, but in any event, local independence will not be impaired by the receipt of such external assistance (unless, at least, the continuation of independence relies upon continued external military assistance).

context of diplomatic and treaty relations and the working of international organisations'; and 'it is evident from international practice and the various, strongly worded resolutions . . . that the international community does not regard the "TRNC" as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus.' See also *Cyprus v Turkey* (2002) 35 EHRR 30 (965), para 61: 'The Court reiterates the conclusion reached in its *Loizidou* judgment (*merits*) that the Republic of Cyprus has remained the sole legitimate government of Cyprus.'

[191] For the response of English courts see *Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd* [1977] 3 WLR 656; *R v Minister of Agriculture, ex parte S.P. Anastasiou (Pissouri) Ltd*, High Court, Queen's Bench Division, (1994) 100 ILR 245.

[192] On the unsuccessful 2004 Annan Plan for the reunification of Cyprus see Palley, *International Relations Debacle*. On Cyprus see further Chapter 5.

[193] See Protocol No 10 on Cyprus, 2003 Act of Accession, OJ L 236, 23 September 2003. Article 1 of the Protocol suspends the *acquis* 'in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control' (Art 1(1)). Under Art 1(2), it is for the Council to decide on the withdrawal of the suspension referred to in Art 1(1). The Protocol represents recognition by EU Member States that accession by the Republic of Cyprus to the EU gave competence to the Community to legislate for Cyprus as a whole with the consent of the Government of the Republic of Cyprus (decisions under the Protocol require unanimity).

(4) An entity claiming statehood but created during a period of foreign military occupation will be presumed not to be independent.[194]

(5) Where the local unit is a self-determination unit, the presumption against independence in the case of foreign military intervention may be displaced or dispelled. There is no prohibition against recognition of a new State which has emerged in such a situation. The normal criteria for statehood—based on a qualified effectiveness—apply.

(6) On the other hand, where a State illegally intervenes in and foments the secession of part of a metropolitan State other States are under the same duty of non-recognition as in the case of illegal annexation of territory.[195] An entity created in violation of the rules relating to the use of force in such circumstances will not be regarded as a State.

3.4 Statehood and fundamental human rights

(1) General considerations

The principle of self-determination is itself an aspect of human rights law, but, apart from this, there is so far in modern practice no suggestion that as regards statehood itself, there exists any criterion requiring regard for fundamental human rights.[196] The cases are numerous of governments violating fundamental norms of human rights; there is no case where such violations have called in question statehood itself. Thus, in connection with South Africa, it was said in the Third Committee:

The issues of racism and self-determination are related. The South African system is particularly obnoxious because racism is institutionalized in the apartheid system; and because the majority of South Africa's people are denied any effective

[194] See *Knox v Palestine Liberation Organization*, 306 F Supp 2d 424, 437 (SDNY, 2004): '[under] international law, a state will *maintain* its statehood during a belligerent occupation . . . but it would be anomalous indeed to hold that a state may *achieve* sufficient independence and statehood in the first instance while subject to and laboring under the hostile military occupation of a separate sovereign' (emphasis in original); *Efrat Ungar v Palestine Liberation Organization*, 402 F 3d 274, 290 (1st Cir, Selya, CJ): 'Nor does the fact that the Egyptians and Jordanians occupied and controlled a significant portion of the defined territory immediately following the end of the mandate aid the defendants' cause. To the contrary, the fact is a stark reminder that no state of Palestine could have come into being at that time.'

[195] Cf *Restatement (3rd), Foreign Relations Law of the United States*, §202(2): 'A State has an obligation not to recognize or treat as a state an entity that has attained the qualifications for statehood as a result of a threat or use of armed force in violation of the United Nations Charter.'

[196] Fawcett (1965–6) 41 BY 103, 112 referred to the Rhodesian case as a 'systematic denial of civil and political rights.' It is submitted that the relevant rubric is self-determination.

defined. But neither were they equivalent to colonial protectorates. Their status was analogous to that of international protectorates.[222] By 1947 the Crown had evidently changed its mind, because its position then was inconsistent with the view that the States were merely municipal units of the Empire. Despite 'paramountcy', the Indian States were regarded as free to accede to India or Pakistan or neither: no constitutional authority was thought to exist to force such accession, although the British Government advised in favour of that course.[223] The Indian Independence Act 1947, section 7 merely provided for the 'lapse' of suzerainty over the Indian States, so that it was arguable that those States which had not acceded were rendered fully independent.

The most important such case was that of Hyderabad, which had been in the 'most independent' class of native States prior to 1947. Its full independence was shortlived: Hyderabad was blockaded, invaded and annexed by India in September 1948. While hostilities were in progress, the Security Council accepted the Nizam's complaint of aggression as an agenda item and admitted his representative to the deliberations, apparently under Article 35(2).[224] Following Hyderabad's surrender, it took no specific action.[225]

(3) Autonomy and residual sovereignty

Autonomous areas are regions of a State, usually possessing some ethnic or cultural distinctiveness, which have been granted separate powers of internal administration, to whatever degree, without being detached from the State of which they are part. For such status to be relevant for the purposes of this study it must be established as internationally binding upon the central authorities (as for example with the Memel Territory, discussed in Chapter 5). In such cases the local entity may have a certain status, although since that does not normally involve any foreign relations capacity, it is usually very limited. Until

[222] Great Britain had no power to act internally to carry out international agreements: *ILO Off Bull* vol XII, 172–3, cited by Kamanda, *Study of Legal Status*, 203–4. British cases on the States rest upon a distinction between those States which were separate from the Raj, the relationships with which were non-justiciable (e.g., *Sec of State in Council for India v Kamachee* (1859) 7 Moo Ind App 476; *Rajah Salig Ram v Sec of State* (1872) LR IA Supp 119; *Ex-Rajah of Coorg v East India Co* (1860) 29 Beav 300), and those States that had been taken over by the Raj, the relationships with which were municipally justiciable (e.g., *Forester v Sec of State* (1872) LR IA Supp 10).

[223] 439 *HC Deb* cols 2451–2 (10 July 1947); 452 *HC Deb* cols 1360–2 (23 June 1948).

[224] *SCOR* 3rd yr Supp, Sept 1948, 5 (S/986); Higgins, *Development*, 51–2; Eagleton (1950) 44 *AJ* 277; *contra* Das (1949) 43 *AJ* 57.

[225] *SCOR* 3rd yr No 109, 357th mtg, 16 September 1948: Eagleton, 277–81, 294–9. See also USFR 1948/V, 360–1, 373, 411, 417. On the Kashmir dispute see Gupta, *Jammu and Kashmir*; Mendelson (1996) 36 *Indian JIL* 1. On Hyderabad, Franck (1984) 78 *AJ* 811, 815; Popper (1986) 80 *ASIL Proc* 348, 360.

an advanced stage is reached in the progress towards self-government such areas are not States. Two examples—Tibet and Oman—illustrate some of the legal problems of this type of dependency.

The status of Tibet has long been uncertain and became a matter of some controversy with the Chinese 'invasion' of the territory in 1951.[226] Tibet had been said to be under the 'suzerainty' of China since the eighteenth century: the incidents of the relationship had remained obscure and fluctuated with the power of each side to impose or escape from its rights or obligations. By 1910 the weakness of central government in China made the separate independence of Tibet at least arguable.[227] In a treaty of 1904 with Great Britain, Tibet undertook not to dispose of territory, not to pledge its revenue and not to grant concessions to, or admit representatives of, any 'foreign Power' without British consent.[228] That Treaty was confirmed by a Convention of 1906 between Great Britain and China, the terms of which confirm that the phrase 'foreign Power' in the 1904 Treaty was not intended to include China.[229] This was further confirmed by the Russo-British Treaty of 1907 relating to Persia, Afghanistan and Tibet, by which the parties, 'reconnaissant les droits suzerains de la Chine sur le Thibet', agreed to respect the territorial integrity of Tibet, not to interfere in its internal affairs, and not to negotiate with Tibet except through the Chinese Government as intermediary.[230] The Agreement of 1908 amending Trade Regulations in Tibet between Great Britain, China and Tibet, was concluded with the 'representative' of the 'High Authorities of Tibet' acting 'under the directions of the Chinese plenipotentiary'.[231] In 1910, Tibet possessed a considerable degree of *de facto* independence but this was conditioned by Chinese power with respect to Tibetan foreign affairs, and by the claims of China (largely unexercised) to some greater degree of control. In 1911 the Manchu dynasty collapsed: with it, it has been argued, collapsed also the claims of China over Tibet, since these were based on a personal allegiance under feudal law.[232] In the event neither China nor Great Britain thought that this was the case.

[226] See Lamb, *The McMahon Line*; Rubin (1968) 35 *China Q* 110; International Commission of Jurists, Question of Tibet; Alexandrowicz (1954) 48 *AJ* 265; van Walt van Praag, *The Status of Tibet*; McCorquodale and Orosz (eds), *Tibet: The Position In international Law*.

[227] Alexandrowicz (1954) 48 *AJ* 265, 275; International Commission of Jurists, *Question of Tibet*, 85.

[228] 98 BFSP 148, Art 9. For the circumstances surrounding the conclusion of the Treaty see International Commission of Jurists, *Question Of Tibet*, 78–91.

[229] 99 BFSP 171, Art III.

[230] 100 BFSP 555. But cf McCorquodale and Orosz, *Tibet*, 147: 'The relationship of a tributary—sometimes contended for by China—necessarily implies the separate identities of the tributary and the dominant state. It is therefore inconsistent with a claim that Tibet was an integral part of China in the period prior to 1911.'

[231] 101 BFSP 170. Only Great Britain and China were to ratify the Agreement.

[232] Alexandrowicz (1954) 48 *AJ* 265, 275 270.

The crucial document of the period was the Simla Convention of 1914, intended to be signed by China, Tibet and Great Britain but because of disagreement over boundaries signed by the latter two only. The Simla Convention was not binding upon China but it is the best evidence of what the negotiating parties thought of Tibet's status at the time—or, perhaps, of what they hoped Tibet could successfully claim. Article 2 stated: 'The Governments of Great Britain and China recognizing that Tibet is under the suzerainty of China, and recognizing also the autonomy of Outer Tibet, engage to respect the territorial integrity of the country, and to abstain from interference in the administration of Outer Tibet . . .'.[233] Thus despite various possibilities,[234] Tibet was not in 1914 regarded as independent, even though at least part of the country possessed substantial autonomy. This has always been the British view,[235] and it was also the Chinese view in 1951.[236] The invasion of Tibet was thus not a case of invasion of an independent State, although Chinese actions in Tibet after 1951 may be criticized on other grounds.[237]

A rather similar controversy surrounded the status of Oman vis-à-vis the Sultan of Muscat and Oman.[238] The hinterland had long been an autonomous area with a separate government owing little allegiance to the Sultan at Muscat. The situation was affirmed by the secret Treaty of Sib of 25 September 1920, concluded through British mediation between the Sultan and 'the people of Oman'.[239] That agreement provided that the Sultan would not grant asylum to

[233] Simla Convention, 3 July 1914, 220 CTS 144, 144–5. The International Commission of Jurists, 85 concluded that 'the events of 1911–1912 mark the re-emergence of Tibet as a fully sovereign state, independent in fact and law of Chinese control.' It is true that the signatories in 1914 deleted from the draft agreement the declaration that 'Thibet forms part of Chinese territory' (ibid, 140). But if Tibet was not part of China in 1914 it is difficult to understand why Art 2 was allowed to stand between two parties in whose interests it was that Tibet should be as independent as possible. See, generally, Goldstein, *A History of Modern Tibet*, 1913–1951.

[234] On the disputed declaration of independence of 1912 see Rubin (1965) 59 *AJ* 586; (1966) 60 *AJ* 812; McCabe (1996) 60 *AJ* 369. The matter is also of importance in relation to the India-China boundary: see Rubin (1960) 9 *ICLQ* 96; Sharma (1965) 59 *AJ* 16. See also International Commission of Jurists, *Tibet and the Chinese People's Republic*, 139–66.

[235] 151 BFSP 89.

[236] China–Tibet Agreement on Administration of Tibet, 23 May 1951: 158 BFSP 731. Cf, however, the Sino-Indian Agreement of 29 April 1954 concerning Indian Trade and Intercourse with the 'Tibet Region of China': Lamb II, 638–41. The 1954 Agreement assumes either termination or cancellation of British treaties relating to Tibet.

[237] Cf GA res 1353 (XIV), 3rd preambular paragraph, 21 October 1959 (45–9:26), referring to 'the distinctive cultural and religious heritage of the people of Tibet and . . . the autonomy which they have traditionally enjoyed'; 1723 (XVI), para 2, 20 Dec. 1961 (56–11:29), referring to the 'right to self-determination' of the people of Tibet; 2079 (XX), 18 Dec. 1965 (43–26:22), referring only to the human rights issues. No further action has been taken. See also Higgins, *Development*, 123–5, 222; Rubin (1968) 35 *China Q* 110; Herzer and Levin (1996) 3 *Mich J Gender & Law* 551.

[238] Al-Baharna, *Legal Status*, 239–47; Kelly, 'Sultanate and Imamate in Oman', *Chatham House Memoranda* (1959) 13.

[239] Text in (1961) 10 *ICLQ* 552.

'any criminal fleeing from the justice of the people of Oman', that he would 'not interfere in their internal affairs'; and that, on the other hand, the tribes and Sheiks of Oman would be 'at peace with the Sultan. They shall not attack the towns of the coast and shall not interfere in his Government.' The Treaty is equivocal with regard to the status of the signatories; in the absence of any clear acknowledgment of their position, the status of the treaty depended on the position of the parties rather than the reverse.[240] In 1937 the Sultan, apparently without local protest, granted oil concessions over part of Oman. The status of Oman was raised in two different contexts before United Nations organs. In 1955 a rebellion in the hinterland was put down only after British military intervention at the invitation of the Sultan. The Security Council, after debate, refused to include on the agenda a complaint by eleven Arab League States of British aggression against Oman under Article 35 of the Charter.[241]

Of more consequence were the debates in the General Assembly on the problem of Oman. The matter was considered in 1960 to 1962, but for various reasons no action was taken. However, in December 1963 the Assembly created an 'Ad hoc Committee on Oman',[242] which reported in 1964 to the effect that Oman was 'an autonomous political entity that took steps to assert its competence in such important matters as the control of its foreign relations and its natural resources.'[243] Significantly it did not say that Oman was a State separate from the Sultanate of Muscat and Oman. In successive resolutions the General Assembly '[r]ecognize[d] the inalienable right of the people of the Territory as a whole to self-determination and independence in accordance with their freely expressed wishes.'[244] The reference to 'the territory as a whole' was regarded as including both Muscat and Oman, so that these resolutions did not support the view implied by the Arab League States proposal in 1957 that Oman was itself an independent State.[245] On 23 July 1970, the Sultanate of Muscat and Oman changed its name to the Sultanate of Oman.[246] It was admitted to the United Nations in 1971.[247]

[240] Al-Baharna, *Legal Status*, 243–4.

[241] S/3865 & Add 1, *SCOR* 12th yr supp, July-September 1957, 16–17; 783rd mtg, 20 August 1957, para 87 (4–5: 1 abst, 1 member not voting).

[242] GA res 1948 (XVIII), 11 December 1963 (96–1:4).

[243] 1964 *UNYB* 186–8.

[244] GA resns 2073 (XX), 17 December 1965 (61–18:32); 2238 (XXI), 20 December 1966 (70–12:28); 2302 (XXII), 12 December 1967 (72–18:19); 2424 (XXIII), 18 December 1968 (66–18:26); 2559 (XXIV), 12 December 1969 (64–17:24); and 2702 (XXV), 14 December 1970 (69–17:23).

[245] The UK intervention in 1957 could of course have been unlawful on other grounds: see Al-Baharna, *Legal Status*, 246–7.

[246] Department of State, GE-69, 9 September 1970.

[247] SC res 299, 30 September 1971; GA res 2754 (XXVI), 7 October 1971.

These two cases of what might be called 'autonomous regions' present certain similarities. In both, the normal classifications of sovereignty and statehood are only applicable with difficulty, and the facts are obscure and controversial. The case of Tibet, in particular, highlights the rather arbitrary way in which, for their own purposes, individual powers decided upon a particular course of action, and thus, in effect, determined the status of a people.

It is beyond the scope of this study to examine in more detail the large number of cases of residual authority claimed or exercised over autonomous territories. Such residual sovereignty may involve extensive rights, as with Turkey over Cyprus after 1878, or it may be so nominal that, as Sir Walter Scott said of Bengal, it 'hardly exists otherwise than as a phantom.'[248] In the modern period, too, various arrangements have been referred to in terms of autonomy, minority rights and regional devolution (e.g., Nunavut, Tatarstan, Catalonia, South Tyrol).[249] But these have resulted from grants of authority by the central government of the State and are probably revocable as a matter of international law.[250] Some of the considerations involved when territories separate themselves by degrees from metropolitan authority are examined in the next chapter.

(4) Spheres of influence

Spheres of influence were agreements by two or more States delimiting the areas of territory, in particular in Africa and also in Persia and Siam,[251] within which each party would be permitted by the other party or parties to operate. Neuhold refers to spheres of influence as '[c]onceptually ill-defined and legally dubious'.[252] But they were part of the apparatus of territorial control, in effect giving the State whose sphere was recognized a free hand within that sphere to colonize or not. They were considered as strictly contractual[253] and gave no

[248] *The Indian Chief* (1801) 3 C Rob 11, 31; 165 ER 367, 374; and cf *Secretary of State for India v Sardar Rustam Khan* (PC 1941) 10 ILR 98, 165 ER 367, 374.

[249] See Hannum, *Autonomy, Sovereignty and Self-determination* (rev edn). Perhaps the best known modern case is that of Hong Kong after 1997, discussed in Chapter 5.

[250] Subject to treaty commitments, bilateral (e.g. agreement between Austria and Italy, Art 3(c), 5 September 1946, incorporated as Annex IV to and confirmed by Art 10 of Treaty of Peace with Italy (Italy–Australia–France–UK–USA–USSR), 10 February 1947: 49 UNTS 3, 11, 69–70)) or multilateral: e.g. Framework Convention for the Protection of National Minorities, 1 February 1995, (in force 2 January 1998), [1995] ETS 157, 34 ILM 351, 2151 UNTS 246.

[251] Convention between Great Britain and Russia relating to Persia, Afghanistan, and Thibet, 31 August 1907, Arts I–III, 100 BFSP 555; Declaration between Great Britain and France, with regard to the Kingdom of Siam and other matters, Art III, 88 BFSP 13, 14.

[252] Neuhold, IV *Enc PIL* (2000) 577.

[253] Cf US Memorandum of 22 June 1896 (Venezuela): 88 BFSP 1283, 1287, cited by Lindley, 212–13. To the same effect, *Western Sahara Case*, 1975 ICJ Rep p 12, 56.

majority of the population.'[20] On the view taken by the United Nations and by almost all States, the United Kingdom retained authority over Southern Rhodesia, and thus had the competence (and eventually the duty) to transfer power to the territory. However, the exercise of that competence was restricted, not only by the principle of self-determination but also by explicit United Nations resolutions to which the United Kingdom assented.[21]

(ii) Grants disruptive of the territorial integrity of a self-determination unit

United Nations' practice in self-determination matters reveals two distinct and to some extent conflicting principles: that '[a]ll peoples have the right to self-determination',[22] and that '[a]ny attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.'[23] According to the Declaration on Principles of International Law of 24 October 1970:

> Nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour. Every State shall refrain from any action aimed at the partial or total disruption of the national unity or territorial integrity of any other State or country . . .[24]

As shown in Chapter 3, the principle of self-determination is now clearly recognized in international law. The status of the principle of 'territorial

[20] SC res 202, 6 May 1965 (7–0:4), para 5. See also, e.g., SC res 253, 29 May 1968 (11–0:0), para 17; GA res 1883 (XVIII) (90–2:3), para 1; GA res 2138 (XXI) (86–2:18), para 1; GA res 2151 (XXI) (89–2:17), para 3.

[21] See also GA res 2023 (XX) (90–1 1:4), para 4 (Question of Aden) (90–11:10), para 4: 'Further deplores the attempts of the administering power to set up an unrepresentative régime in the Territory, with a view to granting it independence contrary to General Assembly resns 1514 (XV) and 1949 (XVIII), and appeals to all States not to recognize any independence which is not based upon the wishes of the people of the Territory freely expressed through elections held under universal adult suffrage.' The Assembly also condemned in general terms the imposition of 'non-representative régimes and arbitrary constitutions': e.g., GA res 2878 (XXVI), 20 Dec 1971 (96–5:18), para 6; 2908 (XXVII), 2 Nov 1972 (99–5:23), para 7.

[22] GA res 1514 (XV), para 2.

[23] Ibid, para 6.

[24] GA res 2625 (XXV), 24 Oct 1970 (adopted without vote). For a later but very similar formulation see Beijing Declaration, Joint Statement by PRC and Russian Federation, 18 December 1992: cited in Goldman and Sutter, CRS Report, 27 January 1997.

integrity', so far as it relates to self-determination units which are not States, is less certain. It is an established part of United Nations practice, and may be treated as a presumption as to the operation of self-determination in particular cases. Thus the division of a self-determination unit into fragments for the purpose of avoiding the principle of self-determination would be unlawful: for example, the division of South West Africa into 'bantustans' or native homelands was universally condemned.[25] For present purposes, the consequences of the 'territorial integrity' principle may be summarized as follows.

(1) Prima facie self-determination units must be granted self-determination as a whole. Only if the continued unity of the territory is clearly contrary to the wishes of the people or to international peace and security will schemes for partition meet with approval of United Nations organs.[26]

(2) Attempts to disrupt the territorial integrity of a self-determination unit so as to evade the principle of self-determination are excluded. By contrast, it appears that independent States may dissolve into their component parts without popular consultation: for example the so-called 'velvet divorce' in Czechoslovakia at the end of 1992 was not accompanied by any referenda but was carried out on the basis of legislation in the two component republics without attracting external criticism.[27]

(3) A further aspect of practice under the rubric of 'territorial integrity' has been the disapproval of the alienation of territory of self-determination units without local consent. For example, the General Assembly invited the United Kingdom as administering power 'to take no action which would dismember the Territory of Mauritius and violate its territorial integrity . . .'[28] Practice has not, however, been particularly consistent. For example, the transfer by the United Kingdom of the Cocos (Keeling) Islands and Christmas Island in 1955 and 1957 respectively from the Straits Settlement to Australia[29] was at least

[25] See, e.g., SC resns 323 (1972), para 2 (13–0:1); 366 (1974), para 5(6) (15–0:0). For the Odendaal Commission Report, see Dugard, *The South West Africa/Namibia Dispute*, 236–8, 431–5; D'Amato (1966) 4 *JMAS* 177–92; Umozurike, *Self-Determination in International Law*, 133–7. Cf also *Namibia Opinion*, 1971 ICJ Rep p 6, 57.

[26] Partition was approved in the cases of Rwanda and Burundi, Palestine, the British Cameroons, the Trust Territory of the Pacific Islands and the Gilbert and Ellice Islands. In the case of West Irian a majority of the Assembly applied the 'territorial integrity' rather than the self-determination rule: Rigo Sureda, *Evolution*, 143–51 and Chapter 14 for further discussion.

[27] Hošková (1993) 53 *ZaöRV* 689. Cf the dissolution of the USSR: Antonwicz (1991–2) 19 *Polish YBIL* 7; Yakemtchouk, (1993) 46 *Studia Diplomatica* 3.

[28] GA res 2066 (XX), 16 December 1965, para 4 (89–0:18).

[29] Transfer was effected by legislation of the UK and Australia: Cocos (Keeling) Islands (Request and Consent) Act 1954 (Aust); Cocos Islands Act 1955 (UK), Cocos (Keeling) Islands Act 1955 (1955); 536 *HC Deb* cols 1575–8, 31 Jan 1955. Subsequently the Cocos (Keeling) Islands was, but Christmas Island was not, treated as a non-self-governing territory. See below, Chapter 14.

tacitly accepted by the United Nations, despite the absence of formal consent by any indigenous government in the Straits Settlement, still less by the people affected by the transfer. Separation of the Chagos Archipelago from Mauritius as the 'British Indian Ocean Territory' though from time to time contested by Mauritius, appears also to have been accepted, at least as a temporary measure.[30] By contrast the division of the Trust Territory of the Pacific Islands into four separate units, though protested in the Trusteeship Council by the USSR, was accepted as the basis for the independence of three new States and the association of the Northern Marianas with the former administering power: in this case the relevant populations clearly supported the proposed division.

(4) Associated with the problem of cession of parts of self-determination units is the problem of reservations for military bases. These have been condemned by the General Assembly[31] but again practice has not been particularly consistent. For example, the 'sovereign base areas' reserved by the United Kingdom in Cyprus have been accepted by the Assembly.[32] The problem is outside the scope of this study.

(5) The problem of 'colonial enclaves' is sometimes treated as an aspect of the self-determination rule.[33] It is better regarded as an exception to the rule, and

[30] The British Indian Ocean Territory houses the US military and naval base of Diego Garcia. According to the Minister of State, FCO: 'The islands of the British Indian Ocean Territory are British, and have been since 1814 when ceded by France. We do not accept that they were ever an integral part of Mauritius. We do not therefore consider that General Assembly Resolution 1514, which was concerned with the partial or total disruption of the national unity and territorial integrity of a country, has any application to the Territory.' 307 *HC Debs*, WA, col 192, 24 Feb 1998. The British position is that the administration of the Chagos Archipelago as part of Mauritius before 1965 was an administrative convenience 'following French practice.' The UK paid Mauritius £3 million 'for the detachment of the islands', which received the assent of the Mauritius Council of Ministers: Cmnd 4264 (1999), 50–1. The UK has undertaken to cede the islands to Mauritius 'when they are no longer needed for defence purposes' and 'subject to the requirements of international law'. Min State, FCO, 367 *HC Debs* cols 337–8, 26 Apr 2001, (2001) 72 *BY* 633. See also (1992) 63 *BY* 722; (1994) 65 *BY* 582; (1997) 68 *BY* 587; Lynch (1984) 16 *Case W Res JIL* 101. Litigation by the Chagos Islanders before UK courts has achieved limited results: *R (Bancoult) v Secretary of State* [2001] QB 1067; noted Byers (2000) 71 *BY* 433; *Chagos Islanders v Attorney-General* [2003] EWHC 2222; noted O'Keefe (2003) 74 *BY* 486.

[31] E.g. GA res 2832 (XXVI) (Declaration of the Indian Ocean as a Zone of Peace), 16 December 1971, para 1. See also GA res 40/153 (on implementation of the Declaration of the Indian Ocean as a Zone of Peace), 16 December 1985, esp preambular paras.

[32] For Cyprus see Chapter 5. For continued presence of Russian troops in the Baltic States, Georgia, and other former republics of the USSR see *Heintschel* v *Heinegg* (1992) 34 *Neue Zeitschrift für Wehrrecht* (Frankfurt/Main) 45; Tiller and Umbach, *Kontinuität und Wandel der russischen Streitkräfte unter Jelzin*; Uibopuu in Benedek (ed), *Development and Developing International and European Law*, 175; Lang, *Vertrag über konventionelle Streitkräfte in Europa*.

[33] E.g. Rigo Sureda, *Evolution*, 218–19.

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in this discussion of limitations on the competence to grant independence must be dealt with separately: see Chapter 14.

(3) Grants of independence in furtherance of fundamentally unlawful policies: the bantustans

The question of the limits on the power of a State to grant independence to some part of its metropolitan territory—a power previously regarded as more-or-less unfettered—was raised squarely by the purported grant of independence by South Africa to the so-called 'independent homelands' or bantustans. The first of these was Transkei, granted independence on 26 October 1976.[34] Bophuthatswana followed on 6 December 1977;[35] Venda on 13 September 1979;[36] and Ciskei on 4 December 1981.[37]

(i) Origins of the bantustan policy

The policy of 'separate development' of racial groups within South Africa had been long established: its ultimate expression was the dismemberment of areas of the Republic by the creation of self-governing 'bantustans', which would then be granted independence. This took place in stages. South African law had imposed restrictions on the residency and movement of the black population well before the articulation of a policy of 'separate development'. The Glen Grey Act of 1874 established representative councils, known as 'local boards', in the Transkei area for the government of Africans.[38] Reserves in various parts of the country were defined by statute in 1913.[39] A United Transkeian Territories General Council was established in 1931. Legislation in 1936 extended the reserves,[40] which 'eventually formed the cores of the territorial jurisdiction of the Black national states.'[41]

[34] Status of Transkei Act 1976 (Act No 100 of 1976), 15 ILM 1175. See Booysen (1976) 2 *SAfYBIL* 1; Richings (1976) 93 *SALJ* 119; Harding, *Unabhängigkeit der Transkei*; Vorster, in Vorster, Wiechers & Van Vuuren (eds), *Constitutions of Transkei, Bophuthatswana, Venda and Ciskei*, 21.

[35] Status of Bophuthatswana Act 1977 (Act No 89 of 1977); Wiechers and van Wyk (1977) 3 *SAYB* 85; Devenish in Vorster, Wiechers and Van Vuuren(eds), *Constitutions of Transkei, Bophuthatswana, Venda and Ciskei*, 83.

[36] Status of Venda Act 1979 (Act No 107 of 1979); Carpenter (1979) 5 *SAYB* 40; Ventor in Vorster, Wiechers and Van Vuuren (eds), *Constitutions of Transkei Bophuthatswana, Venda and Ciskei*, 1.

[37] Status of Ciskei Act 1981 (Act No 110 of 1981); Carpenter (1981) 7 *SAYB* 83; Cilliers in Vorster, Wiechers and Van Vuuren (eds), *Constitutions of Transkei Bophuthatswana, Venda and Ciskei*, 197.

[38] Welsh, *A History of South Africa*, 449.

[39] Black Land Act 1913; Festenstein and Pickard-Cambridge, *Land and Race: South Africa's Group Areas and Land Acts*.

[40] Development Trust and Land Act 1936.

[41] Venter, 'Perspectives on constitutions' in Vorster *et al*, *Constitutions*, 5. For discussion of the constitutional development of the Transkei to 1964, see Hill, *Bantustans: The Fragmentation of South Africa*, 53–88.

In the cases of Lebanon and Syria under the French Mandate, again it seemed that the task of the Mandatory was not to administer the territory but to see that its administration by the 'local government' conformed with the conditions laid down in the Mandate agreement.[21] But in fact France exercised direct rule throughout the period of the Mandates. Syria and Lebanon, under Mandate governments, made Treaties of Alliance with the Mandatory Powers,[22] carried on international litigation in their own name[23] and had their own nationality.[24] But their status approximated to that of international protectorates rather than protected States.

If the consistency of this state of affairs with Article 22 was not entirely clear, it was even less so in the case of Palestine. There, in order to implement the declared recognition of 'the historical connection of the Jewish people with Palestine and the grounds for reconstituting their national home in that country',[25] the Mandatory was expressly given 'full powers of legislation and administration save as they may be limited by the terms of this mandate.'[26] As a result some writers considered that the Palestine Mandate was 'nearer the B than the A category',[27] emphasizing the special character of the Palestine Mandate.[28]

(2) Sovereignty and other mandated and trust territories

In relation to the other mandated and (with one exception) trust territories there was no such local governmental autonomy, either according to the

[21] For the Agreement (approved by the League Council on 24 July 1922) see LN Doc C.528.m.313.1922.XI. On the status of Syria see *In re Cassèque & Cot* (French Conseil d'État, 1929) 5 ILR 30 (Post Office officials in Syria and Lebanon not subject to French administrative authority or jurisdiction); *In re Fouad Baddoura* (Brazil, Supreme Federal Tribunal, 1927) 5 ILR 32 ('Syria, being a mandated territory, was really an independent Government under the guidance of France').

[22] The Treaties of Alliance of 9 September 1936 (Syria) and 13 November 1936 (Lebanon) were suspended by the War and never came into force: Hackworth 1 *Digest* 113. See also Agreement of 20 May 1926 between Iraq, Palestine, Syria, Transjordan and Turkey for the creation of an International Office for Information on Locusts: 59 LNTS 128.

[23] See *Radio-Orient Company Case*, between the Levantine States under French Mandate and Egypt, (1940) 3 RIAA 1871. This was an arbitration under the International Telecommunications Convention, Madrid, 9 December 1932, 151 LNTS 5, Art 15.

[24] Bentwich (1926) 7 *BYIL* 97; Whiteman 1 *Digest* 664–7; *AG v Goralschwili*, 3 ILR 47 (Palestine H Ct, 1925); *The King v Ketter* [1940] 1 KB 787 (CCA); *Kletter v Dulles*, 111 F Supp 593, 598 (DC 1953) (Palestine a 'foreign State' for naturalization purposes); 20 ILR 251.

[25] Palestine Mandate, preambular para 3: LN Doc CPM 446. [26] Article 1; see also Art 4.

[27] Stoyanovsky, *The Mandate for Palestine*, 40.

[28] The Mandate for Palestine extended also over the area known as Transjordan, but Art 25 of the Mandate authorized the Mandatory, with the consent of the Council, not to apply certain of its provisions, specifically those relating to the Jewish homeland. This was achieved by a Memorandum of the British Delegate approved by the Council on September 16, 1922 (see [1922] LNOJ 1188: for the Mandate see LN Doc CPM 466, 7), and Transjordan was thereafter administered separately. By an

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constituting instruments or in practice. Subject to the limitations contained in the instruments the administering authorities had plenary powers of government. As a result the various indications of sovereignty—dispositive authority, administrative power, beneficial interest—seemed to point in different directions, so that one authority concluded that: 'The totality of functions of the administering authority and the United Nations, and the ultimate interest of the beneficiaries make up the totality of sovereignty, but its incidents are distributed.'[29] Indeed the consensus view came to be that the concept of sovereignty was simply inapplicable to mandated and trust territories. As Lord McNair stated in his separate opinion in *South West Africa (Status)*:

> The Mandates System (and the 'corresponding principles' of the International Trusteeship System) is a new institution—a new relationship between territory and its inhabitants on the one hand and the government which represents them internationally on the other—a new species of international government, which does not fit into the old conception of sovereignty and which is alien to it. The doctrine of sovereignty has no application to the new system. Sovereignty over a Mandated Territory is in abeyance; if, and when the inhabitants of the Territory obtain recognition as an independent State... sovereignty will revive and vest in the new State. What matters in considering this new institution is not where sovereignty lies, but what are the rights and duties of the Mandatory in regard to the area of territory being administered by it. The answer to that question depends on the international agreements creating the system and the rules of law which they attract. Its essence is that the Mandatory acquires only a limited title to the territory entrusted to it, and that the measure of its powers is what is necessary for the purpose of carrying out the Mandate...[30]

Thus the establishment of a Mandate (or Trusteeship) over a territory did not constitute cession of that territory to the Mandatory.[31] The inhabitants of the territory lost their previous nationality but did not automatically gain the nationality of the Mandatory. In 'B' and 'C' Mandates they were treated as protected persons.[32] Generally speaking, the territory was not considered by

Agreement of 20 February 1928, the Emir Abdullah was recognized as the 'local government': 128 BFSP 273; Wright, *Mandates under the League of Nations*, 458. The status of Trans-Jordan was accordingly similar to that of the other 'A' Mandates, at least after 1928.

[29] O'Connell, *International Law*, vol 1, 369.

[30] ICJ Rep 1950 p 150. See also *Ffrost v Stevenson* (1937) 58 CLR 528, 549–55 (Latham CJ), 565–6 (Dixon J), 579–80 (Evatt J), 612–15 (McTiernan J); *R v Christian* (1924) SALR (AD) 101, 106 (Ross-Innes CJ).

[31] See *Status of South West Africa*, ICJ Rep 1950 p 128, 132.

[32] See Hales (1937) 23 *Grotius ST* 85, 96–111; O'Connell (1954) 39 *BY* 458; Whiteman, 1 *Digest* 667–71.

national courts as part of the territory of the administering State, but as having a special status.[33]

So far as Trust territories were concerned, the only possible exception to this analysis was the Italian Trusteeship over Somaliland, approved by the General Assembly on 2 December 1950 for a fixed term of ten years.[34] Article 24 of the Trusteeship Agreement provided that, at the conclusion of the period of ten years, 'the Territory shall become an independent sovereign State'. Article 1 of the Annexed Declaration of Constitutional Principles stated: 'The sovereignty of the Territory is vested in the people and shall be exercised by the Administering Authority on their behalf and in the manner prescribed herein by decision of the United Nations.'[35] Exactly what the 'sovereignty' referred to in Article 1 meant is unclear: Somaliland was not independent before 1960.[36] It may be that the term 'sovereign' in Article 1 expressed in strong terms the proposition that the people of the territory were entitled to independence; but it is difficult to see what further consequences followed that were not already expressed or implicit in the Charter and the Agreement. In any case the fixed term of the Somaliland Trusteeship may well serve to distinguish it from the other Trusteeships.

[33] US courts took the view that the Pacific Islands did not constitute 'sovereign' territory of the United States: *Brunell v United States*, 77 F Supp 68, 72 (SDNY 1948); 15 ILR 519 (Saipan a 'foreign country' for the purposes of the Federal Tort Claims Act); *Application of Reyes*, 140 F Supp 130, 131 (D Haw 1956) (Kwajalein foreign territory for purposes of US immigration law); *Aradnas v Hogan*, 155 F Supp 546, 547 (D Haw 1957); 24 ILR 57 (Kwajalein foreign territory for purposes of US immigration law); *Porter v United States*, 496 F 2d 583 (Ct Cl 1974), cert den 420 US 1004 (1975) (Government of the Trust Territory not a US agency); *People of Saipan v United States Department of Interior*, 356 F Supp 645 (D Haw 1973), aff'd 502 F 2d 90 (9th Cir 1974), cert den 420 US 1003 (1975); *Gale v Andrus*, 643 F 2d 826 (1980) (FOIA does not apply to Trust Territory, which is not a US government agency); *Bank of Hawaii v Balos*, 701 F Supp 744 (D Haw 1988); 84 ILR 201 (Marshall Islands a 'foreign state' for purposes of diversity jurisdiction). Although the situation was left for a time ambiguous with respect to Palau (*In re Bowoon Sangsa Co*, 720 F 2d 595 (9th Cir 1983) (Palau courts not 'foreign' until full independence); *Morgan Guaranty Trust Co v Republic of Palau*, 639 F Supp 706, 714 (SDNY 1986). 87 ILR 590 (adoption of Compact and Palau Constitution 'reactivated a sovereignty which had been dormant'), judicial determinations remained broadly consistent on the separate status of the units of the Territory.

[34] GA res 442(V) (44–6:0).

[35] 118 UNTS 225. See also *Società ABC v Fontana and Della Rocca* (Italy, Corte di Cassazione) (1954) 22 ILR 76, 77–8: 'it is clearly wrong to say that acts performed by the State which has the power of administration over a Trust Territory can be regarded as foreign in relation to its own legal system, even though they concern another subject of international law... The Trusteeship Administration which has been entrusted to Italy comes within the limits and scope of the Italian legal system...': but cf *Trafficante v Ministry of Defence* (Consiglio di Stato, 1961) 40 ILR 37.

[36] Cf the terms of GA res 289(IVA), 21 November 1949 (48–1:9): '1. That Somaliland *shall be* an independent sovereign State; 2. That this independence shall become effective at the end of ten years from the date of the approval of a Trusteeship Agreement by the General Assembly.'

The notion of 'sovereignty' then was inapplicable to the system of Mandates and Trusteeships, according to the received view. Nevertheless writers tended to be internally consistent in their approaches to the questions of sovereignty, termination and revocation—deducing, for example, the existence of a power of revocation from the location of a residual sovereignty in the League or the United Nations,[37] or conversely the impossibility of revocation from the existence of sovereignty 'subject to the Mandate' in the Mandatory.[38] Neither approach is satisfactory. The implications to be drawn from the creation and structure of the two systems are not usefully summarized one way or another by the concept of sovereignty, which, if anything, would be a conclusion from the power of revocation rather than its premiss.

It may still be asked why the concept of sovereignty was inapplicable to the two systems. Chapter XI of the Charter embodies substantive obligations on metropolitan States with respect to their 'Non-Self-Governing Territories' not notably different from the substantive obligations of the Trusteeship System, yet it is generally considered that United Nations Members retain sovereignty over their non-self-governing (colonial) territories. The novelty of the Mandate (and Trusteeship) systems was the extent of international supervision and control over the Mandatory, and in particular over the ultimate disposition of the territory. The Mandate as a whole was, as the International Court pointed out, bound up with and inseverable from a form of international control in the interests of the inhabitants of the territory.[39] The crux of the non-sovereign position of the Mandatory or Administering Authority was that it could not unilaterally determine the status of the territory. That required international action, normally exercised through the competent League or United Nations body.

On the other hand this did not mean that either the League or the United Nations were themselves sovereign over mandated or trust territories. Whether or not international organizations can be the holders of territorial sovereignty, the point of their position was supervision, not beneficial interest. The fundamental long-term goal of Mandates and Trust territories was the progression to self-government of the people of the territory. Their rights in that regard were not rights of any international organization, and as the practice showed, those rights still had to be made effective when the organization was dissolved or if it signally failed to act.

[37] E.g., Lauterpacht, *Private Law Sources and Analogies of International Law*, 198, 200–1.

[38] Lindley, *Acquisition and Government of Backward Territory in International Law*, 247–69; cf Judge Fitzmaurice, *Namibia Opinion*, ICJ Rep 1971 p 16, 267 (para 69).

[39] *Status of South West Africa*, ICJ Rep 1950 p 128, 136–8.

termination of mandated or trust status, or the transfer from the former to the latter.

(1) Termination of Mandates

(i) During the period of the League

Neither the Mandate agreements nor Article 22 of the Covenant made express provision for the termination of Mandates, though Article 22 did state that 'the degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by Members of the League, be explicitly defined in each case by the Council.' In the event, four Mandates—the 'A' Mandates for Iraq, Syria, Lebanon and Transjordan—were terminated by independence before the dissolution of the League in 1946. Of these, only the British Mandate for Iraq was actually terminated by agreement between the new State, the Mandatory and the Council.[46] This occurred in 1932, but it was the culmination of a longer process of emancipation. As early as 1924, a British representative to the League had said that his Government

> no longer think it practicable to adopt a mandatory form, even to regulate our obligations towards the League. The conception of a mandate is not popular among the people of Iraq. It is held to imply a form of tutelage inconsistent with the facts as they stand to-day and with the large measure of independence which the Iraq State has actually acquired. In other words, Iraq has advanced too far along the path laid down in Article 22 of the Covenant for the particular form of control contemplated in that article to be any longer appropriate.[47]

In the period 1924 to 1930, a series of agreements between Iraq and Great Britain largely prefigured formal independence.[48]

The history of the termination of the other three Mandates is of considerable interest, both in itself and as illustrating the character of the Mandate regime.

[46] LNOJ (1932), 1212, 1347; Bentwich (1930) 11 *BY* 193; Wright (1931) 25 *AJIL* 436; Tripp, *A History of Iraq*, 30–76.

[47] Lord Parmoor to the Council of the League of Nations, 19 September 1924: LNOJ (1924) 1314.

[48] The United Kingdom and Iraq on 10 October 1922 had concluded a Treaty of Alliance specifying terms of the Mandatory relationship and providing that Iraq in time would become independent: 119 BFSP 389. The Council of the League, acknowledging this transaction, on 27 September 1924 approved a Mandate in light of the British representative's description of the special status of Iraq: LNOJ (1924) 1346–7. The period for which the 1922 Treaty would remain in force was defined in an agreement of 13 January 1926: 123 BFSP 446. The Mandatory and the government in the mandated territory on 30 June 1930 concluded a further Treaty of Alliance which again made provision for the independence of Iraq: 132 BFSP 280. See Gray and Olleson (2001) 12 *Finish YBIL* 354, 394. From the treaty practice it may be inferred that even before its full independence and admission to the League in 1932, Iraq was something more than a dependency of the Mandatory. Cf USFR 1943/IV, 990 (Aide-Mémoire of the British Embassy (Washington) to the Department of State, 18 September 1943).

Turning first to the French Mandates for Syria and Lebanon, on 27 September 1941 General Catroux proclaimed the independence of Syria and on 26 November 1941 of Lebanon.[49] These proclamations notwithstanding, the French Government on the whole took the view that the Mandates remained formally in existence until terminated by the League Council, and that the continued existence of the Mandates justified continued French rights with respect to Syria and Lebanon,[50] including the right to impose a treaty of future relations and to determine the composition of local government. Transfer of governmental authority was not immediate, and, in the case of Lebanon, uncertainty over French rights under the Mandate was a contributing factor to a constitutional crisis, resolved only after the United States, United Kingdom and Arab States communicated to the French Committee of National Liberation in Algiers their view that the Mandate neither continued in force nor, after termination, gave France authority to rescind decisions taken by the Lebanese parliament.[51] The United States in November 1942 accredited a Diplomatic Agent and Consul General to Beirut and Damascus, a measure it characterized as 'limited recognition'.[52] But it withheld an unequivocal statement of recognition, pending transfer by France of governmental functions to the Lebanese and Syrian authorities. The transfer was declared by the French Committee of National Liberation in December 1943 and entered into force on 1 January 1944.[53] An exchange of notes took place in September 1944, in which the governments of Lebanon and Syria affirmed the continuation of American rights as agreed in a Convention of 1924, and the United States extended full recognition.[54] 'Limited' recognition and the delay before full recognition aside, at no stage did the United States regard the continuation of the Mandate as an obstacle to independence. Rather, the view was consistently taken that the independence of the two States, provided it was sufficiently

[49] USFR 1941/III, 786; ibid, 1941/III, 805.

[50] USFR 1941/III, 790–1, 809; ibid, 1942/IV, 616; ibid, 1943/IV, 956 ('non-recognition by most foreign States justified in itself a continuing exercise of the mandatory power'); ibid, 1944/V, 785, 811.

[51] Parliament in early November 1943 had made amendments to the constitution, striking out references to the Mandate. France on 11 November forcibly dissolved the parliament, arrested the president and cabinet, and put in place a government consisting of its own nominees. USFR 1943/IV, 1003, 1011–12. French authorities on 22 November 1943 released the Lebanese politicians from jail, permitting the president, and, later, the members of his cabinet, to resume their official functions: ibid, 1943/IV, 1040–3, 1055.

[52] USFR 1942/IV, 667, 673. See also ibid, 1943/IV, 984 n 51, 1000, 1049–50.

[53] USFR 1943/IV, 1055.

[54] *Department of State Executive Agreement Series*, No 435; 58 Stat (pt 2) 1493; *Department of State Executive Agreement Series*, No 434; 58 Stat (pt 2) 1491. The United States–France Convention of 4 April 1924, in which France guaranteed American rights in Lebanon and Syria, is at USFR 1924/I, 741.

effective, could be recognized as consistent with the object and purpose of the Mandate, notwithstanding the absence of formal termination by the League.[55] Egypt, which had recognized Syria in October 1941 and Lebanon in September 1943, expressed a similar view,[56] as did Syria.[57] The British Government attempted to mediate between the United States and France, and in the process took a somewhat equivocal stance on termination.[58] However, British action, and in particular the ultimatum of May 1945,[59] was inconsistent with the retention by France of substantial authority over Syria or Lebanon.

In the event, no formal League action was taken to terminate the Mandate, which disappeared 'with graceless reluctance'.[60] No treaty with France formally terminating the French administration was concluded. The League Assembly at its final session merely welcomed 'the termination of the mandated status of Syria, the Lebanon, and Transjordan, which have, since the last Session of the Assembly [i.e. in 1939], become independent members of the world community.'[61] Syria and Lebanon both became original members of the United Nations.

The same position was taken by both the United States and the United Kingdom when the independence of Transjordan was recognized by the

[55] USFR, 1942/IV, 647–8, 665; ibid, 1943/IV, 966, 987, 1007 ('no useful purpose would be served by an academic debate on the juridical technicalities of this complex situation. The validity of the French thesis is dubious, at best, and for practical purpose the League Mandate must be regarded as being in suspense'); ibid, 1944/V, 774, 782, 785, 795–7; ibid, 1945/VIII, 1197. The Secretary of State, in a note of 22 August 1943 to the Diplomatic Agent and Consul General at Beirut, articulated a standard for recognition based on effectiveness. Recognition of the executive in a State, the Secretary wrote, was to be deferred until '1) It is in possession of the machinery of State, administering the government with the assent of the people thereof [and] 2) It is a position to fulfill the international obligations and responsibilities incumbent upon a sovereign state under treaties and international law.'

[56] According to the Prime Minister of Egypt, the Mandate 'disappeared in fact and in law on the day when the French and British Governments recognized the independence of Syria and the Lebanon. At that time they admitted that [the] League of Nations was not functioning and that Syria and Lebanon could not await its problematical resurrection in order to ratify [the] decision of [the] French and British. If the mandate remained in force, [the] British and French had no right to declare independence and conversely by so doing they put [an] end to the mandate.' USFR 1943/IV, 1012.

[57] Ibid, 1944/V, 786.

[58] Cf ibid 1941/III, 802, with 1942/IV, 646. See also 1943/IV, 900; 1945/VIII, 1041; 393 *HC Deb* col 157, 27 Oct 1943.

[59] USFR 1945/VIII, 1124.

[60] Longrigg, *Syria and Lebanon under French Mandate*, 317. Consistent with this characterization, France continued to press the view that the Mandate had some continuing vitality, arguing well after other parties had taken the issue as settled, that a treaty between the two states and France was necessary to terminate the Mandate and that such treaty should accord France a special status in Lebanon and Syria. See USFR 1944/V, 783–4.

[61] LNOJ 21st Ass (1946) Sp Supp No 194, 58. Cf the Franco-Lebanese Agreement of 24 Jan 1948; 173 UNTS 101, and the Franco-Syrian Financial Agreement of 7 Feb 1949; Rollet, 199.

conclusion of a Treaty of Alliance on 22 March 1946.[62] The separate status of Transjordan from the rest of Palestine already had been suggested by Article 25 of the Mandate, which provided that Britain, with the approval of the Council of the League, could suspend implementation of certain Mandate provisions east of the River Jordan.[63] By an Amendment to the Mandate approved in September 1922, Britain was authorized to divide the territory into two, and to limit the application of the Balfour Declaration to the area to the west, excluding Transjordan.[64] As described in the Palestine Order in Council of 1 September 1922, Transjordan consisted of 'all territory lying to the east of a line drawn from a point two miles west of the town of Aqaba on the Gulf of that name up the centre of the Wadi Araba, Dead Sea and River Jordan to its junction with the Yarmuk: hence up the centre of that river to the Syrian frontier.' Self-determination for the residents of Transjordan was achieved in stages and on the basis of the territory so delimited. The first stage was a Treaty between Great Britain and the Emir Abdullah of 20 February 1928;[65] the culmination was the Treaty of Alliance of 22 March 1946, already referred to. Although various links existed, and exist, between Jordan and the Occupied Palestinian Territory (not limited to the period 1949 to 1967 when Jordan administered the West Bank), nonetheless the effect of the separation was that issues of self-determination in respect of Palestine properly so-called, i.e. the area west of the 1922 line, had thereafter to be separately resolved. The 1994 Peace Treaty between Israel and Jordan affirmed that the western boundary of Jordan is the line laid down in 1922, but left other issues to be resolved as part of the Permanent Status Negotiations.[66]

In 1946, a British *Aide-Mémoire* stated that objections to the form by which Transjordan acceded to independence were:

> answered by the fact that (a) their intention to grant independence to Transjordan was announced at an early session of the United Nations Assembly in London, where it was not challenged by any delegate, and (b) that the final assembly of the League of Nations passed a resolution approving and welcoming this action . . . In the light of the above and of the welcome given by the United Nations Assembly in January to the announcement of His Majesty's Government's intention to recognise Transjordan as an independent

[62] Treaty of Alliance between the United Kingdom and Transjordan, with Annex and Exchange of Notes, London, 22 March 1946, 146 BFSP 461, There is no reference in the Treaty to termination of the Mandate.

[63] 8 LNOJ 1007 (24 July 1922). See also Watson, *The Oslo Accords*, 18.

[64] 116 BFSP 849.

[65] Agreement between the United Kingdom and Transjordan respecting the Administration of the Latter, Jerusalem, 20 Feb 1928, 128 BFSP 273.

[66] Israel–Jordan Treaty of Peace, Avaba/Araba Crossing Point, 26 October 1994: (1995) 34 ILM 43. See generally Al Madfai, *Jordan, The United States and the Middle East Peace Process 1974–1991*.

State... His Majesty's Government feel that, in so far as general international approval is required for setting up Transjordan as an independent State, such approval has in fact been manifestly given.[67]

The legality of this process was challenged by Poland in the Security Council when Transjordan's application for United Nations membership was under discussion.[68] The Polish representative did not appear to argue that Transjordan could not become independent without the consent of the League Council or transfer to Trusteeship. Rather he doubted whether Transjordan had in fact attained independence, and claimed that the consent of the General Assembly was a condition precedent to any such independence. Great Britain contended that such consent had in fact been given.[69] Jordan was eventually admitted to membership in 1955.[70]

It is clear, then, that these three Mandates were effectively and validly terminated without the consent of the League Council. According to one view, the reason is to be found in the fact that 'A' Mandates, having already 'provisional independence', were subject to different procedures regarding termination.[71] But there was no textual basis for this distinction; Article 22 of the Covenant applied equally to all classes of Mandate. The better view is that approval by the Council was not a condition to valid termination of a Mandate. Termination of a Mandate involved compliance with the basic purpose of the Mandate[72] and a determination of political fact—that effective self-government existed.[73] In default of approval by the League Council, recognition by individual States and appropriate action by the General Assembly was seen as sufficient to terminate the Mandate with full legal effect. And this conclusion must be right: otherwise the dissolution of the League would have deprived the mandated people of the self-government or independence which it was the principal purpose of the Mandate system to advance.[74]

[67] USFR 1946/VII, 799–800. The US view was that 'formal termination of the mandate... would be generally recognized upon the admission of [Trans-Jordan] into the United Nations as a fully independent country': ibid, 798.

[68] *SCOR* 1st yr, 2nd sess Suppl No 4, 70–1 (S/133); Higgins, *Development*, 30–1.

[69] In particular by GA res 11(I), 9 Feb 1946, clause 3 (adopted unanimously), noting with approval the Mandatory's intention to grant independence to Transjordan.

[70] GA res 995(X), 14 December 1955.

[71] This was the US view in 1946: USFR 1946/VII, 797.

[72] Throughout the Syria–Lebanon conflict the US emphasized that the independence of the two States was a right recognized and guaranteed by the Mandate: cf ibid, 1943/IV, 1008.

[73] Cf Report of PMC, June 1931 (Iraq), discussed by Hales (1937) 23 *Grotius ST* 85, 117.

[74] To the same effect, Duncan Hall, *Mandates, Dependences and Trusteeship*, 265–6; Longrigg, *Syria and Lebanon under French Mandate*, 362. In the *Aegean Sea Continental Shelf* case, Judge Tarazi expressed the view that attainment of independence automatically released the Mandatory from its obligations and thus terminated the Mandate: ICJ Rep 1978 p 3, 58.

In one other case—viz, the loss by Japan of its right to administer the Pacific Islands Mandate—dispositive elements of a Mandate were altered. What was terminated there was not the Mandate but rather the authority of the Mandatory: the matter is closer to revocation than to termination and is dealt with below. Once again no League approval for the change was forthcoming.

(ii) After the dissolution of the League

Only two Mandates survived the dissolution of the League without being transferred to the Trusteeship system—Palestine and South West Africa. With regard to both, the General Assembly unequivocally asserted its authority, each Mandatory having made a request as to the future disposition of the territory. General Assembly action with respect to Palestine has been referred to already: it is clear that, at the least, GA resolution 181(II) was effective to terminate the Mandate for Palestine, although its relevance for the future disposition of the territory was disputed.

The General Assembly also refused a South African request for permission to annex South West Africa.[75] Then, when it became clear that the territory would not be brought under Trusteeship, it asserted authority to carry out the supervisory functions of the Mandate. In this it was upheld by the International Court in *Status of South West Africa*. The Court unanimously held that the Mandate had survived the dissolution of the League and by twelve votes to two (Judges McNair and Read dissenting) that the supervisory functions were to be exercised by the Assembly.[76] In the light of United Nations practice, the rationale behind the Opinion, and the South African request for permission to annex, there can be little doubt that the Assembly also had the authority to terminate the Mandate. The extent of this authority will be discussed in the context of revocation.

(iii) By transfer to Trusteeship

All the 'B' Mandates and all but one of the 'C' Mandates were terminated by transfer to the Trusteeship system. Yet again no League Council approval for this disposition was forthcoming, though the League Assembly did 'take note' of the new system.[77] Approval of the new arrangements was a matter for the

[75] GA res 65 (I), 14 Dec 1946 (37–0:9).

[76] ICJ Rep 1950 p 128, 136–7; 155–62 (Judge McNair); 169 (Judge Read).

[77] Assembly resolution of 17 Apr 1946: LNOJ Sp Supp No 194, 254. For the arguments concerning the rejection of the 'Chinese' draft resolution purporting to transfer supervisory functions to the UN see Judge Jessup, *South West Africa Cases (Second Phase)*, ICJ Rep 1966 p 6, 347–8; but see Judge Fitzmaurice, *Namibia Opinion*, ICJ Rep 1971 p 6, 247–9.

> It is for the people to determine the destiny of the territory and not the territory the destiny of the people.
>
> Judge Dillard, sep op, *Western Sahara Case*
> 1975 ICJ Rep p 12, 122

14.1 Introduction

Before 1945 there was very little general international concern with colonial issues, and still less with the progress of colonized peoples to self-government. The Mandate and Trusteeship systems provided for progressive development towards independence or self-government of certain colonial territories, but their ambit was restricted, and has remained so.

However, at the San Francisco Conference more extensive provision for colonial territories was made, in the form of Chapter XI of the Charter, entitled 'Declaration Regarding Non-Self-Governing Territories'.[1] Chapter XI, which contains only Articles 73 and 74, is an attempt to apply somewhat similar ideas to those embodied in Article 22 of the Covenant to a far broader category of territory. The focus here will be on the dispositive aspects of Chapter XI, and on the extensive practice pursuant to Chapter XI. The status of that practice was historically controversial, but most UN Members took an extensive view of Chapter XI, and in general these views prevailed. Indeed, it has been largely through the medium of Chapter XI that Members have extended and elaborated the operation of the principle of self-determination.

In accordance with Article 73:

> Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories . . .

Article 73 then sets out five specific undertakings relating to (1) the development of the peoples concerned, (2) progress towards self-government, (3) the furtherance of international peace and security, (4) economic development, and (5) the regular transmission of certain information to the Secretary-General. An important development in the practice pursuant to Article 73

[1] See GA res 9 (I), 9 Feb 1946; for the *travaux préparatoires*, Russell and Muther, *A History of the United Nations Charter*, 813–24.

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was the Declaration on the Granting of Independence to Colonial Countries and Peoples,[2] which, like certain other Assembly Declarations, has achieved in practice a quasi-constitutional status.[3] Clause 7 of the Declaration places it on a par with the Universal Declaration of Human Rights and the Charter itself. The Colonial Declaration addresses all 'Trust and Non-Self-Governing Territories' and 'all other territories which have not yet attained independence' (c 5), so that it derives in part from Chapters XI and XII, and in part from the customary law right of self-determination. It provides, *inter alia*, that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation...
3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.
4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence; and the integrity of their national territory shall be respected.
5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories... to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence or freedom.
6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter...

United Nations practice under Chapter XI, and the Colonial Declaration as an integral part of that practice, have been explicitly approved by the International Court. In the *Namibia* case the Court stated that:

the concepts embodied in Article 22 of the Covenant... were not static, but were by definition evolutionary, as also, therefore, was the concept of the 'sacred trust'.

[2] Often referred to as the Colonial Declaration: GA res 1514 (XV), 14 Dec 1960 (89–0: 9) (Australia, Belgium, Dominican Republic, France, Portugal, South Africa, Spain, UK and USA abstaining).

[3] For practice pursuant to the Declaration see *UN Repertory*, Supp III, vol 3, paras 302–48. Also Asamoah, *The Legal Significance of the Declarations of the General Assembly of the United Nations*, 163; Fastenrath in Simma, *The Charter of the United Nations* (2nd edn), 1089.

The parties to the Covenant must consequently be deemed to have accepted them as such. That is why, viewing the institutions of 1919, the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law.[4]

This is equally true of Article 73 of the Charter, based as it is on Article 22 of the Covenant; and the Court explicitly affirmed the applicability of self-determination to non-self-governing territories under the Charter. In the *Western Sahara* Case, after referring to this passage, the Majority Opinion reaffirmed '[t]he validity of the principle of self-determination'.[5] In its view, Spain, as an administering power, 'has not objected, and could not validly object, to the General Assembly's exercise of its powers to deal with the decolonization of a non-self-governing territory...'[6] Thus the 'right of [the Spanish Sahara] population to self-determination' was 'a basic assumption of the questions put to the Court'.[7] The Court's reply to those questions, equally, was based upon 'existing rules of international law'.[8] On the other hand, the Court stated, 'the right of self-determination leaves the General Assembly a measure of discretion with respect to the forms and procedures by which that right is to be realized.'[9] In view of the fact that all but a few non-self-governing territories have achieved self-government in some form or other, the exercise of this 'procedural discretion' by the General Assembly in respect to the remaining territories (most of them small and relatively non-viable) has assumed considerable importance—it was the issue before the Court in the *Western Sahara* case.[10] Before considering these specific problems of application, a brief account of the development of Chapter XI in practice since 1945 is in order.[11]

[4] ICJ Rep 1971 p 16, 31; 49 ILR 2, 21. [5] ICJ Rep 1975 p 12, 31–3.

[6] Ibid, 33. The Court referred to GA res 1514 (XV) as providing 'the basis for the process of decolonization which has resulted since 1960 in the creation of many States which are today Members of the United Nations': ibid, 32. [7] Ibid, 36.

[8] Ibid, 36. [9] Ibid, 30, 37. [10] Ibid, 36.

[11] The best study, of an extensive literature, is still Rigo Sureda, *The Evolution of the Right of Self-Determination*. See also Sud, *The United Nations and Non-Self-Governing Territories*; Ahmad, *The United Nations and the Colonies*; El-Ayouty, *The United Nations and Decolonization*; Rajan, *The United Nations and Domestic Jurisdiction* (2nd edn), 133–222; Barbier, *Le Comité de décolonization des Nations-Unies*; Nawaz (1962) 2 *Indian YIA* 3; van Asbeck (1947) 71 *HR* 345. See also Orentlicher (1998) 23 *Yale ILJ* 1; Aldrich and Connell, *The Last Colonies*.

could be at the same time 'non-self-governing'. Or, if the antithesis between the two is to be seen as stipulated by Article 74, a territory might cease to be 'metropolitan' when it becomes 'non-self governing', whatever its history.[13]

The usual and more restrictive view is that Chapter XI was intended to apply only to 'territories, known as colonies at the time of the passing of the Charter'.[14] In particular, according to Principle IV of resolution 1541 (XV): '*Prima facie* there is an obliation to transmit information in respect of a territory which is geographically separate and is distinct ethnically and/or culturally from the country administering it.' Thereafter, according to Principle V:

> Once it has been established that such a *prima facie* case of geographical and ethnical or cultural distinctness of a territory exists, other elements may then be *inter alia*, of an administrative, political, juridical, economic or historical nature. If they affect the relationship between the metropolitan State and the territory concerned in a manner which arbitrarily places the latter in a position or status of subordination, they support the presumption that there is an obligation to transmit information under Article 73e of the Charter.

Given these restrictive criteria, the question has been to determine which territories come within the ambit of Chapter XI.

(2) Competence to determine whether a territory falls under Chapter XI

In the early sessions of the Assembly, Administering States expressed a view that it was within the domestic jurisdiction of the administering State concerned to decide whether a given territory was non-self-governing for purposes of Chapter XI.[15] They argued that Chapter XI, as a 'Declaration', represented merely a statement by administering powers of their colonial policy rather than a binding legal obligation.[16] That argument, not surprisingly, did not gain

[13] This was the contention of Belgium in 1952 (the so-called 'Belgian Thesis'): 'It cannot... be maintained that "colonies" are the only territories envisaged in ch XI. Colonies are not the only territories whose people are not completely self-governing, and the word 'colonies' does not appear anywhere in ch XI. To maintain that it is only colonies that are intended is therefore to limit arbitrarily the number of States bound by ch XI and to discriminate to the disadvantage of many peoples which are not yet completely self-governing.' Cited in Whiteman, 13 *Digest* 697–8. See also Belgian Government Information Centre, New York, 1953.

[14] GA res 1541 (XV), Annex: *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for in Article 73e of the Charter of the* Principle I (99–221); Nawaz (1962) 11 *Indian YIA* 3, 13. But Art 73 expressly refers to after-acquired territories: it would be strange if only the characteristics of colonies in 1945 were to be relevant in such cases.

[15] See, e.g., A/64/Add 1, 125; A/AC 100/1, 43; UN Rep Vol IV, 68; Kelsen *Law of the United Nations*, 557. Cf Higgins, *Development*, 83–7, 110–13; Rajan, *UN and Domestic Jurisdiction*, 194–212.

[16] French delegate, *GAOR*, 1st sess Part 2, 4th ctee, pt 3, 27.

widespread acceptance: the Charter is a treaty and the terms of Article 73 '*prima facie* connote legal obligation'.[17] It was implausible from the beginning that the applicability of Chapter XI could be a matter of domestic jurisdiction, and the issue came to be accepted as at least within the concurrent competence of the Assembly.[18] In practice, the extent of Chapter XI has been determined by the United Nations acting in conjunction with the administering State, but the possibility was reserved of unilateral determination by the General Assembly. Given the evolutionary nature of Chapter XI, the presumption in favour of the validity of concerted Assembly action is strong.[19]

(3) The scope of Chapter XI in practice

In the beginning, the scope of Chapter XI was determined by the replies of States to a letter from the Secretary-General requesting information about non-self-governing territories.[20] As a result, about seventy-two[21] territories under eight different administering States were listed in resolution 66 (I)[22] as territories with regard to which information under Article 73e had been or would be submitted. This voluntary method was not likely to achieve the consistent or comprehensive application of Chapter XI, but the only objections to the enumeration of territories in resolution 66 (I) were made by States with claims to sovereignty over certain of them (Guatemala over British Honduras; Panama over the Panama Canal Zone; and Argentina over the Falkland (Malvinas) Islands).[23]

In 1955, after the admission of Spain and Portugal to United Nations membership, the issue of their colonial territories was raised. They refused to bring their colonial territories within the reporting system of Chapter XI: in response,

[17] Waldock (1962-II) 106 *HR* 1, 28–34; Oppenheim (8th edn, 1955), vol I, 240.

[18] Cf GA res 334 (IV), para 1 (30–12:10); GA res 1467 (XIV), para 1 (54–5:15); Higgins, *Development*, 112–13.

[19] Cf *Expenses Opinion*, ICJ Rep 1962 p 151, 168.

[20] A/74, 29 June 1946; authorized by GA res 9 (I), 9 February 1946.

[21] The UN's standard study refers to 72 territories (see *The United Nations and Decolonization* (2001) (http://www.un.org/Depts/dpi/decolonization/brochure/UN/page1.html)). The exact number depends whether the 'High Commission Territories of the Western Pacific' (Gilbert and Ellice Islands Colony; the British Solomon Islands Protectorate and the Pitcairn Islands) are treated as a single territory; in practice they were treated as separate, thus bringing to 74 the territories listed in res 66 (I). This was the US view: A/915/Add.1, 22 Aug 1949. The UK itself, for purposes of internal reporting, treated them separately. See Colonial Office, *Colonial Reports*, 'Gilbert & Ellice Islands' (1948, 1949); 'British Solomon Islands' (1948, 1949–50); Neill, *Pitcairn Island: General Administrative Report*, Colonial No 155. See also Pacific Order in Council 1893, s 6(1) (referring to 'Pacific dependencies', in the plural).

[22] 13 Dec 1946 (27–7:13).

[23] See 1946–7 *UNYB*, 210; *GAOR*, 1st sess, 2nd part, Fourth Committee, 20th meeting, 113 (Panamanian statement of 14 Nov 1946).

the General Assembly moved to specify criteria for non-self-governing territories, which it did in resolution 1541 (XV). In accordance with those criteria it went on to determine that particular territories fell within Chapter XI.[24] Spain eventually agreed to comply with Assembly recommendations,[25] but Portugal refused and the Assembly itself designated nine Portuguese territories as non-self-governing.[26]

In 1962, with the impending secession of Southern Rhodesia, the Assembly also declared it to be a non-self-governing territory.[27] The British contention was that, since Southern Rhodesia was a 'self-governing colony' in British constitutional law, it did not have the status of a 'Non-Self-Governing Territory' under the Charter and that any United Nations declaration to the contrary was *ultra vires*.[28] This was consistent with British practice since 1945, insofar as the UK had not transmitted information with respect to Southern Rhodesia under Article 73(e). This view was rejected by the General Assembly. But in 1965 the British Government itself, by the Southern Rhodesia Act, claimed 'responsibilities for the administration' of Southern Rhodesia: thus, whatever the position may have been at an earlier stage, the status of Southern Rhodesia as non-self-governing was clear enough by 1965.[29]

At various times the General Assembly took action with reference to resolution 1541 (XV) in connection with a number of further territories, including French territories in Africa and the Pacific;[30] most recently New Caledonia,

[24] GA res 1542 (XV), 15 Dec 1960, para 1 (Portuguese territories); para 5 (Spanish territories).

[25] Spanish statement to the Committee on Information from Non-Self-Governing Territories, 7 November 1960: A/C.4/SR.1038, paras 20–8 (Mr Aznar, Spain). In May 1961, the participation of Spain in the work of the Committee was welcomed; and the Spanish representative told the Committee that 'Spain had nothing to hide with regard to the Territories it administered': A/AC.35/SR.238, 17 May 1961, 4 (Mr Rasgotra, India); A/AC.35/SR.239, 18 May 1961, 3 (Mr De Pinies, Spain). Spain tabled detailed information concerning Fernando Poo, Rio Muni, and (Western) Sahara: A/4785, Annex V, paras 37 ff; A/5078/Add.3.

[26] GA res 1542 (XV), 15 Dec 1960, para 1 (68–6:17). See *UN Repertory*, Supp III, vol 3, Art 73, paras 105–29; Wohlgemuth, *IntConc* No 545 (Nov 1963). For the Portuguese position see A/C.4/SR.1036, paras 34–61 (Mr Nogueira, Portugal). The Portuguese arguments were set out in Nogueira, *The UN and Portugal: A Study of Anticolonialism*. See also Galvão Teles and Canelas de Castro (1996) 34 *AdV* 3, 11.

[27] GA res 1747 (XVI), 28 June 1962 (73–1:27, Portugal and UK np.).

[28] *GAOR*, 17th sess, 4th ctee, 360th mtg, A/C.4/SR 1360, 11 ff. Internally, the UK regarded it as 'constitutionally inappropriate' to transmit information about self-governing territories: Cmnd 8035 (1950), para 79. See also Cmnd 2807 (1965). Southern Rhodesia acquired responsible government under a limited franchise in 1923: Southern Rhodesia Constitution Letters Patent of 1 Sept 1923, attached to Southern Rhodesia (Annexation) Order in Council 1923 (UK). See also Southern Rhodesia (Constitution) Act 1961 (UK).

[29] The declaration in the Southern Rhodesia Constitution Order 1965 (UK) that the UDI constitution was illegal reinforced the point.

[30] GA res 2069 (XX), 16 Dec 1965 (Condominium of New Hebrides); GA res 2228 (XXI), 20 December 1966 (French Somaliland); GA res 3161 (XXVIII), 14 Dec 1973 (Comoros).

which, by resolution 41/41A in 1986 was designated as non-self-governing.[31] To provide an institutional locus for decolonization matters after the Colonial Declaration, the Assembly in 1961 established a Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, first with seventeen members, and, from 1962 with twenty-four.[32]

The Committee of Twenty-Four (as it came to be called) not only added territories to the list; it also declined to delete others. Certain territories no longer reported on by Administering States continued to be considered by the Committee: these included the Comoro Archipelago,[33] the French Territory of the Afars and Isaas (formerly French Somaliland, now Djibouti),[34] and the West Indies Associated States (until the disaggregation of that entity in the early 1980s). In addition, Puerto Rico, which was removed from the General Assembly list of Non-Self-Governing Territories in 1953,[35] has continued to be considered by the Committee of Twenty-four, fifty years after its 'de-listing'.[36]

A complete list of Chapter XI territories and their eventual political status is set out in Appendix 3 (pp. 746–56).

(4) Possible extension of Chapter XI beyond colonial territories

I have already discussed whether Chapter XI is limited to territories of the colonial type, or whether the term 'non-self-governing' should be read in some

[31] GA res 41/41A, 2 Dec 1986 (New Caledonia). [32] GA res 1654 (XVI), 27 Nov 1961.

[33] In a referendum on 22 December 1974, the inhabitants of the four islands voted overwhelmingly (94%) for independence. On one island (Mayotte), there was however a majority in favour of continued association with France. In negotiations for independence, attempts were made to secure separate self-determination, or at least substantial constitutional guarantees, for the inhabitants of Mayotte. The local government rejected these attempts and on 6 July 1975 unilaterally declared their independence. This was accepted (with respect to the three main islands) by France on 9 July 1975, and the Comoro Islands were recognized thereafter by a number of other States, and admitted to the UN on 12 November 1975. See (1975) 80 *RGDIP* 793; Ostheimer, *The Politics of the Western Indian Ocean Islands*, 73–101; and on the decision of the French Constitutional Court, Ruzié (1976) 103 *JDI* 392, Favoreu [1976] *Rev Droit Public* 557. The General Assembly rejected continued French occupation of Mayotte as a violation of the 'national unity of the Comorian State...': GA res 31/4 (XXXI), 21 Oct 1976 (102–1:28). See also GA res 32/7, 1 Nov 1977 (121–0: 17, France np); GA resns 34/69, 6 Dec 1979; 35/43, 28 Nov 1980; 36/105, 10 Dec 1981; 37/65, 3 Dec 1982; 38/13, 21 Nov 1983; 39/48, 11 Dec 1984; 40/62, 9 Dec 1985; 41/30, 3 Nov 1986; 42/17, 11 Nov 1987; 43/14, 26 Oct 1988; 44/9, 18 Oct 1989; 45/11, 1 Nov 1990; 46/9, 16 Oct 1991; 47/9, 27 Oct 1992; 48/56, 13 Dec 1993; 49/18, 28 Nov 1994. See further Aldrich and Connell, *The Last Colonies*, 228–32, 262.

[34] Djibouti was admitted to the United Nations in 1977: GA res 32/1, 20 Sept 1977.

[35] On constitutional arrangements between Puerto Rico and the United States and discussions concerning the cessation of transmission of information under Art 73e, see Igarashi, *Associated Statehood in International Law*, 44–62.

[36] On Puerto Rico see Committee of Twenty-four res A/AC.109/2000/24, 12 July 2000; A/55/23, paras 30–9.

Annex 151

David Vine, *Island of Shame: The Secret History of the U.S. Military Base on Diego Garcia* (2009)

ISLAND OF SHAME

The Secret History of the U.S. Military Base on Diego Garcia

With a new afterword by the author

David Vine

PRINCETON UNIVERSITY PRESS

PRINCETON ■ OXFORD

Annex 151

Copyright © 2009 by Princeton University Press
Published by Princeton University Press, 41 William Street,
Princeton, New Jersey 08540
In the United Kingdom: Princeton University Press, 6 Oxford Street,
Woodstock, Oxfordshire OX20 1TW
press.princeton.edu

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Fourth printing, and first paperback printing, 2011
Paperback ISBN 978-0-691-14983-7

THE LIBRARY OF CONGRESS HAS CATALOGED THE CLOTH EDITION OF THIS BOOK AS FOLLOWS

Vine, David, 1974–
Island of shame : the secret history of the U.S. military base on Diego Garcia / David Vine.
p. cm.
Includes bibliographical references and index.
ISBN 978-0-691-13869-5 (hbk. : alk. paper) 1. United States. Naval Communications Station, Diego Garcia—History. 2. Military bases, American—British Indian Ocean Territory—Diego Garcia. 3. Chagossians—History. 4. Population transfers—Chagossians. 5. Refugees—Mauritius. 6. Refugees—British Indian Ocean Territory. 7. British Indian Ocean Territory—History. 8. Diego Garcia (British Indian Ocean Territory)—History. I. Title.
VA68.D53V66 2008
355.70969'7—dc22 2008027868

British Library Cataloging-in-Publication Data is available

This book has been composed in Adobe Garamond

The author will donate all royalties from the sale of this book to the Chagossians.

Printed on acid-free paper. ∞

Printed in the United States of America

5 7 9 10 8 6 4

"No person shall be . . . deprived of life, liberty, or property, without due process; nor shall private property be taken for public use, without just compensation."

—Fifth Amendment to the United States Constitution, 1791

"No one shall be subjected to arbitrary arrest, detention or exile. . . . No one shall be subjected to arbitrary interference with his privacy, family [or] home. . . . No one shall be arbitrarily deprived of his property. . . . Everyone has the right to freedom of movement and residence within the borders of each State."

—Articles 9, 12, 17, 13, Universal Declaration of Human Rights, 1948

"We, the inhabitants of Chagos Islands—Diego Garcia, Peros Banhos, Salomon—have been uprooted from those islands. . . . Our ancestors were slaves on those islands, but we know that we are the heirs of those islands. Although we were poor there, we were not dying of hunger. We were living free."

—Petition to the governments of the United Kingdom and the United States, 1975

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A NOTE TO THE READER

Quotations that appear in this book without citation come from interviews and conversations conducted during my research. Translations from French, Mauritian Kreol, and Seselwa (Seychelles Kreol) are my own. The names and some basic identifying features of Chagossians in the book (other than members of the Bancoult family and representatives of the Chagos Refugees Group) have been changed in accordance with anonymity agreements made during the research.

INTRODUCTION

Rita felt like she'd been sliced open and all the blood spilled from her body.

"What happened to you? What happened to you?" her children cried as they came running to her side.

"What happened?" her husband inquired.

"Did someone attack you?" they asked.

"I heard everything they said," Rita recounted, "but my voice couldn't open my mouth to say what happened." For an hour she said nothing, her heart swollen with emotion.

Finally she blurted out: "We will never again return to our home! Our home has been closed!" As Rita told me almost forty years later, the man said to her: "Your island has been sold. You will never go there again."

Marie Rita Elysée Bancoult is one of the people of the Chagos Archipelago, a group of about 64 small coral islands near the isolated center of the Indian Ocean, halfway between Africa and Indonesia, 1,000 miles south of the nearest continental landmass, India. Known as Chagossians, none live in Chagos today. Most live 1,200 miles away on the western Indian Ocean islands of Mauritius and the Seychelles. Like others, 80-year-old Rita lives far from Mauritius's renowned tourist beaches and luxury hotels. Rita, or Aunt Rita as she is known, lives in one of the island's poorest neighborhoods, known for its industrial plants and brothels, in a small aging three-room house made of concrete block.

Rita and other Chagossians cannot return to their homeland because between 1968 and 1973, in a plot carefully hidden from the world, the United States and Great Britain exiled all 1,500–2,000 islanders to create a major U.S. military base on the Chagossians' island Diego Garcia. Initially, government agents told those like Rita who were away seeking medical treatment or vacationing in Mauritius that their islands had been closed and they could not go home. Next, British officials began restricting supplies to the islands and more Chagossians left as food and medicines dwindled. Finally, on the orders of the U.S. military, U.K. officials forced the remaining islanders to board overcrowded cargo ships and left them on the docks in Mauritius and the Seychelles. Just before the last deportations, British agents and U.S. troops on Diego Garcia herded the Chagossians' pet dogs into sealed sheds and gassed and burned them in front of their traumatized owners awaiting deportation.

The people, the descendants of enslaved Africans and indentured south Indians brought to Chagos beginning in the eighteenth century, received no resettlement assistance and quickly became impoverished. Today the group numbers around 5,000. Most remain deeply impoverished. Meanwhile the base on Diego Garcia has become one of the most secretive and powerful U.S. military facilities in the world, helping to launch the invasions of Afghanistan and Iraq (twice), threatening Iran, China, Russia, and nations from southern Africa to southeast Asia, host to a secret CIA detention center for high-profile terrorist suspects, and home to thousands of U.S. military personnel and billions of dollars in deadly weaponry.

"You were born—"

"Peros Banhos," replied Rita Bancoult* before I could finish my question.

"In what year?"

"1928. . . . The thirtieth of June."

Rita grew up in Peros Banhos's capital and administrative center, *L'île du Coin*—Corner Island. *"Lamem monn ne, lamem monn reste,"* she added in the songlike, up-and-down cadence of Chagossians' Kreol: La-MEM moan NAY, la-MEM moan rest-AY. "The island where I was born is the island where I stayed."[1]

Corner Island and 31 neighboring islands in the Peros Banhos atoll form part of the Chagos Archipelago. Portuguese explorers named the largest and best-known island in the archipelago Diego Garcia, about 150 miles to the south. The archipelago's name appears to come from the Portuguese *chagas*—the wounds of Christ.[2]

"And your parents?" I asked. "What island were your parents born on?"

"My parents were born there too," Rita explained. "My grandmother—the mother of my father—was born in Six Islands—*Six Îles.* My father was also born in Six Islands. My grandfather was born there too. My grandmother on my mother's side was born in Peros Banhos."

Rita does not know where her other ancestors were born, one of the injuries still borne by people with enslaved forebears. However, she remembers her grandmother, Olivette Pauline, saying that Olivette's grandmother—Rita's great-great-grandmother—had been enslaved and had the name "Masambo" or "Mazambo." Rita thinks she was a *Malgas*—a person from Madagascar.

* Rita's last name has since changed to Isou, but for reasons of clarity I will refer to her throughout by the name Bancoult.

Rita and her family are some of Chagos's indigenous people.[3] Chagossians lived in Diego Garcia and the rest of the previously uninhabited archipelago since the time of the American Revolution when Franco-Mauritians created coconut plantations on the islands and began importing enslaved and, later, indentured laborers from Africa and India.

Over the next two centuries, the diverse workforce developed into a distinct, emancipated society and a people known initially as the *Ilois*—the Islanders. Nearly everyone worked on the coconut plantations. Most worked in the production of copra—dried coconut flesh—and coconut oil made by pressing copra. The people built the archipelago's infrastructure and produced its wealth. As some maps still attest, the islands became known as the "Oil Islands"—meaning coconut oil, not the petroleum that would prove central to the archipelago's recent history. A distinct Chagos Kreol language emerged. The people built their own houses, inhabited land passed down from generation to generation, and kept vegetable gardens and farm animals. By the time Rita was a mother, there were nurseries and schools for her children. In 1961, Mauritian colonial governor Robert Scott remarked that the main village on Diego Garcia had the "look of a French coastal village miraculously transferred whole to this shore."[4]

While far from luxurious and still a plantation society, the islands provided a secure life, generally free of want, and featuring universal employment and numerous social benefits, including regular if small salaries in cash and food, land, free housing, education, pensions, burial services, and basic health care on islands described by many as idyllic.

"You had your house—you didn't have rent to pay," said Rita, a short, stocky woman with carefully French-braided white hair. "With my ration, I got ten and a half pounds of rice each week, I got ten and a half pounds of flour, I got my oil, I got my salt, I got my dhal, I got my beans—it was only butter beans and red beans that we needed to buy.

"And then I got my fresh fish, Saturday. I got my salted fish too, of at least four pounds, five pounds to take. But we didn't take it because we were able to catch fish ourselves. . . . We planted pumpkin, we planted greens. . . . Chickens, we had them. Pigs, the company fed them, and we got some. Chickens, ducks, we fed them ourselves.

"I had a dog named *Katorz*—Katorz, when the sea was at low tide, he would go into the sea. He caught fish in his mouth and he brought them back to me," recalled Rita 1,200 miles from her homeland.

"Life there paid little money, a very little," she said, "but it was the sweet life."

During the winter of 1922, eight-year-old Stuart Barber was sick and confined to bed at his family's home in New Haven, Connecticut. A solitary child long troubled by health problems, Stu, as he was known, found solace that winter in a cherished geography book. He was particularly fascinated by the world's remote islands and had a passion for collecting the stamps of far-flung island colonies. While the Falkland Islands off the coast of Argentina in the South Atlantic became his favorite, Stu noticed that the Indian Ocean was dotted with many islands claimed by Britain.[5]

Thirty-six years later, after having experienced a taste of island life as a naval intelligence officer in Hawai'i during World War II, Stu was drawing up lists of small, isolated colonial islands from every map, atlas, and nautical chart he could find. It was 1958. Thin and spectacled, Stu was a civilian back working for the Navy at the Pentagon.

The Navy ought to have a permanent facility, Stu suddenly realized, like the island bases acquired during the Pacific's "island hopping" campaign against Japan. The facility should be on "a small atoll, minimally populated, with a good anchorage." The Navy, he began to tell his superiors, should build a small airstrip, oil storage, and logistical facilities. The Navy would use it "to support minor peacetime deployments" and major wartime operations.[6]

Working in the Navy's long-range planning office, it occurred to Stu that over the next decades island naval bases would be essential tools for maintaining military dominance during the Cold War. In the era of decolonization, the non-Western world was growing increasingly unstable and would likely become the site of future combat. "Within the next 5 to 10 years," Stu wrote to the Navy brass, "virtually all of Africa, and certain Middle Eastern and Far Eastern territories presently under Western control will gain either complete independence or a high degree of autonomy," making them likely to "drift from Western influence."[7]

All the while, U.S. and other Western military bases were becoming dangerous targets of opposition both in the decolonizing world and from the Soviet Union and the United Nations. The inevitable result for the United States, Stu said, was "the withdrawal" of Western military forces and "the denial or restriction" of Western bases in these areas.[8]

But Stu had the answer to these threats. The solution, he saw, was what he called the "Strategic Island Concept." The plan would be to avoid traditional base sites located in populous mainland areas where they were vulnerable to local non-Western opposition. Instead, "only relatively small, lightly populated islands, separated from major population masses, could be safely held under full control of the West." Island bases were the key.

But if the United States was going to protect its "future freedom of military action," Stu realized, they would have to act quickly to "stockpile" island basing rights as soon as possible. Just as any sensible investor would "stockpile any material commodity which foreseeably will become unavailable in the future," Stu believed, the United States would have to quickly buy up small colonial islands around the world or otherwise ensure its Western allies maintained sovereignty over them. Otherwise the islands would be lost to decolonization forever.[9]

As the idea took shape in his head, Stu first thought of the Seychelles and its more than 100 islands before exploring other possibilities. Finally he found time to gather and "scan all the charts to see what useful islands there might be": There was Phuket, Cocos, Masirah, Farquhar, Aldabra, Desroches, Salomon, and Peros Banhos in and around the Indian Ocean alone. After finding all to be "inferior sites," Stu found "that beautiful atoll of Diego Garcia, right in the middle of the ocean."[10]

Stu saw that the small v-shaped island was blessed with a central location within striking distance of potential conflict zones, one of the world's great natural harbors in its protected lagoon, and enough land to build a large airstrip. But the Navy still needed to ensure it would get a base absent any messy "political complications." Any targeted island would have to be "free of impingement on any significant indigenous population or economic interest." Stu was pleased to note that Diego Garcia's population was "measured only in the hundreds."[11]

When in late 1967 a mule-drawn cart ran over the foot of Rita's three-year-old daughter Noellie, the nurse in Peros Banhos's eight-bed hospital told Rita that the foot needed an operation. She would have to take Noellie to the nearest full-service hospital, 1,200 miles away in Mauritius.

Going to Mauritius meant waiting for the next and only boat service—a four-times-a-year connection with the larger island. Which meant waiting two months. When the boat finally arrived, Rita packed a small box with some clothes and a pot to cook in, locked up the family's wood-framed, thatched-roof house, and left for Mauritius with Noellie, her husband, Julien Bancoult, and their five other children.

After four days on the open ocean, the family arrived in the Mauritian capital, Port Louis, and rushed Noellie to the nearest hospital. As Rita recalled, a doctor operated but saw immediately that the foot had gone untreated for "much too long." Gangrene had set in. Noellie died a month later.

Mourning her death, the family had to wait two months until the departure of the next boat for Chagos. With the departure date approaching, Rita

walked to the office of the steamship company to arrange for the family's return. There the steamship company representative told her, "Your island has been sold. You will never go there again," leaving Rita to return to her family speechless and in tears.

When Julien finally heard his wife's news he collapsed backwards, his arms splayed wide, unable to utter a word. Prevented from returning home, Rita, Julien, and their five surviving children found themselves in a foreign land, separated from their home, their land, their animals, their possessions, their jobs, their community, and the graves of their ancestors. The Bancoults had been, as Chagossians came to say, *derasine*—deracinated, uprooted, torn from their natal lands.

"His sickness started to take hold of him," Rita explained. "He didn't understand" a thing she said.

Soon Julien suffered a stroke, his body growing rigid and increasingly paralyzed. "His hands didn't move, his feet didn't move. Everything was frozen," Rita said. Before the year was out, she would spend several weeks receiving treatment in a psychiatric hospital.

Five years after suffering the stroke, Julien died. Rita said the cause of death was *sagren*—profound sorrow.

"There *wasn't* sickness" like strokes or *sagren* in Peros Banhos, Rita explained. "There wasn't that sickness. Nor diabetes, nor any such illness. What drugs?" she asked rhetorically. "This is what my husband remembered and pictured in his mind. Me too, I remember these things that I've said about us, David. My heart grows heavy when I say these things, understand?"

After Julien's death, the Bancoults' son Alex lost his job as a dockworker. He later died at 38 addicted to drugs and alcohol. Their son Eddy died at 36 of a heroin overdose. Another son, Rénault, died suddenly at age eleven, for reasons still mysterious to the family, after selling water and begging for money at a local cemetery near their home.

"My life has been buried," Rita told me from the torn brown vinyl couch in her small sitting room. "What do I think about it?" she continued. "It's as if I was pulled from my paradise to put me in hell. Everything here you need to buy. I don't have the means to buy them. My children go without eating. How am I supposed to bear this life?"

"Welcome to the Footprint of Freedom," says the sign on Diego Garcia. Today, at any given time, 3,000 to 5,000 U.S. troops and civilian support staff live on the island. "Picture a tropical paradise lost in an endless

expanse of cerulean ocean," described *Time* magazine reporter Massimo Calabresi when he became one of the first journalists in over twenty-five years to visit the secretive atoll. Calabresi earned the privilege traveling with President George W. Bush and Air Force One during a ninety-minute refueling stop between Iraq and Australia. "Glossy palm fronds twist in the temperate wind along immaculate, powder white beaches. Leathery sea turtles bob lazily offshore, and the light cacophony of birdsong accents the ambient sound of wind and waves," he reported. "Now add concrete. Lots and lots of concrete. . . . Think early-'70s industrial park."[12]

Confined to an auditorium during his stay (but presented with a souvenir t-shirt bearing "pictures of scantily clad women and mermaids" and the words "Fantasy Island, Diego Garcia"), Calabresi was prevented from touring the rest of the island. If he had, he would have found what, like most overseas U.S. bases, resembles a small American town, in this case magically transported to the middle of the Indian Ocean.

Leaving Diego Garcia International Airport, Calabresi might have stayed at the Chagos Inn; dined at Diego Burger or surfed the internet at Burgers-n-Bytes; enjoyed a game of golf at a nine-hole course; gone shopping or caught a movie; worked out at the gym or gone bowling; played baseball or basketball, tennis or racquetball; swam in one of several pools or sailed and fished at the local marina; then relaxed with some drinks at one of several clubs and bars. Between 1999 and 2007, the Navy paid a consortium of private firms called DG21 nearly half a billion dollars to keep its troops happy and to otherwise feed, clean, and maintain the base.

The United Kingdom officially controls Diego Garcia and the rest of Chagos as the British Indian Ocean Territory (BIOT). As we will later see, the British created the colony in 1965 using the Queen's archaic power of royal decree, separating the islands from colonial Mauritius (in violation of the UN's rules on decolonization) to help enable the expulsion. A secret 1966 agreement signed "under the cover of darkness" without congressional or parliamentary oversight gave the United States the right to build a base on Diego Garcia. While technically the base would be a joint U.S.-U.K. facility, the island would become a major U.S. base and, in many ways, *de facto* U.S. territory. All but a handful of the troops are from the United States. Private companies import cheaper labor from places like the Philippines, Sri Lanka, and Mauritius (though until 2006 no Chagossians were hired) to do the laundry, cook the food, and keep the base running. The few British soldiers and functionaries on the atoll spend most of their time raising the Union Jack, keeping an eye on substance abuse as the local police force, and offering authenticity at the local "Brit Club." Diego

Garcia may be the only place in what remains of the British Empire where cars drive on the right side of the road.

In the years since the last Chagossians were deported in 1973, the base has expanded dramatically. Sold to Congress as an "austere communications facility" (to assuage critics nervous that Diego Garcia represented the start of a military buildup in the Indian Ocean), Diego Garcia saw almost immediate action as a base for reconnaissance planes in the 1973 Arab-Israeli war. The base grew steadily throughout the 1970s and expanded even more rapidly after the 1979 revolution in Iran and the Soviet invasion of Afghanistan: Under Presidents Carter and Reagan, Diego Garcia saw the "most dramatic build-up of any location since the Vietnam War." By 1986, the U.S. military had invested $500 million on the island.[13] Most of the construction work was carried out by large private firms like long-time Navy contractor Brown & Root (later Halliburton's Kellogg Brown & Root).

Today Diego Garcia is home to an amazing array of weaponry and equipment. The lagoon hosts an armada of almost two dozen massive cargo ships "prepositioned" for wartime. Each is almost the size of the Empire State Building. Each is filled to the brim with specially protected tanks, helicopters, ammunition, and fuel ready to be sent off to equip tens of thousands of U.S. troops for up to 30 days of battle.

Closer to shore, the harbor can host an aircraft carrier taskforce, including navy surface vessels and nuclear submarines. The airport and its over two-mile-long runway host billions of dollars worth of B-1, B-2, and B-52 bombers, reconnaissance, cargo, and in-air refueling planes. The island is home to one of four worldwide stations running the Global Positioning System (GPS). There's a range of other high-tech intelligence and communications equipment, including NASA facilities (the runway is an emergency landing site for the Space Shuttle), an electro-optical deep space surveillance system, a satellite navigation monitoring antenna, an HF-UHF-SHF satellite transmission ground station, and (probably) a subsurface oceanic intelligence station. Nuclear weapons are likely stored on the base.[14]

Diego Garcia saw its first major wartime use during the first Gulf War. Just eight days after the U.S. military issued deployment orders in August 1990, eighteen prepositioned ships from Diego Garcia's lagoon arrived in Saudi Arabia. The ships immediately outfitted a 15,000-troop marine brigade with 123 M-60 battle tanks, 425 heavy weapons, 124 fixed-wing and rotary aircraft, and thirty days' worth of operational supplies for the annihilation of Iraq's military that was to come. Weaponry and supplies shipped from the United States took almost a month longer to arrive in Saudi Arabia, proving Diego Garcia's worth to many military leaders.[15]

Since September 11, 2001, the base has assumed even more importance for the military. About 7,000 miles closer to central Asia and the Persian Gulf than major bases in the United States, the island received around 2,000 additional Air Force personnel within weeks of the attacks on northern Virginia and New York. The Air Force built a new thirty-acre housing facility for the newcomers. They named it "Camp Justice."

Flying from the atoll, B-1 bombers, B-2 "stealth" bombers, and B-52 nuclear-capable bombers dropped more ordnance on Afghanistan than any other flying squadrons in the Afghan war.[16] B-52 bombers alone dropped more than 1.5 million pounds of munitions in carpet bombing that contributed to thousands of Afghan deaths.[17] Leading up to the invasion of Iraq, weaponry and supplies prepositioned in the lagoon were again among the first to arrive at staging areas near Iraq's borders. The (once) secret 2002 "Downing Street" memorandum showed that U.S. war planners considered basing access on Diego Garcia "critical" to the invasion.[18] Bombers from the island ultimately helped launch the Bush administration's war overthrowing the Hussein regime and leading to the subsequent deaths of hundreds of thousands of Iraqis and thousands of U.S. occupying troops.

In early 2007, as the Bush administration was upping its anti-Iran rhetoric and making signs that it was ready for more attempted conquest, the Defense Department awarded a $31.9 million contract to build a new submarine base on the island. The subs can launch Tomahawk cruise missiles and ferry Navy SEALs for amphibious missions behind enemy lines. At the same time, the military began shipping extra fuel supplies to the atoll for possible wartime use.

Long off-limits to reporters, the Red Cross, and all other international observers and far more secretive than Guantánamo Bay, many have identified the island as a clandestine CIA "black site" for high-profile detainees: Journalist Stephen Grey's book *Ghost Plane* documented the presence on the island of a CIA-chartered plane used for rendition flights. On two occasions former U.S. Army General Barry McCaffrey publicly named Diego Garcia as a detention facility. A Council of Europe report named the atoll, along with sites in Poland and Romania, as a secret prison.[19]

For more than six years U.S. and U.K. officials adamantly denied the allegations. In February 2008, British Foreign Secretary David Miliband announced to Parliament: "Contrary to earlier explicit assurances that Diego Garcia has not been used for rendition flights, recent U.S. investigations have now revealed two occasions, both in 2002, when this had in fact occurred."[20] A representative for Secretary of State Condoleezza Rice said Rice called Miliband to express regret over the "administrative error." The State

Department's chief legal adviser said CIA officials were "as confident as they can be" that no other detainees had been held on the island, and CIA Director Michael Hayden continues to deny the existence of a CIA prison on the island. This may be true: Some suspect the United States may hold large numbers of detainees on secret prison ships in Diego Garcia's lagoon or elsewhere in the waters of Chagos.[21]

"It's the single most important military facility we've got," respected Washington-area military expert John Pike told me. Pike, who runs the website GlobalSecurity.org, explained, "It's the base from which we control half of Africa and the southern side of Asia, the southern side of Eurasia." It's "the facility that at the end of the day gives us some say-so in the Persian Gulf region. If it didn't exist, it would have to be invented." The base is critical to controlling not just the oil-rich Gulf but the world, said Pike: "Even if the entire Eastern Hemisphere has drop-kicked us" from every other base on their territory, he explained, the military's goal is to be able "to run the planet from Guam and Diego Garcia by 2015."

Before I received an unexpected phone call one day late in the New York City summer of 2001, I'd only vaguely known from my memories of the first Gulf War that the United States had an obscure military base on an island called Diego Garcia. Like most others in the United States, I knew nothing of the Chagossians.

On the phone that day was Michael Tigar, a lawyer and American University law professor. Tigar, I later learned from my father (an attorney), was famously known for having had an offer of a 1966 Supreme Court clerkship revoked at the last moment by Justice William Brennan. The justice had apparently succumbed to right-wing groups angered by what they considered to be Tigar's radical sympathies from his days at the University of California, Berkeley. As the story goes, Brennan later said it was one of his greatest mistakes. Tigar went on to represent the likes of Angela Davis, Allen Ginsberg, the Washington Post, Texas Senator Kay Bailey Hutchison, and Oklahoma City bomber Terry Nichols. In 1999, Tigar ranked third in a vote for "Lawyer of the Century" by the California Lawyers for Criminal Justice, behind only Clarence Darrow and Thurgood Marshall. Recently he had sued Henry Kissinger and other former U.S. officials for supporting assassinations and other human rights abuses carried out by the government of Chilean dictator Augusto Pinochet.

As we talked that day, Tigar outlined the story of the Chagossians' expulsion. He described how for decades the islanders had engaged in

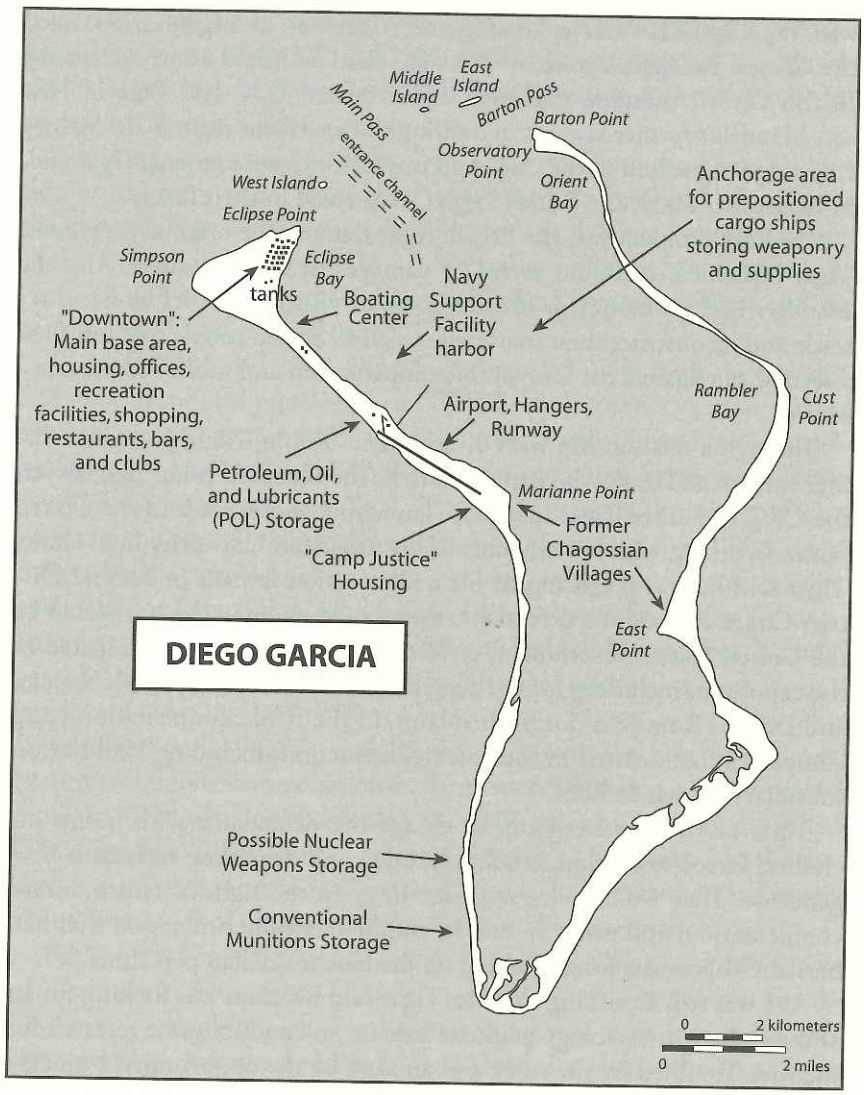

Figure 0.2 Diego Garcia, with base area at left.

a David-and-Goliath struggle to win the right to return to Chagos and proper compensation.

In 1978 and 1982 their protests won them small amounts of compensation from the British. Mostly, though, the money went to paying off debts accrued since the expulsion, improving their overall condition little. Lately, they had begun to make some more significant progress. In 1997,

with the help of lawyers in London and Mauritius, an organization called the Chagos Refugees Group, or the CRG, had launched a suit against the British Crown charging that their exile violated U.K. law. One of Nelson Mandela's former lawyers in battling the apartheid regime, Sir Sydney Kentridge, signed on to the case. And to everyone's amazement, Tigar said, in November 2000, the British High Court ruled in their favor.

The only problem was the British legal system. The original judgment, Tigar explained, made no award of damages or compensation. And the islanders had no money to charter boats to visit Chagos let alone to resettle and reconstruct their shattered societies. So the people had just filed a second suit against the Crown for compensation and money to finance a return.

Through a relationship with Sivarkumen "Robin" Mardemooto, a former student of Tigar's who happened to be the islanders' Mauritian lawyer, the CRG had asked Tigar to explore launching another suit in the United States. Working with law students in his American University legal clinic, Tigar said he was preparing to file a class action lawsuit in Federal District Court. Among the defendants they would name in the suit would be the United States Government, government officials who participated in the expulsion, including former Secretaries of Defense Robert McNamara and Donald Rumsfeld (for his first stint, in the Ford administration), and companies that assisted in the base's construction, including Halliburton subsidiary Brown & Root.

Tigar said they were going to charge the defendants with harms including forced relocation, cruel, inhuman, and degrading treatment, and genocide. They would ask the Court to grant the right of return, award compensation, and order an end to employment discrimination that had barred Chagossians from working on the base as civilian personnel.

As I was still absorbing the tale, Tigar said his team was looking for an anthropology or sociology graduate student to conduct some research for the suit. Troubled by the story and amazed by the opportunity, I quickly agreed.

Over the next six-plus years, together with colleagues Philip Harvey and Wojciech Sokolowski from Rutgers University School of Law and Johns Hopkins University, I conducted three pieces of research: Analyzing if, given contemporary understandings of the "indigenous peoples" concept, the Chagossians should be considered one (I found that they should and that other indigenous groups recognize them as such); documenting how Chagossians' lives have been harmed as a result of their displacement; and calculating the compensation due as a result of some of those damages.[22]

While I was never paid for my work, ironically enough, big tobacco helped foot some of the bill: Tigar reimbursed my expenses out of a human rights litigation fund he had established at American University with attorney fees won in a Texas tobacco suit.[23]

Not long after starting the project, however, I saw there was another side of the story that I wanted to understand. In addition to exploring the impact of the expulsion on the Chagossians, I wanted to tell the story of the United States and the U.S. Government officials who ordered the removals and created the base: How and why, I wanted to know, did my country and its officials do this?[24]

Between 2001 and 2008, I conducted research with both the islanders and some of the now mostly retired U.S. officials. To understand something of the fabric and texture of Chagossians' lives in exile, I lived in their communities in Mauritius and the Seychelles for more than seven months over four trips between 2001 and 2004. This meant living in the homes of Chagossian families and participating actively in their daily lives. I did everything with the people from working, cooking, studying, cleaning, praying, and watching French-dubbed Brazilian telenovelas on Mauritian TV to attending weddings, baptisms, first communions, public meetings, birthday parties, and funerals. In addition to hundreds of informal conversations, I conducted more than thirty formal interviews in Mauritian Kreol, Seselwa (Seychelles Kreol), English, and French, and, with the help of dedicated Mauritian interviewers, completed a large survey of living conditions with more than 320 islanders. I complemented this work by going to the British Public Records Office and the national archives of Mauritius and the Seychelles to unearth thousands of pages of historical and documentary records about the history of Chagos, the expulsion, and its aftermath.[25]

Back in the United States, I moved from New York to my hometown of Washington, DC, to try to understand the officials responsible for the base and the expulsion. I had no interest in turning them into caricatures, and wanted to dedicate the same anthropological attention and empathy to them that I had focused on the islanders.[26] During more than seven months of concentrated research in 2004 and 2005, and continuing over the next two years, I interviewed more than thirty former and current U.S. Government officials, primarily from the departments of Defense and State and the Navy, as well as journalists, academics, military analysts, and others who were involved in the story or otherwise knowledgeable about the base.[27]

Unfortunately, I was unable to speak with some of the highest-ranking and most influential officials involved. Many, including White House official Robert Komer and Admirals Elmo Zumwalt and Arleigh Burke,

were deceased. Two, Paul Nitze and Admiral Thomas Moorer, died early in my research before I could request an interview. Others, including Henry Kissinger, did not respond to repeated interview requests.

After repeatedly attempting to contact Robert McNamara, I was surprised to return to my office one day to find the following voicemail: "Professor Vine. This is Robert McNamara. I don't believe I can help you. At 91, my memory is very, very bad. And I recall almost nothing about Diego Garcia. Thank you."

When I hurriedly called him back and asked if he had any memory of conversations about people on the island, he responded, "None."

When I asked why the Department of Defense would have wanted to remove the Chagossians, he said, "At 91, my memory's bad."

I asked if he could recommend anyone else to speak with. "No," he replied. I asked if he could suggest any other leads. "None," he said. Fumbling around to think what else I could ask, I heard McNamara say quickly, "Thank you very much," and then the click of the connection going dead.

With these kinds of limitations, I balanced my interviews with an analysis of thousands of pages of government documents uncovered in the U.S. National Archives, the Navy archives, the Kennedy and Johnson presidential libraries, the British Public Records Office, and the files of the U.S. and British lawyers representing the Chagossians.[28] While the Navy's archives proved a critical resource, all the files from Stu Barber's office responsible for the original base idea had been destroyed.[29]

While many of the relevant surviving documents were still classified (after 30–40 years), Freedom of Information Act (FOIA) requests revealed some formerly secret information. However, government agencies withheld hundreds of documents, claiming various FOIA exemptions "in the interest of national defense or foreign relations." Tens of other documents were released to me "in part"; this often meant receiving page after page partially or entirely blank. Britain's "30 year rule" for the automatic release of most classified government documents, by contrast, revealed hundreds of pages of critical material, much of it originally uncovered by the Chagossians' U.K. legal team and a Mauritian investigative reporter and contributing to the 2000 victory.[30]

Like trying to describe an object you can't actually see, telling the story of Diego Garcia was further complicated by not being able to go to Diego Garcia. The 1976 U.S.-U.K. agreement for the base restricts access "to members of the forces of the United Kingdom and of the United States" and their official representatives and contractors.[31] A 1992 document ex-

plains, "the intent is to restrict visits in order . . . to prevent excessive access to military operations and activities."[32] Visits by journalists have been explicitly banned, making the island something of a "holy grail" for reporters (only technically claimed by the recent ninety-minute visit of President Bush's reporting pool, during which reporters were confined to an airport hangar). In the 1980s, a *Time* magazine chief offered a "fine case of Bordeaux to the first correspondent who filed a legitimate story from Diego Garcia."[33]

The U.S.-U.K. agreement does allow visits by approved "scientific parties wishing to carry out research." Indeed scientists, including experts on coral atolls and the Royal Navy Bird Watching Society, have regularly surveyed Diego Garcia and the other Chagos islands. Encouraged, I repeatedly requested permission from both U.S. and U.K. representatives to visit and conduct research on the islanders' former society. After months of trading letters with British officials in 2003 and 2004, I finally received word from Charles Hamilton, the British Indian Ocean Territory administrator, stating that "after careful consideration, we are unable to agree at the present time to a scientific visit involving a survey of the former homes of the Chagossians. I am sorry to have to send you such disappointing news."[34] All my other requests were denied or went unanswered. John Pike described the chance of a civilian visiting Diego Garcia as "about as likely as the sun coming up in the west."

Still, if I had had a yacht at my disposal, I could have joined hundreds of other "yachties" who regularly visit Peros Banhos, Salomon, and other islands in Chagos far from Diego Garcia. (Enterprising journalist Simon Winchester convinced one to take him to Chagos in 1985, even managing to get onto Diego Garcia when his Australian captain claimed her right to safe harbor under the law of the sea.[35]) Many yachties today enjoy the "island paradise" for months at a time. They simply pay a fee to the BIOT for the right to stay in the territory and enjoy beachside barbeques by the "impossibly blue" water, parties with BIOT officials, and free range over the islands and the Chagossians' crumbling homes. "Welcome to the B.I.O.T.," a sign reads. "Please keep the island clean and avoid damage to buildings. Enjoy your stay."[36]

Sadly, the Chagossians are far from alone in having been displaced by a military base. As we will see in the story ahead, the U.S. military has exhibited a pattern of forcibly displacing vulnerable peoples to build its military bases. In the past century, most of these cases have taken place

outside the United States. Generally those displaced have, like the Chagossians, been small in number, under colonial control, and of non-"white," non-European ancestry. Some of the examples are relatively well known, like those displaced in the Bikini Atoll and Puerto Rico's Vieques Island. Others have, like the Chagossians, received less attention, including the Inughuit of Thule, Greenland, and the more than 3,000 Okinawans displaced to, of all places, Bolivia.

It is no coincidence that few know about these stories. Few in the United States know that the United States possesses some 1,000 military bases and installations outside the fifty states and Washington, DC, on the sovereign land of other nations. Let me repeat that number again because it's hard to take in: 1,000 bases. On other people's sovereign territory. 1,000 bases.

More than half a century after the end of World War II and the Korean War, the United States retains 287 bases in Germany, 130 in Japan, and 106 in South Korea. There are some 89 in Italy, 57 in the British Isles, 21 in Portugal, and nineteen in Turkey. Other bases are scattered around the globe in places like Aruba and Australia, Djibouti, Egypt, and Israel, Singapore and Thailand, Kyrgyzstan and Kuwait, Qatar, Bahrain, and the United Arab Emirates, Crete, Sicily, and Iceland, Romania and Bulgaria, Honduras, Colombia, and Guantánamo Bay, Cuba—just to name a few (see fig. 2.1). Some can still be found in Saudi Arabia and others have recently returned to the Philippines and Uzbekistan, where locals previously forced the closure of U.S. bases. In total, the U.S. military has troops in some 150 foreign nations. Around the world the Defense Department reports having more than 577,519 separate buildings, structures, and utilities at its bases, conservatively valuing its facilities at more than $712 billion.[37]

It's often hard to come up with accurate figures to capture the scope of the base network, because the Pentagon frequently omits secret and even well-known bases—like those in Iraq and Afghanistan—in its own accounting. In Iraq, as President Bush's second term came to an end, the military controlled at least 55 bases and probably well over 100. In trying to negotiate a long-term military agreement with the Iraqi Government, the Bush administration hoped to retain 58 long-term bases in the country as part of a "protracted" presence of at least 50,000 troops, following the South Korean model; originally U.S. officials pressed for more than 200 military facilities. In Afghanistan, the base collection includes sixteen air bases and may run to over eighty in total amid similar Pentagon plans for permanent installations.[38]

While Pentagon and other officials have been careful never to refer to bases in Iraq and Afghanistan as "permanent," the structures on the ground

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tell a different story: A 2007 National Public Radio story reported that Balad Air Base near Baghdad, one of five "mega bases" in Iraq, housed some 30,000 troops and 10,000 private contractors in facilities complete with fortified Pizza Hut, Burger King, and Subway outlets and two shopping centers each about the size of a Target or Wal-Mart. "The base is one giant construction project, with new roads, sidewalks, and structures going up across this 16-square-mile fortress in the center of Iraq, all with an eye toward the next few decades," Guy Raz explained. "Seen from the sky at night, the base resembles Las Vegas: While the surrounding Iraqi villages get about 10 hours of electricity a day, the lights never go out at Balad Air Base."[39]

If you are anything like me and grew up in the United States, you may have a hard time imagining another nation occupying a military base on your nation's territory—let alone living next to such "simulacrums of suburbia" found the world over.[40] In 2007, Ecuadorian President Rafael Correa offered some insight into this phenomenon when he told reporters that he would only renew the lease on the U.S. military base in Ecuador if the United States agreed to one condition: "They let us put a base in Miami—an Ecuadorian base."

"If there's no problem having foreign soldiers on a country's soil," Correa added, "surely they'll let us have an Ecuadorian base in the United States."

The idea of an Ecuadorian military base in Miami, of a foreign base anywhere in the United States, is unthinkable to most people in the United States. And yet this is exactly what thousands of people in countries around the world live with every day: Military forces from a foreign country living in their cities, building huge military complexes on their lands, occupying their nations. About 95 percent of these foreign bases belong to the United States. Today the United States likely possesses more bases than any nation or people in world history.[41] Not to be confined to the globe alone, the Pentagon is making plans to turn outer space into a base as part of the rapid militarization of space.[42]

Growing recognition about the U.S. overseas base network has mirrored a renewed acknowledgment among scholars and pundits, following the wars in Afghanistan and Iraq, that the United States is in fact an empire.[43] With even the establishment foreign policy journal *Foreign Affairs* declaring, "The debate on empire is back," conversation has centered less on *if* the United States is an empire and more on *what kind* of empire it has become.[44]

Too often, however, the debates on empire have ignored and turned away from the lives of those impacted by empire. Too often analysts turn to abstract discussions of so-called foreign policy realism or macro-level

economic forces. Too often, analysts detach themselves from the effects of empire and the lives shaped and all too often damaged by the United States. Proponents of U.S. imperialism in particular willfully ignore the death and destruction caused by previous empires and the U.S. Empire** alike.[45]

In 1975, the *Washington Post* exposed the story of the Chagossians' expulsion for the first time in the Western press, describing the people as living in "abject poverty" as a result of what the *Post*'s editorial page called an "act of mass kidnapping."[46] When a single day of congressional hearings followed, the U.S. Government denied all responsibility for the islanders.[47] From that moment onward, the people of the United States have almost completely turned their backs on the Chagossians and forgotten them entirely.

Unearthing the full story of the Chagossians forces us to look deeply at what the United States has done, and at the lives of people shaped and destroyed by U.S. Empire. The Chagossians' story forces us to focus on the damage that U.S. power has inflicted around the world, providing new insight into the nature of the United States as an empire. The Chagossians' story forces us to face those people whom we as citizens of the United States often find it all too easy to ignore, too easy to close out of our consciousness. The Chagossians' story forces us to consider carefully how this country has treated other peoples from Iraq to Vietnam and in far too many other places around the globe.[48]

At the same time, we would be mistaken to treat the U.S. Empire simply as an abstract leviathan. Empires are run by real people. People made the decision to exile the Chagossians, to build a base on Diego Garcia. While empires are complex entities involving the consent and cooperation of millions and social forces larger than any single individual, we would be mistaken to ignore how a few powerful people come to make decisions that have such powerful effects on the lives of so many others thousands of miles away. For this reason, the story that follows is two-pronged and bifocaled: We will explore both sides of Diego Garcia, both sides of U.S. Empire, focusing equally on the lives of Chagossians like Rita Bancoult and the actions of U.S. Government officials like Stu Barber. In the end

** Throughout the book I use the term *U.S. Empire* rather than the more widely recognized *American Empire*. Although "U.S. Empire" may appear and sound awkward at first, it is linguistically more accurate than "American Empire" and represents an effort to reverse the erasure of the rest of the Americas entailed in U.S. citizens' frequent substitution of *America* for the *United States of America* (America consists of all of North and South America). The name of my current employer, American University, is just one example of this pattern: Located in the nation's capital, the school has long touted itself as a "national university" when its name should suggest a hemispheric university. The switch to the less familiar U.S. Empire also represents a linguistic attempt to make visible the fact that the United States is an empire, shaking people into awareness of its existence and its consequences.

we will reflect on how the dynamics of empire have come to bind together Bancoult and Barber, Chagossians and U.S. officials, and how every one of us is ultimately bound up with both.***[49]

To begin to understand and comprehend what the Chagossians have suffered as a result of their exile, we will need to start by looking at how the islanders' ancestors came to live and build a complex society in Chagos. We will then explore the secret history of how U.S. and U.K. officials planned, financed, and orchestrated the expulsion and the creation of the base, hiding their work from Congress and Parliament, members of the media and the world. Next we will look at what the Chagossians' lives have become in exile. While as outsiders it is impossible to fully comprehend what they have experienced, we must struggle to confront the pain they have faced. At the same time, we will see how their story is not one of suffering alone. From their daily struggles for survival to protests and hunger strikes in the streets of Mauritius to lawsuits that have taken them to some of the highest courts in Britain and the United States, we will see how the islanders have continually resisted their expulsion and the power of two empires. Finally, we will consider what we must do for the Chagossians and what we must do about the empire the United States has become.

The story of Diego Garcia has been kept secret for far too long. It must now be exposed.

*** Those interested in reading more about the book's approach as a bifocaled "ethnography of empire" should continue to the following endnote.

CHAPTER 1

THE ILOIS, THE ISLANDERS

"*Laba*" is all Rita had to say. Meaning, "out there." Chagossians in exile know immediately that *out there* means one thing: Chagos.

"*Laba* there are birds, there are turtles, and plenty of food," she said. "There's a leafy green vegetable . . . called cow's tongue. It's tasty to eat, really good. You can put it in a curry, you can make it into a pickled chutney.

"When I was still young, I was a little like a boy. In those times, we went looking" for ingredients for "curries on Saturday. So very early in the morning we went" to another island and came back with our food.

"By canoe?" I asked.

"By sailboat," Rita replied.

Peros Banhos "has thirty-two islands," she explained. "There's English Island, Monpatre Island, Chicken Island, Grand Bay, Little Bay, Diamond, Peter Island, Passage Island, Long Island, Mango Tree Island, Big Mango Tree Island. . . . There's Sea Cow Island," and many more. "I've visited them all. . . ."[1]

EMPIRES COMING AND GOING

"A great number of vessels might anchor there in safety," were the words of the first naval survey of Diego Garcia's lagoon. The appraisal came not from U.S. officials, but from the 1769 visit to the island by a French lieutenant named La Fontaine. Throughout the eighteenth century, England and France vied for control of the islands of the western Indian Ocean as strategic military bases to control shipping routes to India, where their respective East India companies were battling for supremacy over the spice trade.[2]

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Having occupied Réunion Island (Île Bourbon) in 1642, the French replaced a failed Dutch settlement on Mauritius (renamed Île de France) in 1721. Later they settled Rodrigues and, by 1742, the Seychelles. As with its Caribbean colonies, France quickly shifted its focus from military to commercial interests.[3] French settlers built societies on the islands around enslaved labor and, particularly in Mauritius, the cultivation of sugar cane. At first, the French Company of the Indies tried to import enslaved people from the same West African sources supplying the Caribbean colonies. Later the company developed a new slaving trade to import labor from Madagascar and the area of Africa known then as Mozambique (a larger stretch of the southeast African coast than the current nation). Indian Ocean historian Larry Bowman writes that French settlement in Mauritius produced "a sharply differentiated society with extremes of wealth and poverty and an elite deeply committed to and dependent upon slavery."[4]

Chagos, including Peros Banhos and Diego Garcia, remained uninhabited throughout the seventeenth and early eighteenth centuries, serving only as a safe haven and provisioning stop for ships growing familiar with what were sometimes hazardous waters—in 1786, a hydrographer was the victim of a shipwreck. But as Anglo-French competition increased in Europe and spilled over into a fight for naval and thus economic control of the Indian Ocean, Chagos's central location made it an irresistible military and economic target.[5]

France first claimed Peros Banhos in 1744. A year later, the English surveyed Diego Garcia. Numerous French and English voyages followed to inspect other island groups in the archipelago, including Three Brothers, Egmont Atoll, and the Salomon Islands, before Lieutenant La Fontaine delivered his prophetic report.[6]

TWENTY-TWO

Like tens of millions of other Africans transported around the globe between the fifteenth and nineteenth centuries, Rita's ancestors and the ancestors of other Chagossians were brought against their will. Most were from Madagascar and Mozambique and were brought to Chagos in slavery to work on coconut plantations established by Franco-Mauritians.

The first permanent inhabitants of the Chagos Archipelago were likely 22 enslaved Africans. Although we do not know their names, some of today's Chagossians are likely their direct descendants. The 22 arrived

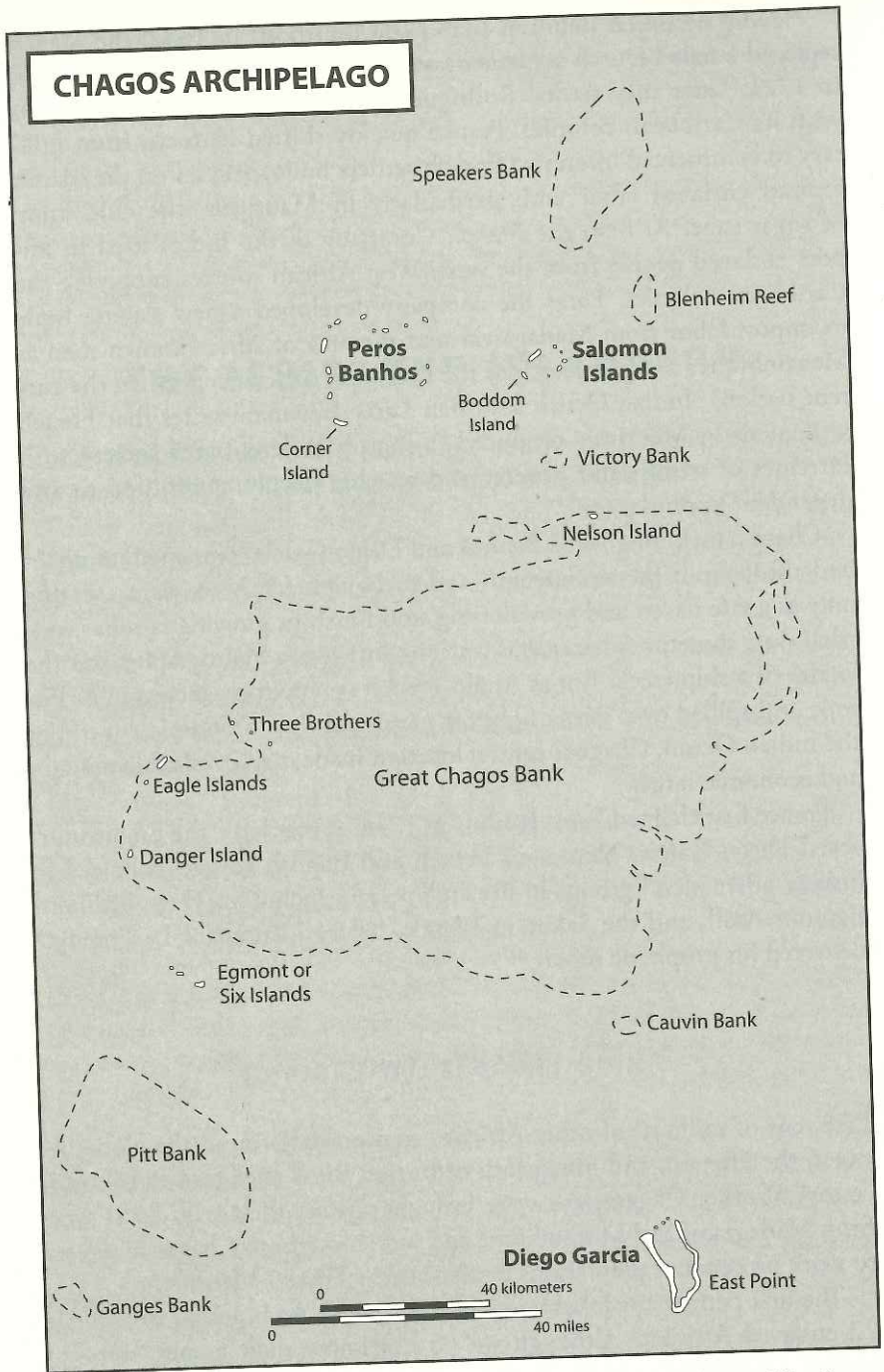

Figure 1.1 The Chagos Archipelago, with Peros Banhos and Salomon Islands at top center, Diego Garcia at bottom right.

around 1783, brought to the island by Pierre Marie Le Normand, an influential plantation owner born in Rennes but who left France for Mauritius at the age of 20.[7] Only half a century after the settlement of Mauritius, Le Normand petitioned its colonial government for a concession to settle Diego Garcia. On February 17, 1783, he received a "favourable reply" and "immediately prepared his voyage."[8]

Three years later, apparently unaware of Le Normand's arrival, the British East India Company sent a "secret committee" from Bombay to create a provisioning plantation on the atoll. Although they were surprised to find the French settlement, the British party didn't back down. On May 4, 1786, they took "full and ample Possession" of Diego Garcia and Chagos "in the name of our Most Gracious Sovereign George the third of Great Britain, France and Ireland King Defender of the faith etc. And of the said Honourable Company for their use and behoof."[9]

Unable to resist the newcomers, Le Normand left for Mauritius to report the British arrival. When France's Vicompte de Souillac learned of the landing, he sent a letter of protest to Bombay and the warship *Minerve* to reclaim the archipelago. To prevent an international incident liable to provoke war, the British Council in Bombay sent departure instructions to its landing party. When the *Minerve* arrived on Diego, its French crew found the British settlement abandoned and its grain and vegetable seeds washed into the sand.[10]

While France won this battle, governing Chagos along with the Seychelles as dependencies of Mauritius, its rule proved short-lived. By the turn of the nineteenth century and the Napoleonic Wars, French power in the Indian Ocean had crumbled. The British seized control of the Seychelles in 1794 and Mauritius in 1810. In the 1814 Treaty of Paris, France formally ceded Mauritius, including Chagos and Mauritius's other dependencies (as well as most of France's other island possessions worldwide), to Great Britain. Succeeding the Portuguese, Dutch, and French empires before it, the British would rule the Indian Ocean as a "British lake"[11] for a century and a half, until the emergence of a new global empire.

"IDEALLY SUITED"

Ernestine Marie Joseph Jacques (Diego Garcia). Joseph and Pauline Pona (Peros Banhos). Michel Levillain (Mozambique). Prudence Levillain (Madagascar). Lindor Courtois (India). Theophile Le Leger (Mauritius). Anastasie Legère (Three Brothers).[12] These are the slave names and birthplaces of some of the Chagossians' first ancestors.[13] While most arrived

from Mauritius, some may have come via the Seychelles and on slaving ships from Madagascar and continental Africa as part of an illegal slave trade taking advantage of Chagos's isolation from colonial authority.[14]

Not long after Le Normand established his settlement, hundreds more enslaved laborers began arriving to build a fishing settlement and four more coconut plantations established by Franco-Mauritians Dauquet, Lapotaire, Didier, and the brothers Cayeux. By 1808 there were 100 enslaved people working under Lapotaire alone. By 1813, a similar number were working in Peros Banhos, as settlement spread throughout an archipelago judged to have "a climate ideally suited to the cultivation of coconuts."[15] Less than eight degrees from the equator, Chagos's environment is marked by "the absence of a distinct flowering season and the gigantic size of many native and cultivated trees." The islands are also free from the cyclones (hurricanes) that frequently devastate Mauritius and neighboring islands. Meaning that coconut palms produce bountiful quantities of nuts year round for potential harvest. Hundreds more enslaved Africans were soon establishing new plantations at Three Brothers, Eagle and Salomon Islands and at Six Islands.[16]

THE PLANTATION SYSTEM

Despite being under British colonial rule, Mauritius and its dependencies surprisingly retained their French laws, language, religion, and ways of life—including that of enslaving Africans. "Mauritius became formally British but remained very French," explains one historian.[17]

Slavery thus remained the defining feature of life in Chagos from Le Normand's initial settlement until the abolition of slavery in Mauritius and its dependencies in 1835. Enslaved labor built the archipelago's infrastructure, produced its wealth (mostly in coconut oil), and formed the overwhelming majority of inhabitants. Colonial statistics from 1826 illustrate the nature of the islands as absolute slave plantation societies relying on a small number of Franco-Mauritians and free people of African or mixed ancestry to rule much larger populations of enslaved Africans.

The considerable gender imbalance in the islands is also important to note. Although it had generally equalized by the mid-twentieth century, the imbalance may help explain the power and authority Chagossian women came to exercise, as we will see in the story ahead.

Plantation owners at the time described their enslaved workforce as "happy and content" and their treatment as being of "the greatest gentle-

TABLE 1.1
Chagos Population, 1826.

	Male	*Female*
Noirs/Enslaved Blacks	269	108
Blancs/Whites	8	1
Libres/Free Persons	13	9

SOURCE: Commissioners of Compensation, Copy of Abstract of Biennial Returns of Slaves at Seychelles for the Year 1830, Minor Dependencies for the Year 1832, Port Louis, Mauritius, May 14, 1835, PRO: T 71/643.

ness." The laborers surely disagreed, working "from sunrise to sunset for six days a week" under the supervision of overseers.[18] However, outside these grueling workdays, each enslaved person was allowed to maintain a "*petite plantation*"—a small garden—to raise crops and animals and to save small sums of money from their sale. Significantly, these garden plots marked the beginnings of formal Chagossian land tenure.[19]

Society in Chagos had little in common with the Maldivian islands and Sri Lanka several hundred miles away, sharing much more with societies thousands of miles away in the Americas from southern Brazil to the islands of the Caribbean and north to the Mason-Dixon line. What these disparate places (as well as Natal, Zanzibar, Fiji, Queensland, Mauritius, the Seychelles, Réunion, and others) shared was the plantation system.[20]

With the plantation system of agriculture well established in the sugar fields of Mauritius by the end of the eighteenth century, Franco-Mauritian entrepreneurs applied the same technology in Chagos. Like societies from Bahia to Barbados and Baltimore, Chagos had all the major features of the plantation world: a mostly enslaved labor force, an agriculture-based economy organized around large-scale capitalist plantations supplying specialized products to distant markets, political control emanating from a distant European nation, a population that was generally not self-sustaining and required frequent replenishment (usually by enslaved peoples and, later, indentured laborers), and elements of feudal labor control. Still, Chagos exhibited important particularities: Unlike most of the Americas, society was based on slavery and slavery alone. Similarly, there was no preexisting indigenous population to force into labor and to replace when they were killed off. And perhaps because of its late settlement, the plantations in Chagos never employed European indentured laborers, or *engagés*.[21]

Likewise, although Chagos was an agriculture-based economy organized around capitalist plantations supplying a specialized product—copra—to distant markets, the majority of the copra harvest was not produced for European markets but was instead for the Mauritian market. The islands were thus a dependent part of the Mauritian sugar cane economy, which was itself a dependent part of the French and, later, British economies. Put another way, Chagos was a colony of a colony, a dependency of a dependency: Chagos helped meet Mauritius's oil needs to keep its mono-crop sugar industry satisfying Europe's growing sweet tooth.

From the workers' perspective, the plantations were in some ways "as much a factory as a farm," employing the "factory-like organization of agricultural labor into large-scale, highly coordinated enterprises."[22] While some of the work was agricultural in nature, much of it required the repetitive manual processing of hundreds of coconuts a day by women, men, and children in what was essentially an outdoor factory area at the center of each plantation. Still, as in the Caribbean, most of the work was performed on a "task" basis, generally allowing laborers to control the pace and rhythm of their work. Plantation owners—who mostly lived far away in Mauritius—probably viewed the (relatively) less onerous task system as the best way to maintain discipline and prevent greatly feared slave revolts, given Chagos's isolation and the tiny number of Europeans.[23]

Authority over work regimens was carefully—and at times brutally—controlled, helping to shape a rigid color-based plantation hierarchy that mirrored the one in the French Caribbean. This was also undoubtedly related to owners' fears of revolt, which in Mauritius and the Seychelles made "domestic discipline," armed militias, and police the backbone of society.[24]

Plantation owners came from the *grand blanc*—literally, "big white"—ruling class and ran the settlements essentially as patriarchal private estates. "Responsibility for the administration of the settlements, before and after emancipation, was vested in the proprietors," explains former governor Scott. "For all practical purposes, however, it was normally delegated to the manager on the spot, the *administrateur*," who was usually a relative or member of the *petit blanc*—"little white"—class, running the plantation from the master's house, the *grand case*.[25]

Petit blanc or "mulatto" submanagers and other staff recruited to Chagos helped run the islands, and were rewarded with better salaries, housing, and other privileges rarely extended to laborers. The submanagers in turn delivered daily work orders and controlled the workers through a group of *commandeurs*—overseers—primarily of African descent who were given some privileges and, after emancipation, paid higher wages.

As on slave plantations elsewhere, owners and their subordinates generally ruled largely through fear.[26] Despite the constraints on their lives, some laborers achieved a degree of upward mobility by becoming artisans and performing other specialized tasks. The vast majority of the population were general laborers of African descent at the bottom of the work and status hierarchy in a system that, as in the U.S. South, became engrained in the social order.

CHANGE AND CONTINUITY

Slavery was finally abolished in Mauritius and its dependencies in 1835. After emancipation, a period of apprenticeship continued for about four years. The daily routine of plantation life during and after the apprenticeship period changed according to the dictates of each island's administrator. On some islands, like Diego Garcia, life and conditions changed little. On others, daily work tasks were reduced in accordance with stipulations ordered by officials in Mauritius.[27]

Following emancipation, plantation owners in Mauritius began recruiting large numbers of Indians to the sugar cane fields as a way to keep labor costs down and replace formerly enslaved laborers leaving the plantations en masse; by century's end, Indians constituted a majority in Mauritius. While plantation owners in Chagos also imported Indian indentured laborers, Indian immigration was relatively light and people of African descent remained in the majority.[28] So, too, Chagos did not experience the large-scale departure of formerly enslaved Africans (in fact, at least some of those previously enslaved on sugar plantations in Mauritius appear to have emigrated to work on Diego Garcia).[29]

This demographic stability, in such contrast to Mauritius, needs explanation: Ultimately it seems to point to a change in the quality of labor relations and the development of a society rooted in the islands. Newly freed Africans and the Indian indentured laborers who joined them massively outnumbered the plantation management of mostly European descent in a setting of enormous isolation. For management, this demographic imbalance and the lack of a militia or police force like the ones in Mauritius and the Seychelles made the threat of an uncontrollable labor revolt frighteningly real. Indeed the islands had a history of periodic labor protest. In one case in 1856, four workers who had been "kidnapped from Cochin" revolted and killed an abusive manager of Six Islands.[30] These facts combined with gradual improvements in salaries and workload (especially

compared to the brutal work of cutting sugar cane) suggest that despite the continuation of the plantation system after emancipation, the general nature of labor relations probably improved noticeably in favor of the Chagossians. Even before the end of the apprentice period, a colonial investigator charged with supervising apprenticeship conditions found the work to be "of a much milder nature than that which is performed on the Sugar Plantations of Mauritius" and the workers to be "a more comfortable body of people" due "to so much of their own time being employed to their own advantage" (he also credited the archipelago's absence of both outsiders and liquor).[31] In general it appears that Chagossians gradually struck what for a plantation society was a relatively—and I stress the word *relatively*—good work bargain. Indeed more than a century later, in 1949, a visiting representative of the Mauritian Labour Office commented on the generally "patriarchal" relations between management and labor in Chagos, "dating back to what I imagine would be the slave days—by this I do not imply any oppression but rather a system of benevolent rule with privileges and no rights."[32]

A "*CULTURE DES ÎLES*"

By the middle of the nineteenth century, a succession of laws increasingly protected workers from the continuation of any slavery-like conditions. Around 1860, wages were the equivalent of 10 shillings a month, a dollop of rum, and a "twist of tobacco if times were good." Rations, which were treated as part of wages, totaled 11–14 pounds a week of what was usually rice. Two decades later, wages had increased to 16 shillings a month for male coconut laborers and 12 shillings a month for women. Some women working in domestic or supervisory jobs received more. Men working the coconut oil mills earned 18–20 shillings a month and had higher status than "rat-catchers, stablemen, gardeners, maize planters, toddy-makers and pig- and fowl-keepers." A step higher in the labor hierarchy, blacksmiths, carpenters, assistant carpenters, coopers, and junior commandeurs made 20–32 shillings.[33]

Management often paid bonuses in the form of tobacco, rum, toddy, and, for some, coconut oil. Housing was free, and at East Point the manager "introduced the system of allowing labourers to build their own houses, if they so opted, the management providing all the materials." The system apparently proved a success, creating "quite superior dwellings," with wood frames and thatched coconut palm leaves, and "a sense

of proprietorship" for the islanders.[34] By 1880, the population had risen to around 760.

"As a general rule the men enjoy good health, and seem contented and happy, and work cheerfully," reported a visiting police magistrate. Fish was "abundant on nearly all the Islands, and on most of them also pumpkins, bananas, and a fruit called the 'papaye,' grow pretty freely."[35] Ripe coconuts were freely available upon request. Anyone could use boats and nets for fishing. Many kept gardens and generally management encouraged chicken and pig raising.

Although the exploitation and export of the coconut—in the form of copra, oil, whole coconuts, and even husks and residual *poonac* solids from the pressing of oil—dominated life in Chagos, the islands also produced and traded in honey, guano, timber, wooden ships, pigs, salt fish, maize and some vegetable crops, wooden toys, model boats, and brooms and brushes made from coconut palms. Guano—bird feces used as fertilizer—in particular became an increasingly important export for the Mauritian sugar fields in the twentieth century, reaching one-third of Diego's exports by 1957.[36]

For about six years in the 1880s, two companies attempted to turn Diego Garcia into a major coal refueling port for steamer lines crossing the Indian Ocean. About the same time, the British Navy became interested in obtaining a site on the island.[37] The Admiralty never followed through, and the companies soon closed as financial failures, having faced the "promiscuous plundering of coconuts" by visiting steamship passengers and revolt from a group of imported English, Greek, Italian, Somali, Chinese, and Mauritian laborers—which required the temporary establishment of a Mauritian police post.[38]

By the turn of the twentieth century, a distinct society was well established in Chagos. The population neared 1,000 and there were six villages on Diego Garcia alone, served by a hospital on each arm of the atoll. While conditions varied to some extent from island to island and from administrator to administrator within each island group, growing similarities became the rule. Chagos Kreol, a language related to the Kreols in Mauritius and the Seychelles, emerged among the islanders.[39] People born in Chagos became collectively known by the Kreol name *Ilois*.*[40] Most considered themselves Roman Catholic—a chapel was built at East Point in 1895, followed by a church and chapels on other islands—although religious and spiritual practices and beliefs of African, Malagasy, and Indian origins remain present

* Many today prefer the term *Chagossian*. In exile, the older name has often been used as a slur against the islanders.

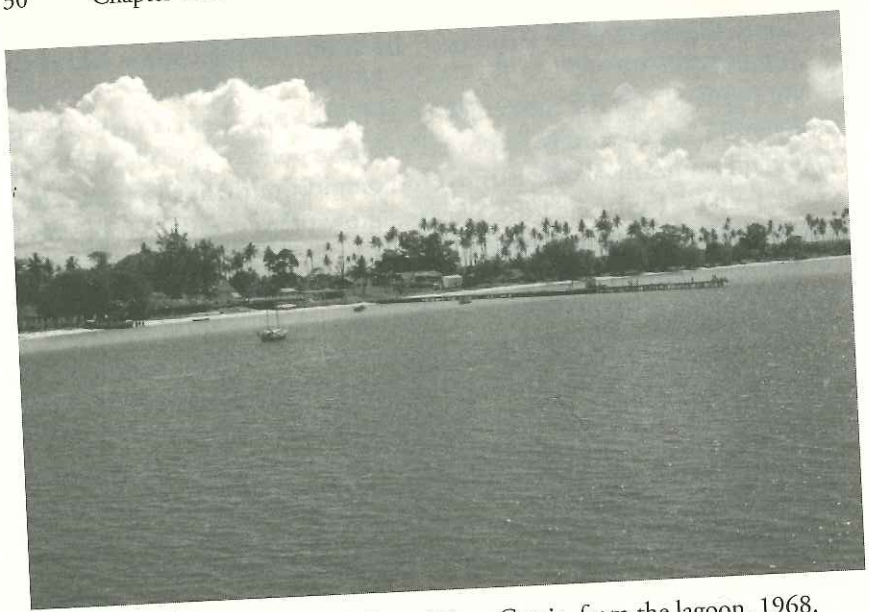

Figure 1.2 View of East Point village, Diego Garcia, from the lagoon, 1968. Photo courtesy of Kirby Crawford.

to this day. A distinct *"culture des îles"*—culture of the islands—had developed, fostered by the islands' isolation. "It is a system peculiar to the Lesser Dependencies," Scott would later write, "and it may be fairly described as indigenous and spontaneous in its emergence."[41]

KUTO DEKOKE

Most mornings, Rita rose for work at 4 a.m. "At four o'clock in the morning, I got up. I made tea for the children, cleaned the house everywhere. At seven o'clock I went for the call to work."

Each morning, she said, the manager gave work orders to the commandeurs, who delivered them to other Chagossians. There were many jobs: cleaning the camp, cutting straw for the houses, harvesting the coconuts, drying the coconuts, work for the manager and his assistant, work at the hospital, child care. Most men worked picking coconuts, 500 or more a day, removing the fibrous husk with the help of a long, spearlike *pike dekoke* knife, planted in the ground. This left the small hard nut within the coconut, which others transported to the factory center. There, like most other women, Rita shelled the interior nut, digging the flesh out with a specialized coconut-shelling knife, the *kuto dekoke*.

"I put it on the ground. I hit it. It splits. I have my knife. I scoop it in quickly, and I dump it over there: the shell on one side, the coconut flesh on the other," Rita explained.

Often she would complete the day's task of shelling 1,200 coconuts by 10:00 or 10:30 in the morning—meaning a rate of about one nut every 10 seconds. The women sat in groups, children often at their sides, amid hills of coconuts, cracked emptied shells, and bright white coconut flesh. Their hands were a concentrated swirl of movement—picking the nut, hitting it once, scoop, scoop with the knife between the flesh and the shell, flesh flying in one direction, empty shell in another. And again, pick, hit, scoop, scoop, flesh, flesh, shell. And again, pick, hit, scoop, scoop, flesh, flesh, shell. And again.

"Then there are other people who take the flesh," Rita said, "to dry it" in the sun. "When it's dry, they gather it up and put it in the *kalorifer*," a heated shed fueled by burning coconut husks. There the flesh was fully dried, producing copra to make oil. Some of the copra was crushed on the spot in a donkey-powered oil mill. Most, Rita explained, went "to Mauritius—was sent all over."[42]

"THINGS WILL BE OVERTURNED"

On a seemingly ordinary Monday morning in August 1931, when Rita Bancoult was ten, Peros Banhos commandeur Oscar Hilaire gave his usual work orders to fifteen Chagossian men to go to Petit Baie island for a week to gather and husk 3,000 coconuts each. The fifteen refused the order.[43] Two days later they finally left for Petit Baie, but returned the same day, refusing to work any further. For the remainder of the week, the men went on strike and didn't report to work.

The following Saturday, nine islanders confronted the assistant manager, Monsieur Dagorne, about the size of a task of weeding he was giving some women. Two days later, a group again confronted Dagorne and demanded that he reduce the women's tasks. This time he complied.

A few hours later, according to a police magistrate's eventual report, one woman assaulted another "for having advised her fellow workers . . . to obey the orders of the staff and to refuse to obey those who wished to create a disorder on the estate." When the victim went to complain to the head manager, Jean Baptiste Adam, a crowd followed, yelling "threatening language" at Adam.[44]

The crowd then turned and hurried into the kalorifer. There they ripped from the wall a rod, the length of a French fathom, used to measure lengths

of rope made by elderly, infirm women working from their homes and paid by the length. They rushed back to Monsieur Adam with the rod and protested that it was a "false measure."[45] Moments later they returned to the kalorifer and placed a new measure on the wall—this one about 8 French inches shorter.

The next morning, the same group showed up at the center of the plantation and told the women to stop shelling coconuts. The group threatened to stop all work if Monsieur Adam did not add an extra laborer to the workforce at the kalorifer. The manager agreed to the change. Later they forced him to reduce the women's weeding and cleaning tasks, and still, all but two of the women walked off the job. The men told the manager they would refuse to unload and load the next cargo ship to arrive at Peros unless he and Dagorne were on the ship when it returned to Mauritius.

The insurgency continued into September. "Adam had lost all authority over these men," the police magistrate later reported. After a Chagossian drowned to death while sailing from Corner Island to another islet to collect coconuts, his partner and a crowd of supporters entered the manager's office, barred the exits, and forced him to sign a document granting her a widow's pension. They also forced him to give her free coffee, candles, sugar, and other goods from the company store to observe the islanders' traditional mourning rites.[46]

Over the next two weeks, leaders of the insurgency twice made Dagorne buy them extra wine from the company store. One leader, Etienne Labiche, again protested the task assigned to some women. "You are going on again because I am remaining quiet," Labiche challenged the managers in Chagos Kreol, according to the police magistrate. "We shall see when the boat arrives. *Sa boule-la pour devirer*." Things will be overturned. Within minutes of issuing the challenge, the islanders had left work for the day. Days later Labiche and some supporters forced Dagorne to reveal that he was living with a mistress. Adam suspended Dagorne on the spot for "scandalous conduct."[47]

Labor unrest continued into a second month, with Labiche, Willy Christophe, and others forcing the manager to lower the price of soap at the company store when they suspected price gouging and Adam was unable to show them a price invoice. During the protest a few approached the store's back door. The island's pharmacist pulled out a revolver and "threatened to blow out the brains of the first man who tried to enter the shop."[48]

When two weeks later the cargo ship *Diego* finally came within sight on its voyage from Mauritius, the blast of a conch shell reverberated through the air as a signal among the islanders. Manager Adam went aboard the

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ship and returned to shore minutes later with his brother, the captain of the *Diego*. "The whole of the population met them at the landing stage," the magistrate's report recounts, "uttering loud shouts, and demanding to see the invoice" listing the prices for articles sold at the shop. The crowd accompanied Adam and his brother to the manager's house "shouting and threatening, climbed up the balcony stairs, and even into his dining room." There Adam unsealed the invoice. Someone in the crowd looked over Adam's shoulder and read the prices aloud. "Having noticed a mention in the official letter about a case of tobacco (plug) and the rise in the price . . . the crowd demanded the return of the case to Mauritius."[49]

At the next morning's call for work, none of the men appeared. When the captain of the *Diego* asked them why they were not coming to work, they told him they would only work if his brother and Dagorne were sent back to Mauritius. A standoff ensued. The ship eventually left with its cargo aboard, but with Manager Adam and Dagorne still in Peros.

Three months and two days after the beginning of the insurgency, Mauritian magistrate W. J. Hanning arrived in the atoll along with an armed guard of ten police constables, two police inspectors, and two noncommissioned officers. Hanning and Police Inspector Fitzgibbon charged, convicted, and sentenced 36 Chagossian men and women for offenses including "larceny soap," "larceny rope measure," "extortion of document," "coalition to prevent unloading cargo," and "coalition to prevent work." Two were convicted of "wounds & blows." Punishment for the charges of larceny and extortion ranged from three to twelve months' hard labor. Labiche received a total of 30 months' hard labor; others got up to 36 months. Hanning sent three commandeurs back to Mauritius and mandated the reading of the names of the convicted and their punishments throughout the rest of Chagos and the other Mauritian dependencies.[50]

"I have the honour to state that quiet has been restored at Peros," Magistrate Hanning wrote. Although he thought the insurgents' grievances "imaginary" and found the islanders "economically many times better off than the Mauritian labourer," he concluded his report by calling on the plantation owners to "exercise some leniency" over markups on prices for "articles of necessity" sold at the company store.[51]

GROWING CONNECTIONS

In 1935, new owners in Chagos established the first regular steamship connection between Mauritius and Chagos after completing the consolidation

Figure 1.3 Schoolchildren in Chagos, 1964. Photographer unknown.

of ownership over the various plantations, which had begun in the 1880s. Previously the islands sent copra, oil, and other goods to Mauritius and received supplies on twice-a-year boats. The new four-times-a-year steamship system decreased travel times significantly and provided a regular connection between Diego Garcia and the northern islands of Peros Banhos and Salomon, over 100 nautical miles away. Peros to Salomon transportation was by sailing ship and later motorboat. Transportation within each group and around Diego Garcia's lagoon was generally by small, locally built sailboats, and later by motorboats. News from the outside world came primarily from illustrated magazines and other reading materials supplied by the transport vessels visiting Chagos.

At the beginning of the twentieth century, Chagos had been so isolated that at the start of World War I, management on Diego Garcia supplied the German battleship *Emden* with provisions before learning that Britain and its colonies were already at war with Germany. By contrast, thirty years later during World War II, Diego Garcia became a small landing strip for Royal Air Force reconnaissance aircraft and a base for a small contingent of Indian Army troops. At war's end, the troops went home, leaving behind a wrecked Catalina seaplane that became a favorite playground for children.

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By the mid-twentieth century, Chagos had moved from relative isolation to increasing connections with Mauritius, other islands in the Indian Ocean, and the rest of the world. Copra and coconut oil exports were sold in Mauritius and the Seychelles, and through them in Europe, South Africa, India, and Israel. Wireless communications at local meteorological stations connected the main islands with Mauritius and the Seychelles. Shortwave radios allowed reception of broadcasts from at least as far as the Seychelles and Sri Lanka.[52]

The Mauritian colonial government started showing increasing interest in the welfare of Chagos's inhabitants and its economy. Specialists sent by the government investigated health and agricultural conditions. With the help of their reports, the government established nurseries in each island group, schools, and a regular garbage and refuse removal system reported to be better than that in rural Mauritius.[53] Water came from wells and from rain catchment tanks. Small dirt roads traversed the main islands, and there were a handful of motorbikes, trucks, jeeps, and tractors.

"NOTHING WE HAD TO BUY"

By the 1960s, everyone in Chagos was guaranteed work on the plantations and pensions upon retirement.[54] The vast majority of Chagossians still worked as coconut laborers. A few male laborers rose to become foremen and commandeurs, and a few women were also commandeurs. Other men became artisans working as blacksmiths, bakers, carpenters, masons, mechanics, and in other specialized positions.

Wages remained low and paternalistic: Men harvesting coconuts earned about £2 a month, while women shelling the nuts earned less than half that. Artisans, foremen, and commandeurs earned six times what female laborers earned, and those in privileged "staff" positions earned considerably more. No matter the position or the gender, workers' monthly rations included about £3 worth of rice or flour, coconut oil, salt, lentils, fish, wine, and occasionally vegetables and pork.[55] Work benefits also included construction materials, free firewood, regular vacations—*promne*—with free passage to Mauritius, burial services, and free health care and medicines. Workers continued to occupy and receive land near their homes. Many used the land for gardens, raising crops like tomatoes, squash, chili peppers, eggplant, citrus and other fruits, and for keeping cows, pigs, goats, sheep, chickens, and ducks.

After the day's work task was completed, generally around midday, Chagossians could work overtime, tend to their gardens and animals, fish, or

hunt for other seafood, including red snapper, tuna, and other fish, crab, prawns, crayfish, lobster, octopus, sea cucumber, and turtles.

"Whatever time it was, you went to your house and your day marched on," Rita recounted. "A commandeur passed by, asked you if you were going to do overtime. So then you went to work for another day's work. . . . If you didn't go do it, no one made you.

"But," she continued, "our money, at the end of the month we got it, we just put it in our account. And what we earned from overtime, that we used for buying our weekly supplies, understand?"

On payday people went to the store and "the women would go to buy a little clothing. . . . That was the only thing we had to buy: our clothing, cloth to make clothing, sugar, milk.

"Apart from that, there was nothing we had to buy. Apart from cigarettes, which if you smoked, you needed to buy. There was beer at the shop to buy. There was rum to buy, but we made our own drink," Rita added, referring to Chagossians' own fermented drinks of dhal-based *baka* and palm toddy *kalu.*

"Then, you know Saturday *laba*," Rita explained, "Saturday what we did, with our coconut leaf brooms, we swept the court of the manager's house, everywhere around the chapel, the hospital, everywhere. When we finished that, then we'd go to the house. Around nine o'clock, we finished and left. Then we had Saturday, Sunday to ourselves. Monday, then we went back to hard work."

But on Saturday "the house, all the family, everyone was there. We had some fun. . . . We had an accordion, later we had a gramophone. . . . On Saturday, Saturday night, we had our *sega.*"

Although the long-standing popular institution featuring singing, playing, and dancing to sega music is found on islands throughout the southwest Indian Ocean, Chagos and most other islands had their own distinctive sega traditions. In Chagos, segas were an occasion for entire island communities to gather. On Saturday nights everyone met around a bonfire in a clearing. Under the moon and stars, drummers on the goat hide–covered *ravanne* would start tapping out a slow, rhythmic beat. Others would begin singing, dancing, and joining in on accordions, triangles, and other percussion and string instruments.

The sega allowed islanders to sing old traditional songs or their own originals, which were often improvised. Most segas followed a call-and-response pattern, with soloists singing verses, supported by dancers, musicians, and onlookers who joined in a chorus, providing frequent shouts, whistles, and outbursts of encouragement. In Chagos, segas were

filled with themes of love, jealousy, separation, and loss. Much as in the blues and other musical traditions, the sega was an important mode of expression and a way to share hardships and gain support from the community.

"The segas," Rita recounted, "at night, people opened their doors, everyone came out, beat the drum, sang, danced. And we carried on until early in the morning. Early in the morning, six o'clock. . . . six o'clock, until seven o'clock too, and then even the old ones went home."

I asked Rita if she danced to the sega. She said, "Yes."

I asked if she sang sega. She said, "Yes."

"What did you sing?" I asked.

"Everything. Those that I knew, I sang. I know how to sing sega very well. . . . I'm full of segas that I know," said Rita. And then she started to sing . . .

My father, you're yelling "Attention passengers! Embark passengers!"
This madame, her husband's going but she's staying.

Crying, madame, enough crying madame.
On the beach, you're crying so much,
The tears from your eyes are drowning the passengers list.

Crying, madame, even if you cry on the beach, even if you cry
Capitan L'Anglois isn't going to turn the boat around to come get you.

O li la e, O la e, O li la la.
O li le le, O li le la la.

L'Anglois answer me, L'Anglois, my friend
Answer me, L'Anglois, this sega that you left down in Chagos.

"FRENCH COASTAL VILLAGES"

"The people of Île du Coin were exceptionally proud of their homes," Governor Scott wrote of Rita's Peros Banhos after World War II. "The gardens usually contained an arrangement of flower-beds and a vegetable patch, almost always planted with pumpkins and loofahs trained over rough trellis-work, with a few tomato plants and some greens."[56]

By that time Salomon had a large timber industry for export and was known as the home of Chagos's boat building industry, widely renowned in the southwest Indian Ocean. Three Brothers, Eagle Island, and Six Islands had been settled for most of the nineteenth and early twentieth centuries before the plantation company moved their inhabitants to Peros and Diego to consolidate production. Eagle's population rose to as many as 100 and was "regarded by its inhabitants," according to Scott, "as a real home," with a "carefully tended" children's cemetery and evocatively named places like Love Apple Crossing, Ceylon Square, and Frigates' Pool.[57]

Looking on "from the seaward end of the pier," Scott compared Diego Garcia's capital East Point to a French coastal village: "The architecture, the touches of old-fashioned ostentation in the *château* and its relation to the church; the disposition of trees and flowering shrubs across the ample green; the neighbourly way in which white-washed stores, factories and workshops, shingled and thatched cottages, cluster round the green; the lamp standards along the roads and the parked motor-lorries: all contribute towards giving the village this quality."

Clearly charmed by the islands, Scott continued, "The association of East Point with a synthesis of small French villages, visited or seen on canvas, was strengthened by the warm welcome of the islanders, since their clothes and merry bearing, and particularly the small, fluttering flags of the school-children, were wholly appropriate to a *fête* in a village so devised."[58]

"Funny little places! Indeed they are. But how lovely!" wrote Scott's predecessor as governor, Sir Hilary Blood. "Coconut palms against the bluest of skies, their foliage blown by the wind into a perfect circle; rainbow spray to the windward where the South-East Trades pile in the Indian Ocean up on the reefs; in the sheltered bays to the leeward the sun strikes through shallow water to the coral, and emerald-green, purple, orange, all the rich colours of the world, follow each other across the warm sea," glowed Sir Hilary. "Its beauty is infinite."[59]

A WARNING

In 1962, ownership of the islands changed hands, purchased by a Mauritian-Seychellois conglomerate calling itself Chagos-Agalega Ltd. Around the same time, Chagossians saw the introduction of a more flexible labor supply revolving around single male laborers from the Seychelles, as well as the "drift" of permanent inhabitants from Chagos to Mauritius, drawn by the allure of Mauritius's "pavements and shop-windows, the cinemas and

football matches, the diversity of food and occupation." Scott compared the movement to the migration of people in Great Britain from villages to cities after World War I, but emphasized, "it is still only a drift."[60]

On the eve of the expulsion that no one in Chagos could have anticipated, Mauritian historian Auguste Toussaint wrote, "The insularity of this archipelago is total and, in this regard, Chagos differs from the Mascarenes and the Seychelles, which are linked with the rest of the world. The conditions of life there are quite specialized and even, believe me, unique."[61]

"The life that I had, compared to what I am experiencing now, David. All the time, I will think about my home because there I was well nourished and I didn't eat anything preserved or stored. We ate everything fresh," Rita told me.

"Doctors know that when we left the islands—they know—your health here isn't the same. Here, we eat frozen food all the time. . . . But *laba*, no. Even if something is only three or four days old, it isn't the same as fresh, David. . . .There we ate everything fresh."

"There, I tell you, you didn't have strokes, you didn't have diabetes. Only rarely did an old person die. A baby, maybe once a year, an infant might die at birth, that's it. Here, every day you hear about—I'm tired of hearing about death."

"Yes," I said softly.

"It's not the same, David. . . ." Rita continued, "I—how can I say this—I didn't leave there because the island closed. . . . I didn't realize" that the islands were being closed down. "And then I had a little girl named Noellie."

Writing in 1961, Governor Scott concluded his book with a sympathetic (if paternalistic and colonialist) description of the Chagossians. In it, one hears a chilling warning from one who as governor of Mauritius may well have known about developing plans aimed at realizing Lieutenant La Fontaine's original vision for harboring a "great number" of vessels in Diego Garcia's lagoon:

> It must also be recognized, however, that ignorance of the way of life of the islanders might open the way to attempts to jerk them too rapidly into more highly organized forms of society, before they are ready. They have never been hurried. Their environment has

probably inoculated them with an intolerance towards hurry. . . . This is far from being a plea to make the Lesser Dependencies a kind of nature reserve for the preservation of the anachronistic. It is, however, very definitely a plea for full understanding of the islanders' unique condition, in order to ensure that all that is wholesome and expansive in the island societies is preserved.[62]

CHAPTER 5

"MAINTAINING THE FICTION"

So far we have seen how officials were worried that despite the advantages of overseas bases for controlling large territories, bases also carry with them significant risks. The most serious, as Stu Barber realized, is the possibility that a host nation will evict its guest from a base. There is also the danger that for political or other reasons a host will make a base temporarily unavailable during a crisis. During the lead-up to the most recent invasion of Iraq, for example, Turkey's Islamist ruling party refused to allow the United States use of its territory for a large troop deployment, though it permitted the basing of warplanes and the use of its airspace. In most cases, guest nations are forced to negotiate continually for a variety of base rights with their hosts.

The other main risk facing bases on foreign soil is that posed by the people outside a base's gates. As recent U.S. experience in Saudi Arabia, South Korea, and Okinawa has shown, foreign bases can become targets of attacks and lightning rods for local protest and criticism about foreign intrusion and imperialism.[1] Worst of all, the military fears outright revolt against a base, or that locals could press claims to self-determination before the United Nations and thus threaten the life of the base. This was of special concern for U.S. officials during an era of rising nationalism and anti-imperialism in Africa and Asia.[2] U.S. military officials also worry that local populations pose risks of espionage, security breaches, and uncontrollable sexual and romantic liaisons between troops and their neighbors.

In short, soldiers and diplomats view local peoples as the source of troubles, headaches, and work that distracts the military from its primary missions. If civilian workers are needed as service personnel, importing outsiders without local ties or rights, who can be controlled and sent home at will, is typically preferred.

For these reasons, in the eyes of soldiers and diplomats, a base free of any nonmilitary population is the best kind of base. For these reasons, after World War II, U.S. officials increasingly looked for bases located in relatively unpopulated areas.[3] The Strategic Island Concept was premised on the threat to bases posed by rising anti-Western sentiment and the search for *people-less* bases. With the islanders scheduled for removal from Diego Garcia, military planners were thrilled at the idea of a base with no civilian population within almost 500 miles. U.S. officials and their British counterparts wanted total control over the island and the entire archipelago without the slightest possibility of outside interference—be it from foreign politicians or local inhabitants.

Diego Garcia was attractive once it became British sovereign territory precisely because it was not subject to, as one Navy official explains, "political restrictions of the type that had shackled or even terminated flexibility at foreign bases elsewhere."[4] The "special relationship" between the United States and the United Kingdom ensured the U.S. military near *carte blanche* (pun intended) use of the island.

The priorities of the U.S. and U.K. governments were clear: maintaining complete political and military control over the islands; retaining the unfettered ability to remove any island populations by force; and assuming an intentional disregard for the rights of inhabitants. The U.S. Government wanted unencumbered freedom to do what it wished with a group of "sparsely populated" islands irrespective of the treatment owed to the people of dependent territories. In simplest terms, the U.S. Government wanted the Chagossians removed because officials wanted to ensure complete political and military control over Diego Garcia and the entire archipelago.

PLANNING THE REMOVALS

Four days after the government of the United Kingdom created the British Indian Ocean Territory in November 1965, the British Colonial Office sent the following instructions to the newly established BIOT administration, headquartered in the Seychelles: "Essential that contingency planning for evacuation of existing population from Diego Garcia . . . should begin at once."[5]

While planning between the British and U.S. governments had been underway since at least 1964, officials began to plan the removals in earnest after the creation of the BIOT. British officials again faced the untidy problem of how to get rid of the Chagossians, given UN rules on decolo-

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nization and the treatment due permanent inhabitants of colonial territories. In a 1966 memorandum, Secretary of State for the Colonies Francis Pakenham proposed simply rejecting "the basic principle set out in Article 73" of the UN Charter "that the interests of the inhabitants of the territory are paramount." "The legal position of the inhabitants would be greatly simplified from our point of view—though not necessarily from theirs," another official suggested, "if we decided to treat them as a floating population." They would claim that the BIOT had no permanent inhabitants and "refer to the people in the islands as Mauritians and Seychellois."[6]

Another official, Alan Brooke-Turner, feared that members of the UN Committee of Twenty-Four on Decolonization might demand the right to visit the BIOT, jeopardizing the "whole aim of the BIOT." Brooke-Turner suggested issuing documents showing that the Chagossians and other workers were "belongers" of Mauritius or the Seychelles and only temporary residents in the BIOT. "This device, though rather transparent," he wrote, "would at least give us a defensible position to take up in the Committee of Twentyfour."[7]

"This is all fairly unsatisfactory," a colleague responded in a handwritten note a few days later. "We detach these islands—in itself a matter which is criticised. We then find, apart from the transients, up to 240 'ilois'* whom we propose either to resettle (with how much vigour of persuasion?) or to certify, more or less fraudulently, as belonging somewhere else. This all seems difficult to reconcile with the 'sacred trust' of Art. 73, however convenient we or the US might find it from the viewpoint of defence. It is one thing to use 'empty real estate'; another to find squatters in it and to make it empty."[8]

A response came from Sir Paul Gore-Booth, Permanent Under-Secretary in the Foreign Office: "We must surely be very tough about this. The object of the exercise was to get some rocks which will remain *ours*; there will be no indigenous population except seagulls who have not yet got a Committee (the Status of Women Committee does *not* cover the rights of Birds)."[9]

Below Gore-Booth's note, one of his colleagues, D. A. Greenhill (later Baron of Harrow), penned back, "Unfortunately along with the Birds go some few Tarzans or Men Fridays whose origins are obscure, and who are being hopefully wished on to Mauritius etc. When this has been done, I agree we must be very tough."[10]

* U.K. and U.S. documents offer widely varying, and mostly inaccurate, estimates of the numbers of Chagossians. In fact, there were probably 1,000–1,500 in Chagos and at least 250–500 living in Mauritius at this time.

British officials eventually settled on a policy, as Foreign Office legal adviser Anthony Aust proposed, to "maintain the fiction that the inhabitants of Chagos are not a permanent or semi-permanent population."

"We are able to make up the rules as we go along," Aust wrote. They would simply represent the Chagossians as "a floating population" of "transient contract workers" with no connection to the islands.[11]

GRADUAL DEPOPULATION

Following the signing of the 1966 agreement, British officials moved to purchase the islands in the BIOT that were privately owned. After conveniently appointing themselves as the legislature for the new colony, British ministers passed "BIOT Ordinance No. 1 of 1967," allowing for the compulsory acquisition of land within the territory. In March 1967, the United Kingdom bought Chagos from Chagos-Agalega Ltd. for £660,000.[12]

The next month the British Government leased the islands back to Chagos-Agalega to continue running the islands on its behalf. Until this point, Chagossians could, as they had been accustomed since emancipation, leave Chagos for regular vacations or medical treatment in Mauritius and return to Chagos as they wished. After May 1967,[13] the BIOT administration ordered Chagos-Agalega to prevent Chagossians, like Rita Bancoult's family, from returning to Chagos. When, at the end of 1967, one of Chagos-Agalega's parent companies, Moulinie & Co., took over management, it also agreed to serve as the United Kingdom's agent in Chagos and prevent the entry of anyone without BIOT consent.[14] Like Rita, Chagossian after Chagossian appearing at the steamship company in Mauritius for return passage was turned away and told, "Your island has been sold."[15]

By February 1968, Chagossians in Mauritius had begun to protest their banning to the Mauritian Government. Mauritian officials asked Moulinie & Co. to allow their return on the next ship to the islands. When Paul Moulinie, Moulinie & Co.'s director, asked BIOT officials if they would allow some Chagossians to return, they refused. The company's steamer, the M.V. *Mauritius,* left on its next voyage for Chagos with no Chagossians aboard.

Later in 1968, with labor running low on the plantations, Moulinie & Co. requested permission from BIOT authorities to bring some Chagossians back from Mauritius. Amid ongoing consultations with U.S. officials, BIOT authorities denied the request. British officials understood, as one wrote, "if

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we accept any returning Ilois, we must also accept responsibility for their ultimate resettlement."[16] To keep the plantations running at a "basic maintenance level," the BIOT administration allowed Moulinie & Co. to replace the stranded Chagossians with imported Seychellois workers.[17]

DETERIORATING CONDITIONS

Back in Chagos, BIOT administrator John Todd found that "the islands have been neglected for the past eighteen months, due to uncertainty as to their future."[18] With military talks ongoing and the start of base construction uncertain, the BIOT and its agents gradually reduced services on the islands, making only basic maintenance repairs to keep the plantations running.

Beginning in 1965 with the creation of the BIOT, Chagos-Agalega began importing three-month stocks of food rather than the six-month stocks ordered previously. This left staple supplies of rice, flour, lentils, milk, and other goods lower than normal, making Chagossians increasingly reliant on fish and their own produce to meet food needs.[19]

After 1967 (and perhaps as early as late 1965) medical and school staff began leaving the islands. The midwife at the hospital in Peros Banhos left Chagos sometime before August 1968. She was not replaced, leaving only a single nurse at the hospital.[20] Around the same time, in 1967, the school in Peros Banhos closed due to the lack of a teacher.[21] In the Salomon Islands, the midwife departed during the first half of 1969, leaving a single nurse employed there as well. Salomon's teacher left sometime before July 1970, and the school there closed.[22]

At first Chagos-Agalega neglected the islands to avoid making capital investments on plantations it knew the BIOT might soon shut down. After the company sold the islands and gave up its lease, the BIOT institutionalized the neglect in the contract Moulinie & Co. signed to manage the islands: No improvements of more than Rs2,000 (around $420 at the time) could be made without BIOT permission.[23]

STRANDED IN MAURITIUS

With conditions worsening, some Chagossians left for Mauritius, with hopes that life in Chagos would improve and allow their return. Others left as usual for vacations or medical treatment. Some Chagossians report

being tricked or coerced into leaving Chagos with the award of an unscheduled vacation in Mauritius.[24] When the new arrivees and other Chagossians in Mauritius attempted to book their return passage, they, like their predecessors, were again refused. Because there was no telephone service in Chagos and because mail service between Mauritius and Chagos had been suspended, news of Chagossians being stranded in Mauritius did not reach those in the archipelago. By 1969, there were at least 356 Chagossians already in exile.[25]

This growing number found themselves having lost their jobs, separated from their homes and their land, with almost all of their possessions and property still in Chagos. Most were separated from family members left behind. All were confused about their future, about whether they would be allowed to return to their homes, and about their legal status in Mauritius.

The islanders also found themselves in a country that was highly unstable after gaining its independence in March 1968. Just after independence, riots between Afro-Mauritians and Indo-Mauritian Muslims broke out in many of the poor neighborhoods where Chagossians were living and continued through most of 1968.

Meanwhile, unemployment in Mauritius was over 20 percent.[26] British experts warned that the island was a Malthusian disaster in the making and would soon lack the resources to feed and support its rapidly growing population. A secret British telegram acknowledged "the near impossibility of [Chagossians] finding suitable employment. There is no Copra industry into which they could be absorbed."[27] The result was that most were left, as another British official put it, languishing "on the beach."[28]

As one Chagossian explained to me in 2004, life was turned completely upside down. Suddenly, "Chagossien dan dife, nu de lipie briye"—Chagossians were in the fire, with both our feet burning.

"LIKE QUESTIONING APPLE PIE"

As Paul Nitze's staff member Robert Murray recalled, the British "relieved us of a lot of problems. I mean, we didn't have to think through" the question of the removals anymore. "We didn't have to decide how we were going to manage our force relative to the local population, because there wasn't a local population."

I asked Murray if there were discussions about the fate of the Chagossians.

There were, he said, but "it was something the British thought they could manage. We didn't, we didn't try to get ourselves involved in it. Unless Kitchen and State did. We had the practical interest in having the base. And the British said that they could manage the transition. And they went about it and some of it was legal and some of it was otherwise. They were doing whatever they were doing. To the best of my knowledge they weren't consulting with us on the—now maybe that's not true, but I don't remember it anyway."

"And your sense was that you wanted to leave that to them and it was something you didn't particularly look into, or—" I asked before Murray interrupted.

"Yeah, we wanted to leave it to the British, I think, to manage that transition of the people and the sovereignty. We saw that as their responsibility. It was their island. . . . We personally saw, in Defense, no need or opportunity for us to inject ourselves—at least that's how I saw it at the time."

Murray's memory of the Chagossians reflects a striking consistency in former officials' responses when I asked what they remembered thinking about the Chagossians. Almost all remembered spending little time thinking about the islanders. The people were, as State Department official James Noyes put it, a "nitty gritty" detail that they never examined. Or as another said, they were something to which officials turned a "blind eye." The removal was a "*fait accompli* . . . a given" never requiring any thought.

I asked former State Department official George Vest if he disagreed in any ways with the Diego policy.

"I didn't have that deep a sense, [that] deep a feeling about it," he explained. "There was never any conflict. My attitude, which I expressed, was what I call an inner internal marginal attitude. I accepted the premises which led us to do what we were doing there without any real questioning."

That he and the United States were doing good in the world, Vest and others took for granted. Noyes said, "It was taken as a given good."

Indeed, Noyes explained that by the time he arrived at the State Department in 1970, there was no policy analysis about Diego Garcia because the base was treated as already being in place. There was no questioning of the British about "'What are you guys doing with the natives?'" he said. "It was an accepted part of the scenery."

"It was—the question, the ethical question of the workers and so on," Noyes said hesitatingly, "simply wasn't, wasn't in the spectrum. It wasn't discussed. No one realized, I don't think . . . the human aspects of it. Nobody was there or had been there, or was close enough to it, so. It was like questioning apple pie or something."

THE WHIZ KIDS

With the population already gone in the minds of most U.S. and U.K. officials, the Pentagon simultaneously pursued the Air Force's interest in Aldabra and the Navy's proposal for Diego Garcia. The Air Force budgeted $25 million in fiscal year 1968 for the 50/50 base on Aldabra. For the Diego Garcia proposal, Secretary of the Navy Nitze asked McNamara to "reconsider" McNamara's 1966 decision to withhold the Navy's request from Congress. This time Nitze had a new justification for the base, pitching it around the war in Vietnam as an "austere" refueling port for ships traveling to and from southeast Asia. The plan had a revised $26 million budget, divided into two funding increments beginning in fiscal year 1969. The austere facility, Nitze noted, would still offer a "nucleus" for expansion into a larger base, "if need arose."[29]

For this new incarnation, Nitze and the Navy had allies at DOD in Nitze's former office and its new Assistant Secretary of Defense for International Security Affairs, John McNaughton. Together, Nitze and McNaughton now pushed McNamara to approve the new Diego-as-fueling-depot plan.

Still hesitant, McNamara referred the proposal to the office in the Pentagon that, bureaucratically speaking, defined his tenure as Secretary of Defense: Systems Analysis. When McNamara joined the Kennedy administration, he brought with him, from his tenure at Ford Motor Company, a mode of statistically based economic analysis that had started to grow in popularity in the 1950s. McNamara saw it as a way to seize control of the Pentagon from the military services by imposing rationality on Defense decision-making and hired a group that became known as the "Whiz Kids" to implement the changes.

"Young, book-smart, Ivy League," these "think-tank civilian assistants," many coming from the RAND Corporation, championed rational calculation and statistical analysis as the basis for all policy decisions. "Everything was scrutinized with the cost-benefit and cost-effectiveness analysis" of RAND, Fred Kaplan writes in *Wizards of Armageddon* (1991[1983]). The questions of the day were ones like, "'What weapon system will destroy the most targets for a given cost?' or 'What weapon system will destroy a given set of targets for the lowest cost?'"[30]

McNamara charged Systems Analysis, and its head Alain Enthoven, with providing this analysis. In Systems Analysis, statistically based cost-effectiveness and cost-benefit calculations helped shape, justify, and evaluate military policymaking. Nearly every weapons purchase, every troop

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deployment, and every base decision had to pass through Systems Analysis for approval.

"McNamara would not act on a proposal without letting Alain's department have a chop at it," explained Earl Ravenal, a Systems Analysis staffer who worked on the Diego Garcia proposal. "Systems analysis became accepted as the buzz word, the way that decisions were rationalized, the currency of overt transactions, the *lingua franca* inside the Pentagon," Kaplan writes.[31] Often, this language and the use of statistical data alone were enough to create the veneer of rationality and justify policy decisions. This is exactly the type of language one sees in the Strategic Island Concept, in the talk of "stockpiling" islands like "commodities" and "investing" in bases as "insurance" to obtain future "benefits." As anthropologist Carole Cohn has shown among "defense intellectuals," and as the recollections of officials suggest, this language played an important role in shaping a particular version of reality and in shielding officials from the emotional and human impacts of their decisions.[32]

But at this time Ravenal's team in Systems Analysis received the proposal for Diego Garcia with instructions to "look into the quantitative rationale" for the base and "see if it makes sense." They took the Navy at its word and evaluated its most recent justification for the project—to create a new fueling depot for ships traveling to and from Vietnam. Ravenal's team found the base was not cost-effective: Given the distances involved and the costs of transporting fuel, it was simply cheaper to refuel ships at existing ports.

McNamara wrote to the new Secretary of the Navy, Paul R. Ignatius (by the end of June 1967, Nitze was back at the Pentagon as Deputy Secretary of Defense), to inform him that he would again defer "investment."[33]

Ravenal explained that the Navy and ISA were "extremely annoyed." They were "hopping up and down" mad, he said. Even people within Systems Analysis were concerned that Ravenal's team had taken on and defied the Navy over what they saw as such a relatively small project (thinking only in dollar terms). Rear Admiral Elmo Zumwalt, Senior Aide to the Secretary of the Navy, who had worked on Diego Garcia since serving under Nitze at ISA, immediately knew that the Navy had picked the wrong rationale to get the base.

"We knew it would be a billion before long," Ravenal said of the base's cost. "They said, 'Why are you opposing an austere communications facility?' I said, 'That's not what's going on here. You're going to have a tremendous base here. It's gonna be a billion'—of course it's over that now."

I asked Ravenal if any discussion of the Chagossians had surfaced in the work of Systems Analysis. Ravenal said he "heard about birds" on

the island—some flightless rails, he thought—but "very little" about any people. "It was sort of out in the middle of, we thought, nowhere," he explained. "We thought nowhere because even though someone may have mentioned that there were some coconut farmers there, it didn't register. I never heard a single thing. Just birds. That's all."

"Why do you think it didn't register?" I asked.

"Well," Ravenal paused. "The mindset of almost anyone on the political-military side of government, they simply were not sensitized to those kinds of issues," Ravenal replied. "And I think it would have been my assumption, if you had twelve hundred people there, if you're going to have a military base there . . . everyone's better off getting them off there. But I would have made the assumption in my mind—but probably not bothered to check it out, I have to admit—that we were going to give them a lot of money and relocate them somewhere. Now if we didn't, I think that's a terrible shame."

"THE ALDABRA AFFAIR"

While the Navy was facing continued resistance at the Pentagon, the British Government was still pursuing a base on Aldabra. At the time, however, the United Kingdom was undergoing a severe financial crisis and looking for ways to cut its overseas expenditures. In April and May 1967, British officials informed their U.S. counterparts that they remained interested in a Diego facility but the U.K. financial participation would be no more than a nominal one.[34] In July, a U.K. white paper announced the withdrawal of all British troops from Singapore and Malaysia by mid-1970.

As the British continued plans for construction on Aldabra, U.K. and U.S. scientists who had been sent by the governments to survey the islands of the BIOT began to rally public opposition against the base. In what soon became known as the Aldabra Affair, scientists from the Royal Geographic Society and the Smithsonian Institution argued against a base on Aldabra. They said the military would endanger local populations of giant tortoises and rare birds, like the red-footed booby, which made Aldabra the "Galapagos of the Indian Ocean."[35]

By contrast, according to David Stoddart, one of the scientists who surveyed the islands, Diego Garcia "was simply a coconut plantation. The plants were common and the birds and land animals few."[36]

CHAPTER 6

"ABSOLUTELY MUST GO"

"When it came to writing official, top-secret reports that combined sophisticated analysis with a flair for scaring the daylights out of anyone reading them," writes Fred Kaplan, "Paul H. Nitze had no match."[1] For five decades, Nitze was at the center of U.S. national security policy, beginning and perhaps most centrally with his authorship of the 1950 NSC-68 memo, which became one of the guiding forces in U.S. Cold War policy.

In NSC-68, and throughout his career, Nitze became an ardent proponent of building up "conventional, non-nuclear forces to meet Soviet aggression on the peripheries" (i.e., in the so-called Third World). But NSC-68's language was "deliberately hyped," admitted another of its authors, Nitze's boss, Secretary of State Dean Acheson. They used it as a "bludgeon," for "pushing their own, more militaristic views into official parlance."[2] In NSC-68 and again in 1957 when Nitze helped spawn unfounded fears about a "missile gap" with the Soviets, as well as in his later work, the Democrat and former Wall Street financier continually inflated the Soviet threat. He offered a "highly pessimistic vision of Soviet military might, and the idea that the only real answer to the Soviet challenge lay in the construction of a gigantic, world-wide U.S. military machine."[3]

In June 1967, with Diego Garcia detached from Mauritius as part of the BIOT and an agreement for a base signed but still facing stiff opposition on financial grounds from Robert McNamara, Nitze left his job as Secretary of the Navy to become Deputy Secretary of Defense, the second highest-ranking official in the Defense Department. Half a year later, with Britain having devalued the pound and still facing deep military spending cuts and scientific opposition to a base on Aldabra, Prime Minister Wilson announced the cancellation of the Aldabra base. McNamara, Nitze, and other U.S. officials were little interested in going it alone on Aldabra (which they had always viewed primarily as another way to keep a British

military presence "East of Suez"). Nitze and other Pentagon leaders returned their focus to Diego Garcia.[4]

Before long, however, changes came closer to home. By March 1968, McNamara had left the Defense Department for the World Bank, and Clark Clifford became Johnson's new Secretary of Defense. With Clifford focused almost entirely on Vietnam, Nitze was left to run most of the rest of the Pentagon. Having worked on Diego Garcia since 1961 during his tenure at ISA, Nitze soon began meeting with Navy officials to discuss plans for the base.

Barely a month after McNamara's departure, the Joint Chiefs offered a "reappraisal" of the Diego Garcia proposal in light of the 1967 Arab-Israeli war and the January 1968 British decision to withdraw their forces east of Suez by the end of 1971. Once again predicting the development of a "power vacuum" in the region and ensuing Soviet and Chinese "domination," the JCS recommended "the immediate establishment" of a base on Diego. They proposed a $46 million joint service facility capable of supporting limited forces in "contingency situations" (the euphemism for combat), Army and Air Force infrastructure, and a 12,000-foot runway capable of landing B-52 nuclear bombers and C-5A transport aircraft.[5] So much for "austere."

Internally the JCS crafted a strategy to dissuade new Secretary of Defense Clifford from being "unduly influenced" by Systems Analysis: "The project is analogous to an insurance policy," their rationale explained. "Low premiums now could lead to large returns later if military requirement does develop." The Chiefs continued, "We are trying to buy preparedness which is never cost-effective."[6]

Systems Analysis was again unconvinced. It urged the Secretary to "reject the JCS proposal" because it was not cost-effective and risked starting an arms race in the Indian Ocean.[7]

Surprisingly, Deputy Secretary of Defense Nitze agreed. He found there was "no justification" for a major base. However, he decided that "adequate justification exists" for what he called a "modest facility" on Diego Garcia, at a cost of $26 million, which, it just so happened, was exactly the price he had previously suggested as Secretary of the Navy.[8]

In this case, Nitze let the JCS provide the "bludgeon" with its warnings of Soviet "domination" and Chinese "expansion." In the face of these articulated threats and with the major JCS proposal on the table, Nitze's plan looked like a cheap, rational option, challenging the heart of Systems Analysis's opposition.

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The Navy submitted a plan for the base along Nitze's suggested lines. It sent Nitze's former staffer Elmo Zumwalt back to Ravenal at Systems Analysis to make the case. "What is so striking about the succession of proposals," Ravenal later said, was "the kaleidoscopic change of rationales to support the same proposals."[9]

But this time, "they knew they were going to win," Ravenal recalled of Zumwalt's visit. "They were going to do it right this time. . . . They weren't going to make some sort of a [weak] case."

Still Systems Analysis continued its opposition, questioning the urgency of the Diego project and asking for it to be deferred until fiscal year 1971. But this time, Ravenal explained, "We lost."

ISA approved the plan as expected and in November 1968, Nitze signed off on the Navy's request to include $9,556,000 in the fiscal year 1970 military construction budget.[10] Within days, the Navy had notified the armed services committees of both houses of Congress. Under Nitze's leadership, an interdepartmental group of top officials from the Pentagon, State Department, CIA, and Treasury Department began arguing for the base on Capitol Hill.[11] In January 1969, a classified line item for Diego Garcia appeared in the fiscal year 1970 Military Construction budget. The funding process for the base was finally underway.

"It is the persistence of the military services," Ravenal would tell Congress years later, "that eventually wears down opposition within the Pentagon, within the executive branch, and ultimately within Congress and succeeds in attaining what they were after in the first place."[12]

In the case of Nitze, Ravenal told me, one has to see, "He threw the football as Secretary of the Navy, and he caught it as Deputy Secretary of Defense."

PLANNING THE "EVACUATION"

While DOD was quarreling over funding, the State Department's Bureau of Politico-Military Affairs and the embassy in London were coordinating the removals with the British.

"U.S. would desire removal of migrant laborers from Diego Garcia after due notice in accord with Minutes to BIOT Agreement," read an August 1968 telegram to the embassy in the name of Secretary of State Rusk. The joint State-Defense message instructed the embassy to inform British officials of the State and Defense departments' concern that the removals

might arouse the attention of the United Nations' Committee of Twenty-Four. The message asked that the removals be carried out in a manner minimizing such negative publicity, preferably with resettlement taking place outside the BIOT (and thus technically removing it from the purview of the Committee of Twenty-Four).[13]

The telegram further noted that some British officials had still been using the term "inhabitants" to describe the people of Diego Garcia. Following the Foreign Office's plan to deny there was a settled population, the message asserted that the islanders were in fact "migrant laborers."

"We suggest, therefore, that the term 'migrant laborers' be used in any conversations with HMG as withdrawal of 'inhabitants' obviously would be more difficult to justify to littoral countries and Committee of Twenty-four."[14]

The embassy spoke with the Foreign Office the next day. Ambassador David Bruce telegrammed back to the State Department that the Foreign Office's representative "took the point on 'migrant laborers'" but noted that although "it was a good term for cosmetic purposes . . . it might be difficult to make completely credible as some of the 'migrants' are second generation Diego residents."[15]

MORE "FICTIONS"

"Negligible. . . . For all practical purposes . . . uninhabited." Or so the U.S. Navy said when characterizing Chagos's population in briefing papers delivered to members of Congress to secure Diego's funding in the 1970 military construction budget. When pushed by Senate Appropriations Committee member Senator Henry Jackson about the local population, one Navy official "told him that it consisted entirely of rotating contract copra workers, and that the British intended to relocate them as soon as possible after Congressional action was complete." Recounting Jackson's reaction, the official explained, "He came back to this question twice more. He was obviously concerned about local political problems. I assured him that there should be none."[16]

On Capitol Hill however, the political problems mounted for the Navy. First the Senate Armed Services Committee rejected the project, only to have it restored in a House-Senate conference. Then, after the House Appropriations Committee authorized funding, Jackson's Senate committee disapproved it, despite an intensive Navy lobbying campaign led by new Chief of Naval Operations Admiral Thomas Moorer.

In appropriations committee conference, senators led by Democrat Mike Mansfield refused to yield to Diego backers in the House through four meetings on the military appropriations. Democrats argued the project was a new military commitment overseas at a time when the Nixon administration had already indicated its desire to withdraw from Vietnam. Others wanted to "hold the Brits feet to the fire," and keep the U.S. from assuming their role in the Indian Ocean. The conferees ultimately left the project unfunded but offered the Navy an oral agreement: It should return in the following year's budget cycle with a pared-down request for a communications station without the other proposed facilities.[17]

Following the congressional defeat, newly elected President Richard Nixon's Secretary of Defense Melvin Laird gave the Navy equally simple instructions: "Make it a communications facility." Within two weeks, John H. Chafee, the new Secretary of the Navy, submitted to Laird a proposal for a $17.78 million "communications facility," with an initial funding increment of $5.4 million for fiscal year 1971.[18]

This of course was the same proposal that in 1965 had been "overtaken by events." Navy documents indicate that while the station was supposed to address gaps in the naval communications network in the Indian Ocean, the only such gaps were in the ocean's southernmost waters, closest to Antarctica and far from any potential conflict zones. A closer examination of the Navy's budget shows too that half the cost of the revised "communications station" project was for dredging Diego Garcia's lagoon and building an 8,000-foot airstrip; both were said to allow the resupply of a facility that featured a mere $800,000 worth of communications equipment. The "austere" project featured the construction of a 17-mile road network, a small nightclub, a movie theater, and a gym.[19]

Under the guise of a communications station, the Navy was asking for the nucleus of a base whose design allowed for ready expansion and the restoration of previously envisioned elements of the base.[20] As the CNO's Office of Communications and Cryptology put it, "The communications requirements cited as justification are fiction."[21]

FUNDING SECURED

By the spring of 1970, with congressional funding looking likely for the following year, British officials wanted to begin making arrangements for the deportations. The British were eager to begin negotiations to convince the Mauritian Government to receive the Chagossians and ar-

range for their resettlement. State and Defense officials on the other hand were concerned that Mauritian officials would leak news of the negotiations and endanger congressional funding by drawing international attention to the removals. State and Defense moved quickly and secured agreement from British officials not to begin negotiations until funding had been secured.[22] With members of Congress concerned at the time about increasing problems between U.S. overseas bases and local populations, presentations to Congress were careful to maintain that there would "be no indigenous population and no native labor utilized in the construction."[23]

At the same time, Defense and State emphasized in internal discussions that they needed "to retain enough distance" from the details of the deportations to ensure that British officials would not look to the United States for assistance and to avoid anyone making the connection between the impending base construction and the removals. Accordingly, the departments rejected a suggestion from the embassy in London to send an engineer to assist simultaneously with the base planning and the resettlement program.[24]

As expected under the previous year's oral agreement, in November 1970, Congress appropriated funds for an "austere communications facility." The funds were again listed as a classified item in the military construction budget. In a closed-to-the-public "executive" session of the House Appropriations Committee, Navy representatives told members of Congress for the first time that the BIOT agreement included the "resettlement of local inhabitants" and $14 million in Polaris missile payments.[25] Neither issue ever found its way out of the closed-door session.

With the money secured, Navy officials worked "to pursue the early removal" of those they were now simply calling "copra workers."[26] On December 7, 1970, a joint State-Defense message, telegrammed in the name of Secretary of State William P. Rogers, delivered instructions to the U.S. Embassy in London. Rogers asked the embassy to inform British officials that it was time "for the UK to accomplish relocation of the present residents of Diego Garcia to some other location":

> All local personnel should be moved from the western half of the island before the arrival of the construction force in March 1971. We hope that complete relocation can be accomplished by the end of July 1971 when aircraft begin using the air strip and the tempo of construction activities reaches its full scale.[27]

In turn, the embassy reported that the British were facing serious difficulties in arranging the deportations, given the bar on discussing resettlement with the Mauritians until after base funding was secured.[28]

"We recognize the British problem," State and Defense replied, but deporting the population "was clearly envisioned as United Kingdom's responsibility in 1966 agreements," and one for which the United States had paid "up to $14,000,000 in Polaris Research and Development charges."[29]

At 10:00 a.m. Washington time, on Tuesday, December 15, the Nixon White House for the first time publicly announced the United States' intention to build a joint U.S.-U.K. military facility on Diego Garcia. The State and Defense departments provided embassies with a list of anticipated questions and suggested answers to handle press inquiries, including the following:

Q: What is the purpose of the facility?
A: To close a gap in our worldwide communications system and to provide communications support to U.S. and U.K. ships and aircraft in the Indian Ocean.

Q: Is this part of a U.S. build-up in the Indian Ocean?
A: No.

Q: Will other facilities be built in this area?
A: No others are contemplated.

Q: What will happen to the population of Diego Garcia?
A: The population consists of a small number of contract laborers from the Seychelles and Mauritius engaged to work on the copra plantations. Arrangements will be made for the contracts to be terminated at the appropriate time and for their return to Mauritius and Seychelles.[30]

AN ORDER

If, as Earl Ravenal indicated with one of today's ubiquitous sports metaphors, Paul Nitze helped get the plan for Diego Garcia moving as Secretary of the Navy (in fact he started even earlier at ISA) and got the base

funded as Deputy Secretary of Defense, the man who saw the project to its completion was Admiral Elmo Zumwalt.

Born in San Francisco in 1920 to two doctors, Elmo Russell Zumwalt, Jr., a prep school valedictorian and Naval Academy graduate, enjoyed an unprecedented rise to the top of the Navy hierarchy. At 44, Zumwalt was the youngest naval officer to be promoted to Rear Admiral. At 49, Zumwalt became the Navy's youngest-ever four-star Admiral and the youngest-ever CNO. His record of awards, decorations, and honorary degrees runs a single-spaced page, including medals from France, West Germany, Holland, Argentina, Brazil, Greece, Italy, Japan, Venezuela, Bolivia, Indonesia, Sweden, Colombia, Chile, South Korea, and South Vietnam.[31]

As CNO from 1970 to 1974, Zumwalt gained attention for integrating the Navy, for upgrading women's roles, and for relaxing naval standards of dress in keeping with the times. In an order to the Navy entitled "Equal Opportunity in the Navy," Zumwalt acknowledged the service's discriminatory practices against African Americans and ordered corrective actions. "Ours must be a Navy family that recognizes no artificial barriers of race, color or religion, " Zumwalt wrote in what was a pathbreaking statement for the U.S. armed forces. "There is no black Navy, no white Navy—just one Navy—the United State Navy."[32]

Nitze originally recruited Zumwalt in 1962 to work under him when Nitze was Assistant Secretary of Defense at ISA. In his memoirs, Zumwalt describes working closely with his "mentor and close friend." Zumwalt eventually following Nitze to his position as Secretary of the Navy, as Nitze's Executive Assistant and Senior Aide. Zumwalt was "at Paul's side" during the Cuban Missile Crisis and negotiations leading to the Nuclear Test Ban Treaty. Under Nitze's "tutelage," Zumwalt writes, he earned a "Ph.D. in political-military affairs."[33]

Nitze, for his part, rewarded Zumwalt by recommending him to receive the rear admiral's second star two years before others in his Naval Academy class were eligible and without having commanded a destroyer squadron or cruiser, as was the Navy's tradition.[34] Upon becoming the Navy's youngest-ever rear admiral, Zumwalt commanded a cruiser-destroyer flotilla and later became Commander of U.S. Naval Forces in Vietnam before his promotion by President Nixon to CNO.

Zumwalt worked on Diego Garcia from his time with Nitze at ISA and maintained the same interest in the base once he left Nitze's staff.[35] One of Zumwalt's staffers, Admiral Worth H. Bagley, remembered in 1989 how Zumwalt wanted to boost the U.S. naval presence in the Indian Ocean, in part out of concern for the "growing reliance on high oil imports at a time

when things were looking unstable." Helped by the 1971 war between India and Pakistan, Zumwalt increased the pace of deployments in the ocean.

"He went out himself and visited the . . . African countries," Bagley explained. "Looking into the question of bases and things of that sort. . . . To see if he could find some economical way to increase base and crisis support possibilities there."[36]

"In dealing with Diego Garcia also?" Bagley's interviewer suggested.

"Moorer did that. Zumwalt finished it up for him," Bagley replied.[37]

And so Zumwalt did. Once Nitze and Admiral Moorer had secured funding from Congress, Zumwalt focused on removing Diego Garcia's population to prevent any construction delays. At a December 10, 1970 meeting, CNO Zumwalt told his deputies that he wanted to "push the British to get the copra workers off Diego Garcia prior to the commencement of construction," scheduled to begin in March 1971.[38]

A secret letter confirmed British receipt of the order to remove the Chagossians: "The United States Government have recently confirmed that their security arrangements at Diego Garcia will require the removal of the entire population of the atoll. . . . This is no surprise. We have known since 1965 that if a defence facility were established we should have to resettle elsewhere the contract copra workers who live there."[39]

As both governments prepared for the deportations and the start of construction, the U.S. embassies in London and Port Louis began recommending that the Navy use some Chagossians as manual laborers for the construction. Zumwalt refused. Two days after his December 17 order redressing racial discrimination in the Navy, Zumwalt stressed that by the end of construction all inhabitants should be moved to their "permanent other home."

In a small note handwritten on the face of Zumwalt's memo, a deputy commented, "Probably have no permanent other home."[40]

As planning proceeded into January 1971, Zumwalt received a memorandum from the State Department's Legal Adviser, John R. Stevenson, bearing on the deportations and the speed with which they would be accomplished. In the memo, Stevenson discussed "several legal considerations affecting US-UK responsibilities toward the 400 inhabitants of Diego Garcia." He pointed out that the 1966 U.S.-U.K. agreement "provides certain safeguards for the inhabitants," noting as well the commitment of both nations under the UN Charter to make the interests of inhabitants living in non–self-governing territories "paramount":

> Although the responsibility for carrying out measures to ensure the welfare of the inhabitants lies with the UK, the US is charged under

> the [1966] Agreement with facilitating these arrangements. London 10391 [embassy memo] states that the US constrained the UK from discussing the matter with the GOM pending the outcome of our Congressional appropriations legislation. In light of this, we are under a particular responsibility not to pressure the UK into meeting a time schedule which may not provide sufficient time in which to satisfactorily arrange for the welfare of the inhabitants. Beyond this, their removal is to accommodate US needs, and the USG will, of course, be considered to share the responsibility with the UK by the inhabitants and other nations if satisfactory arrangements are not made.[41]

A day after Zumwalt received Stevenson's warning, two Navy officials were in the Seychelles to meet with the commissioner and administrator of the BIOT, Sir Bruce Greatbatch and John Todd. Together, they made plans for emptying the western half of Diego Garcia before the arrival of Navy "Seabee" construction teams, the "segregation" of Chagossians from the Seabees, and the "complete evacuation" of Diego Garcia by July.[42] Greatbatch and Todd explained that this was the fastest they could get rid of the population other than to "drop Ilois on pier at Mauritius and sail away quickly."[43]

Two weeks later a nine-member Navy reconnaissance party arrived on Diego Garcia with Todd and Moulinie & Co. director Paul Moulinie. On January 24, Todd and Moulinie ordered everyone on the island to the manager's office at East Point. Dressed in white and perched on the veranda of the office overlooking the assembled crowd, Todd announced that the BIOT was closing Diego Garcia and the plantations. The BIOT, he added, would move as many people as possible to Peros Banhos and Salomon.

A black-and-white photograph of the scene shows the islanders staring in disbelief (see figure 6.1). Some "of the Ilois asked whether they could return to Mauritius instead and receive some compensation for leaving their 'own country.'"[44] Not unlike the Bikinians before them, most were simply stunned.[45]

When given the "choice" between deportation to Mauritius or to Peros Banhos or Salomon, most elected to remain in Chagos. Many Seychellois workers and their Chagos-born children were deported to the Seychelles. Some Chagossians resigned themselves to deportation directly to Mauritius.

Many Chagossians say that they were promised land, housing, and money upon reaching Mauritius.[46] Moulinie's nephew and company employee Marcel Moulinie swore in a 1977 court statement that he "told the

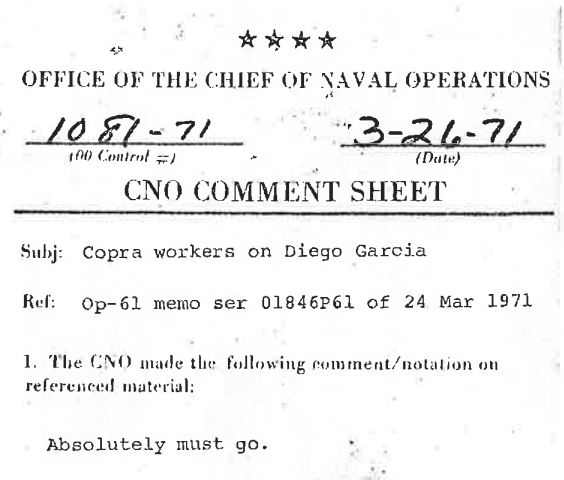
Figure 6.1 Closing Diego Garcia, January 24, 1971. The BIOT announces the deportations, John Todd at center, hand on forehead; Paul Moulinie at right, in white hat. Courtesy Chagos Refugees Group, Willis Prosper.

labourers that it was quite probable that they would be compensated." He continued, "I do not recall saying anything more than that. I was instructed to tell them that they had to leave and that is what I did."[47]

Within days, a Navy status report detailed the progress of the deportations:

> Relocation of the copra workers is proceeding in a satisfactory manner. The Administrator of the BIOT has given his assurance that the three small settlements on the western half of the atoll will be moved immediately to the eastern half. All copra producing activities on the western half will also cease immediately. The BIOT ship NORDVAER is relocating people from Diego Garcia to Peros Banhos, Salomon Islands, and the Seychelles on a regular basis.[48]

On February 4, a State-Defense message directed all government personnel to "Avoid all direct participation in resettlement of Ilois on Mauritius." The cable explained that "basic responsibility [is] clearly British," and that the United States was under "no obligation [to] assist with" the resettlement. On the other hand, the departments conceded, the government had some obligation to give the British "sufficient time" to adequately ensure



★★★★

OFFICE OF THE CHIEF OF NAVAL OPERATIONS

1087-71 (100 Control #) 3-26-71 (Date)

CNO COMMENT SHEET

Subj: Copra workers on Diego Garcia

Ref: Op-61 memo ser 01846P61 of 24 Mar 1971

1. The CNO made the following comment/notation on referenced material:

Absolutely must go.

Figure 6.2 CNO Comment Sheet, Admiral Elmo Russell Zumwalt, Jr., Navy Yard, Washington, DC, 1971. Naval Historical Center.

the welfare of the islanders. "USG also realizes," the telegram stated, "it will share in any criticism levied at the British for failing to meet their responsibilities re inhabitants' welfare."[49]

ECHOES OF CONRAD

The pace of deportations continued unabated, and within a few months, Marcel Moulinie and other company agents had forced all Chagossians on the western side of Diego Garcia, including the villages of Norwa and Pointe Marianne, to leave their homes and land to resettle on the eastern side of the atoll.[50]

On March 9, a landing party arrived on Diego to prepare for the arrival of a Seabee construction battalion later that month. Within days, unexpected reports came back to Navy headquarters from the advance team.

The commander "warns of possible bad publicity re the so-called 'copra workers,'" a Deputy CNO wrote. "He cites . . . fine old man who's been there 50 years. There's a feeling the UK haven't been completely above board on this. We don't want another Culebra," he said, referring to the opposition and negative publicity faced by the Navy during major protests

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in Puerto Rico against 1970 plans to deport Culebra's people and use their island as a bombing range.[51]

"Relocation of persons," Captain E. L. Cochrane, Jr. admitted to the Deputy CNO four days after the Seabees began construction, "is indeed a potential trouble area and could be exploited by opponents to our activities in the Indian Ocean." He added, "A newsman so disposed could pose questions that would result in a very damaging report that long time inhabitants of Diego Garcia are being torn away from their family homes because of the construction of a sinister U.S. 'base.'"[52]

The Navy, Pentagon, and State concluded, however, "that the advantages of having a station on an island which has no other inhabitants makes it worth the risk to ask the British to carry out the relocation." In fact, Cochrane wrote, the advantages of having the British relocate the inhabitants were "so great that the United States should adopt a strict 'let the British do it' policy while at the same time keeping as well informed as possible on the actual relocation activities."[53]

Weighing the concerns of the advance party and Cochrane's recommendation, Zumwalt had the final say. On a comment sheet with the subject line "Copra workers on Diego Garcia," Zumwalt had three words:

"Absolutely must go."[54]

CHAPTER 7

"ON THE RACK"

With the money finally secured from Congress and the British taking charge of the final deportations, the Navy set to work building its base. "Resembling an amphibious landing during World War II," writes a former Navy officer who worked on the project, "Seabees landed on Diego Garcia in March 1971 to begin construction."[1] A tank landing ship, an attack cargo ship, two military sealift command charter ships, and two dock landing ships descended on Diego with at least 820 soldiers and equipment to construct a communications station and an 8,000-foot airstrip. The Seabees brought in heavy equipment, setting up a rock crusher and a concrete block factory. They used Caterpillar bulldozers and chains to rip coconut trees from the ground. They blasted Diego's reef with explosives to excavate coral rock for the runway. Diesel fuel sludge began fouling the water.[2]

According to many Chagossians, there were threats that they would be bombed or shot if they did not leave the island. Children hid in fear as military aircraft began flying overhead.[3] The *Washington Post*'s David Ottaway later reported that "one old man . . . recalled being told by an unidentified American official: 'If you don't leave you won't be fed any longer.'"[4]

Navy officials continued to pressure their British counterparts to complete the deportations as quickly as possible. On April 16, the United Kingdom issued BIOT Immigration Ordinance #1 making it a criminal offense for anyone except authorized military personnel to be on the islands without a permit. A State Department official in the Office of the Assistant Secretary for Africa later acknowledged, "In order to meet our self-imposed timetable, their evacuation was undertaken with a haste which the British could claim has prevented careful examination of resettlement needs."[5] Construction continued unabated, with the runway operational by July 1971.

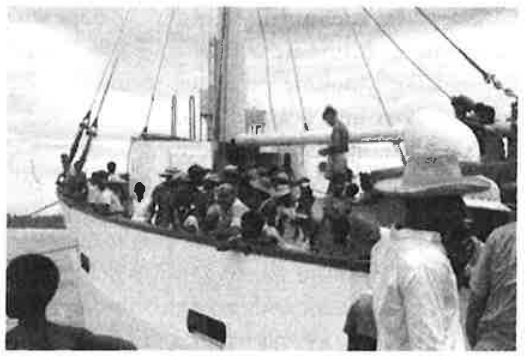

Figure 7.1 M.V. *Nordvær*, 1968. The BIOT cargo ship used to deport Chagossians, at times with more than 100 aboard. Photo courtesy of Kirby Crawford.

The BIOT administration and its Moulinie & Co. agents continued to remove families to Peros Banhos and Salomon. Some Chagossians refused but were told they had no choice but to leave. Marcel Moulinie and other Moulinie & Co. agents reiterated that there would be no more work. There would be no more transportation to and from the island, food stores had run out, and the boats were taking away the salvageable plantation infrastructure.

For the voyage, passengers were generally allowed to take a small box of their belongings and a straw bed mat. Most of their possessions and all their animals were left behind. In August 1971, the BIOT dispatched its 500-ton cargo ship, the M.V. *Nordvær,* to Diego to remove the last families from the island. When the *Nordvær* experienced engine troubles before reaching Diego, the BIOT administration sent another ship, the *Isle of Farquhar,* to continue the removals.[6] By then food supplies were running dangerously low, and BIOT officials started considering asking for emergency assistance. The Navy's Seabee contingent eventually shipped food and medical supplies across the lagoon to sustain the remaining islanders.[7]

In the days before the last inhabitants of Diego Garcia were removed, BIOT commissioner Sir Bruce Greatbatch sent the order to Moulinie & Co. to kill the Chagossians' pet dogs and any other remaining dogs on the island. Marcel Moulinie, who had been left to manage Diego Garcia, was responsible for carrying out the extermination.

According to Moulinie, he first tried to shoot the dogs with the help of Seabees armed with M16 rifles. When this failed as an expeditious

extermination method, he attempted to poison the dogs with strychnine. This too failed. Sitting in his home overlooking a secluded beach in the Seychelles 33 years later, Moulinie explained to me how he finally used raw meat to lure the dogs into a sealed copra-drying shed, the *kalorifer*. Locking them in the shed, he gassed the howling dogs with exhaust piped in from U.S. military vehicles. Setting coconut husks ablaze, he burnt the dogs' carcasses in the shed.[8] The Chagossians were left to watch and ponder their fate.

THE FINAL DEPORTATIONS

After the *Isle of Farquhar* took a load of Chagossians and Seychellois from Diego, a repaired *Nordvær* returned to remove the final inhabitants. "There was a crowd of people there and a lot of them were crying," Marcel Moulinie remembered. "People were upset about" the killing of their dogs, "as well as being upset about having to leave the islands. I persuaded Marcel [Ono, a Diego Garcia commandeur] that he had to go as there were no more rations on the island and the boat had not brought in any food. The stores had been removed and there was no way of feeding anyone. . . . I last saw him as he walked on to the boat." With U.S. military personnel looking on shortly before the end of October 1971, the last boatload steamed away from Diego Garcia.[9]

Chagossians and others report that the boats were terribly overcrowded and that the open seas were often rough on the initial 1,200-mile, four-day journey to the Seychelles. The *Nordvær* had cabin passenger space for twelve and deck space for sixty (accommodating a total of 72 passengers). On the last voyage, 146 were packed on the vessel. At the orders of Sir Bruce Greatbatch, Diego's horses were given the best places on deck. All but a few Chagossians made the trip exposed to the elements elsewhere on deck or in the hold, sitting and sleeping on a cargo of copra, coconuts, company equipment, and guano—bird feces. Many became ill during the passage, vomiting on deck and in the hold. Two women are reported to have miscarried.[10]

Moulinie recalled:

> The boat was very overcrowded. The boat deck was covered with stores, the belongings of the labourers, and a lot of labourers were traveling on deck. Greatbatch had insisted that the horses be carried back to Mahé and these were on deck with the labourers. The

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> labourers also traveled in the holds. This was not unusual but there were more people than usual in them. The holds also held a lot of copra being taken out of Diego. When the boat finally arrived the conditions were filthy. They had taken four days to travel and many of the women and children were sick. The boat deck was covered in manure, urine and vomit and so was the hold.[11]

When the *Nordvær* arrived in the Seychelles, offloading the islanders before the second leg of the journey, another 1,200 miles to Mauritius, Moulinie & Co. arranged to have their management housed in hotels. The Chagossians were housed in a prison.[12]

A VOICE IN THE BUREAUCRACY

With the arrival in Mauritius of the last islanders from Diego Garcia, the U.S. Embassy in Port Louis grew increasingly concerned about the condition of what officials described as "1300 miserable and uneducated refugees."[13]

"The USG has a moral responsibility for the well-being of these people who were involuntarily moved at our request," the embassy argued to the State Department in Washington. U.S. moral responsibility was especially heavy given that the government had "resisted GOM and HMG efforts to permit Ilois to remain as employees of the facility." Even if legally speaking "primary responsibility" lay with the British, the Port Louis mission believed, the U.S. Government was responsible for ordering the removal and was vulnerable to criticism in public and at the UN.[14]

The embassy was equally unhappy about the lack of resettlement planning: "To our knowledge," the mission cabled, "there exists no operative plan and no firm allocation of funds to compensate them for the hardship of the transfer from their former home and their loss of livelihood." While the British were still in the midst of convincing the Mauritian Government to create a resettlement plan, such a scheme was "foredoomed," first, because of the "political impossibility" of giving special resources to the Chagossians while unemployed Hindus, Muslims, and Afro-Mauritians received nothing, and second, because of the Mauritian Government's own inability to make use of current British aid money, let alone new funds for a special Chagossian project.[15]

"The plight of the Ilois," the embassy wrote, "is a classic example of perpetuation of hardship through bureaucratic neglect." "The Embassy

believes we have regrettably neglected our obligation toward them. We recommend that early and specific exchanges with HMG be undertaken in order to assure the welfare of the Ilois and that authority for this essentially political matter be appropriately centralized within the Department."[16]

The primary author of these remarkable cables was Henry Precht, the deputy to the ambassador in an embassy of just seven (Precht later worked on Iran at the State Department, playing a key role in the Carter administration's handling of the hostage crisis). Now living in the Washington area, Precht remembered that the Navy "didn't want to be bothered. They wanted an all-American facility," free of any labor problems, health issues, or anything that would have "complicated life there." It was "much neater" without the islanders, he said.

For three months, Precht and Ambassador William Brewer cabled strongly worded reports about the Chagossians, demanding, "Justice should be done." Lambasting the "inadequate and cavalier treatment so far accorded the Ilois," they traded charged dispatches with an undersecretary of the Air Force and others in the bureaucracy over the U.S. Government's responsibility.[17] It was "absurd" to say, as some in the bureaucracy continued to maintain, that Diego Garcia had "no fixed population," given its history of habitation dating to the eighteenth century. Moreover, "DOD acknowledged its responsibility for the removal of the Ilois by payment of $14 million to HMG." Precht and Brewer wrote that the Government didn't fulfill its obligation to the Chagossians by its $14 million payment, pointing out correctly that most of the money seemed to have gone toward building an international airport in the Seychelles.

"The point of our exercise," they said, is that "the USG should make sure that the British do an adequate job of compensation."[18] (Around the same time Brewer was also helping to "burnish the Diego public relations image" in Mauritius by delivering 3,000 bags of Christmas candy prepared by Navy personnel on Diego to underprivileged and children's groups.[19])

I asked Precht why he thought no one else spoke out on behalf of the Chagossians. "There weren't very many of them," he replied. "They didn't add up to much of a problem. They were easily pushed aside." And it would have taken someone in Washington, he said, to have enough interest "to pursue it. And pursuing something in Washington" takes a lot of political energy. It can be quite a "profitless enterprise."

Adam Hochschild's exploration of violence perpetrated by the Belgian Empire in the Congo helps explain Precht's observation: Because Belgian authorities sanctioned violence against the Congolese, "for a white man to rebel meant challenging the entire system that provided your livelihood.

Everyone around you was participating. By going along with the system, you were paid, promoted, awarded medals."[20]

As the embassy's failed protests show, challenges to the expulsion would likely have been fruitless save for those originating at the highest levels of the bureaucracy, from people like Nitze, Komer, Zumwalt, Moorer, McNamara, and Rusk. "The individual bureaucrat cannot squirm out of the apparatus in which he is harnessed," Max Weber wrote half a century earlier. "The professional bureaucrat is chained to his activity by his entire material and ideal existence. In the great majority of cases, he is only a single cog in an ever-moving mechanism which prescribes to him an essentially fixed route of march. The official is entrusted with specialized tasks and normally the mechanism cannot be put into motion or arrested by him, but only from the very top."[21]

Back in the State Department bureaucracy in Washington, James Bishop was the desk officer who received Precht and Brewer's cables. "Vaguely" recalling the dispatches when I spoke to him in early 2008, Bishop said they came a "considerable time" before human rights "became a major part of our diplomacy." This "was the Kissinger era," when the Secretary of State and National Security Adviser was "chastising" the African bureau "as a bunch of missionaries." Plus, the Chagossians were not a very high issue on State's agenda when it came to relations with Bishop's "parish" Mauritius. On the other hand, he said, "there wasn't any question about their being recent arrivals. It was their homeland." Bishop added, "I do recall feeling that they were going to get screwed."

Jonathan "Jock" Stoddart had responsibility at the State Department for much of the implementation of the removals. I asked Stoddart if anyone investigated the embassy's reports.

"My answer would be, I don't think so," Stoddart replied from his apartment at The Jefferson, a retirement facility in the Washington, D.C. suburbs. "I doubt if the Navy sent somebody that was interested in human rights out to Diego to look into this. I think the Navy's attitude was, accept what the British say, and turn a blind eye to whatever was going on."

State and Defense officials seemed to choose the same tack. "It was, I would say, an issue that was lurking in the background but generally ignored," Stoddart said. "We were all leaving the whole problem up to the British—to justify, rationalize, whatever. We were quite aware that our original—the original information that we had received from the British was wrong: that this was an uninhabited archipelago. I think we fully accepted that fact."

Still, "this is one of the best deals the United States has ever negotiated," Stoddart added, from his apartment complex named for the president known for one of the nation's earliest land acquisitions.

"For a change," he said, it came "at a minimal cost."

The official response to Precht and Brewer from higher-ups in the State and Defense bureaucracies was a February cable from the State Department. "Basic responsibility" for the Chagossians lay with the British, the telegram said; but it directed the embassy in London to inform the Foreign and Commonwealth Office of the U.S. Government's "concern" over their treatment. The State Department conceded internally (in its clipped bureaucratic language), "USG also realizes it may well share in any criticism levied at British for failing meet their responsibilities re inhabitants' welfare." Concerned about the removal's Cold War implications, State added: "Continued failure resolve these issues exposes both HMG and USG to local criticism which could be picked up and amplified elsewhere."[22]

Former national security officials Anthony Lake and Roger Morris, who resigned from the Nixon administration to protest the invasion of Cambodia, describe memoranda from Washington like these and the effect of the geographical and, as they say, spiritual distance between decision makers and those affected by their decisions:

> We remember, more clearly than we care to, the well carpeted stillness and isolation of those government offices where some of the Pentagon Papers were first written. The efficient staccato of the typewriter, the antiseptic whiteness of nicely margined memoranda, the affable, authoritative and always urbane men who wrote them—all of it is a spiritual as well as geographic world apart from piles of decomposing bodies in a ditch outside Hue or a village bombed in Laos, the burn ward of a children's hospital in Saigon, or even a cemetery or veteran's hospital here. It was possible in that isolated atmosphere, and perhaps psychologically necessary, to dull one's awareness of the direct link between those memoranda and the human sufferings with which they were concerned.[23]

In the summer of 1972, the State Department sent Precht to Tehran and Brewer to fill the place of the assassinated ambassador to Sudan.

DETERIORATING CONDITIONS

At about the time that Brewer was on his way to Khartoum, the British secured the agreement of the Mauritian Government to receive the Chagossians. Despite the fact that a majority of the Chagossians said they

wanted to receive compensation in cash, a planned Anglo-Mauritian rehabilitation scheme called for the provision of housing, pig breeding jobs (never a significant economic activity in Chagos), and some cash payments. On September 4, 1972, Mauritian Prime Minister Ramgoolam accepted £650,000 to resettle the Chagossians, including the remaining few hundreds who were still to be removed from Peros Banhos and Salomon.

British officials realized that the project was "under-costed" for an adequate resettlement, but were happy to have struck such a cheap deal. Precht had earlier weighed in on the likelihood of the resettlement plan's working: "We doubt it."[24] The resettlement was never implemented, and Chagossians saw almost none of the £650,000 for more than five years.

After the emptying of Diego Garcia, around 370 Chagossians remained in Peros Banhos and Salomon. Like those who went to Mauritius and the Seychelles, those who went from Diego Garcia to Peros and Salomon had been required to leave most of their possessions, furniture, and animals in Diego. They received Rs500 (about $90) as a "disturbance allowance" to compensate them for the costs of reestablishing their lives. Those going to Mauritius and the Seychelles received nothing.

The neglect of Peros Banhos and Salomon by the BIOT and Moulinie & Co. continued as it had on Diego Garcia, and conditions worsened dramatically in 1972 and 1973. Food supplies declined and Chagossians remember how their diet became increasingly dependent on fish and coconuts. When milk supplies ran out, women fed their children a thin, watery mixture of coconut milk and sugar. Medicines and medical supplies ran out. With even ripe coconuts in short supply, people ate the spongy, overripe flesh of germinated nuts. The remaining staff in each island's hospital left, and the last school, in Peros Banhos, closed.

In June 1972, the *Nordvær* continued emptying Peros and Salomon. At least 53 left on this one voyage, telling BIOT agents they wished to "return later to the islands," hopeful that conditions would improve.[25] Again Chagossians say conditions on the ship were terrible. Marie Therese Mein, a Chagossian woman married to the departing manager of Peros Banhos, described the voyage:

> Our conditions were somewhat better than the other suffering passengers since we were given a small cabin [because her husband was the manager], but we had to share this between my husband, myself and our 8 children. We could not open the portholes since the ship was heavily laden, and the sea would splash in if we did. It was therefore extremely hot and uncomfortable. Many people were

> in much worse conditions than us, having to share a cargo compartment with a cargo of coconuts, horses and tortoises. Some had to sleep on top of the deck of the ship. No meals were provided, and the captain, a Mr. Tregarden, told the families to prepare their own meals. By contrast the horses were fed grass. The passage was rough and many of the passengers were seasick. There was urine and manure from the horses on the lower deck. The captain decided to jettison a large part of the cargo of coconuts in order to lessen the risk of being sunk. The whole complement of passengers suffered both from an extremely rough passage and from bad smells of animals and were sick and weary after the 6 day crossing.[26]

Mein was three months pregnant at the time. She miscarried a day after arriving in the Seychelles.

A subsequent voyage of the *Nordvær* had 120 Chagossians on board, nearly twice its maximum capacity.[27] In December 1972, BIOT administrator Todd reported that Salomon had closed, with all its inhabitants moved to Peros Banhos or deported to Mauritius or the Seychelles. A small number of Chagossians remained in Peros, with only enough food to last until late March or April.

Early in 1973, Moulinie & Co. agents informed the remaining Chagossians that they would have to leave. At the end of April, with food supplies exhausted, the *Nordvær* left Peros Banhos with 133 Chagossians aboard. The *Nordvær* arrived in Mauritius on April 29.

By this time, however, the Chagossians on the *Nordvær* had heard about the fate of others arriving in Mauritius. They refused to disembark. They demanded that they be returned to Chagos or receive houses in Mauritius. After nearly a week of protest and negotiations, 30 families received a small amount of money and dilapidated houses in two of the poorest neighborhoods of Port Louis.

A month later, on May 26, 1973, the *Nordvær* made its final voyage, removing 8 men, 9 women, and 29 children from Peros Banhos. The expulsion from Chagos was complete.

EXPANSION

As early as Christmas Day, 1972, Bob Hope and Red Foxx were cracking jokes for the troops on Diego Garcia as part of a USO special.[28] Shortly before the final deportations from Peros Banhos in 1973, the Seabees com-

pleted their 8,000-foot runway and made the communications station operational. By October, the Navy was using the base to fly P-3 surveillance planes to support Israel during the 1973 Arab-Israeli war—quite a feat for a mere communications station.[29]

As Nitze and others in the U.S. Government had hoped, the original "austere communications facility" on Diego Garcia served as a nucleus for what became a rapidly expanding base. Before the base was operational, Zumwalt was already asking others in the Navy in 1972, "What do we do in 74, 75, and 76 for Diego Garcia?" referring to expansion ideas for the upcoming fiscal years.[30]

Restricted to the use of the Azores as its only base from which to resupply Israel during the October war, the Navy soon submitted an "emergency" request for $4.6 million in additional construction funds. The Pentagon turned them down. Within weeks, the Navy submitted a request to the Pentagon for an almost $32 million expansion of the base over three years, to include ship support facilities and a regular air surveillance capacity. Days later, Chairman of the Joint Chiefs of Staff Admiral Moorer sent a recommendation to Secretary of Defense James Schlesinger to expand the base beyond the new request, including a runway extension to accommodate B-52 bombers. In January 1974, the Air Force asked for a $4.5 million construction budget of its own.[31]

After an initial supplemental appropriation for fiscal year 1974 was deferred to the 1975 budget, additional appropriations for Diego Garcia soon became a minor political battle between the Ford administration and Democratic senators concerned about U.S. military expansion and a growing arms race with the Soviet Union in the Indian Ocean. Hearings were held in both houses of Congress. Amendments to defeat the expansion and to force arms negotiations in the Indian Ocean were introduced but defeated. Congress made new funding contingent on the President affirming that the expansion was "essential to the national interest of the United States," which Ford quickly did. "In particular," his justification said, "the oil shipped from the Persian Gulf area is essential to the economic well-being of modern industrial societies. It is essential that the United States maintain and periodically demonstrate a capability to operate military forces in the Indian Ocean."[32]

During House committee hearings, State Department representative George Vest was asked, was there "any question about Diego Garcia being in the open sea lanes?"

"No, it is open sea," he replied, before volunteering, "and uninhabited."

"There are no inhabitants in Diego Garcia?" queried Representative Larry Winn of Kansas.

"No inhabitants," Vest answered.
"None at all?"
"No."
Within weeks the Pentagon won appropriations for fiscal years 1975 and 1976 totaling more than $30 million.[33]

CONGRESSIONAL HEARINGS

On September 9, 1975, a page-one *Washington Post* headline read, "Islanders Were Evicted for U.S. Base." Reporter David Ottaway had become the first in the Western press to break the story. Democratic Senators Edward Kennedy of Massachusetts and John Culver of Iowa, who had opposed the expansion of the base, took to the floor of the Senate to propose an amendment demanding the Ford administration explain the circumstances surrounding the expulsion and the role of the U.S. Government in the removals. The amendment passed. A month later the administration submitted to Congress a nine-page response drafted by State and Defense.

The "Report on the Resettlement of Inhabitants of the Chagos Archipelago" described how Chagos had been inhabited since the late eighteenth century, and that "despite the basically transitory nature of the population of these islands, there were some often referred to as 'Ilois'. . . . In the absence of more complete data," the report said, "it is impossible to establish the status of these persons and to what extent, if any, they formed a distinct community."[34]

The report explained the removals by saying that the 1966 U.S.-U.K. agreement envisioned the total evacuation of the islands for military purposes, citing three reasons for wanting the islands uninhabited: security, British concerns about the costs of maintaining civil administration, and Navy concerns about "social problems . . . expected when placing a military detachment on an isolated tropical island alongside a population with an informal social structure and a prevalent cash wage of less than $4.00 per month."[35]—this was a polite way of referring to trumped up, racist fears about prostitution and other unwanted sexual and romantic relations between military personnel and the islanders.

As to the deportations, the report said, "All went willingly." It continued, "No coercion was used and no British or U.S. servicemen were involved." Although acknowledging that the "resettlement doubtless entailed discomfort and economic dislocation," the report concluded, "United States and United Kingdom officials acted in good faith on the

7.2 U.S. Government officials. Top from left: Adm. Arleigh Burke, Adm. Horacio Rivero, Paul Nitze. Bottom from left: Robert McNamara, Adm. Thomas Moorer, Adm. Elmo Zumwalt. Photos credits: Admirals courtesy Naval Historical Center; Nitze courtesy Harry S. Truman Library and Museum; McNamara courtesy Lyndon Baines Johnson Library and Museum.

basis of the information available to them." The last sentence of the report offered the Ford administration's final position: "There is no outstanding US obligation to underwrite the cost of additional assistance for the persons affected by the resettlement from the Chagos Islands."[36]

When the House Special Subcommittee on Investigations called for a day of hearings, administration representatives held firm. On November 4, 1975, Democrat subcommittee chair Lee H. Hamilton* asked State Department representative George T. Churchill if he considered the characterization "'all went willingly' to be a fair disclosure of the facts."

"In the sense that no coercion at all was used," Churchill replied.

"No coercion was used when you cut off their jobs? What other coercion do you need? Are you talking about putting them on the rack?"[37]

* Hamilton co-chaired the Iraq Study Group following the 2003 invasion.

Figure 7.3 "Aunt Rita," wearing her best for a Chagos Refugees Group festival and fundraising event, 2004. Photo by author.

At another point in the hearings Hamilton probed further with Churchill: "Is it the position of our Government now, that we have no responsibility toward these islanders? Is that our position?"

"We have no legal responsibility," Churchill replied. "We are concerned. We recently discussed the matter with the British. The British have discussed it with the Mauritian Government. We have expressed our concern."

"It is our basic position that it is up to the British. Is that it?" Hamilton pressed.

"It is our basic position that these people originally were a British responsibility and are now a Mauritian responsibility," Churchill explained.

"We have no responsibility, legal or moral?"

"We have no legal responsibility. Moral responsibility is a term, sir, that I find difficult to assess."[38]

Before testimony's end, Churchill said that it was the position of the Government not to allow the Chagossians to return to their homeland. Congress has never again taken up the issue.

NOTES

Archival Sources

JFK	John F. Kennedy Presidential Library, Boston, MA
LBJ	Lyndon B. Johnson Presidential Library, Austin, TX
MA	Mauritius Archives, Cormandel, Mauritius
NARA	NARA and Records Administration II, College Park, MD
NHC	Naval Historical Center, Operational Archives Branch, Washington, DC
PRO	National Archives, Public Records Office, Kew Gardens, England
SNA	Seychelles National Archives, Victoria, Mahé, Seychelles
UKTB	U.K. Trial Bundle, Sheridans Solicitors, London [U.K. litigation documents]

Introduction

1. Chagossians born in Chagos spoke Chagos Kreol, one of a group of Indian Ocean French Kreol languages, including Mauritian Kreol and Seselwa (Seychellois Kreol). Their vocabulary is largely French while also incorporating words from English, Arabic, and several African, Indian, and Chinese languages; the underlying grammar for the Kreols appears to come from Bantu languages. Speakers of the various Kreols can understand each other, but Chagos Kreol is distinct in some of its vocabulary and pronunciation. Most Chagossians have lost most of the distinctive features of the language over four decades in exile. See Philip Baker and Chris Corne, *Isle de France Creole: Affinities and Origins* (n.p.: Karoma, 1982); Robert A. Papen, "The French-based Creoles of the Indian Ocean: An Analysis and Comparison" (Ph.D. diss., University of California, San Diego, 1978). Throughout I use the word *Kreol* to identify languages and the word *Creole* when used to identify people of generally African ancestry who are socially categorized as such in Mauritius and Seychelles.

2. Auguste Toussaint, *History of the Indian Ocean*, trans. June Guicharnaud (London: Routledge and Kegan Paul, 1966), 110.

3. David Vine, "The Former Inhabitants of the Chagos Archipelago as an Indigenous People: Analyzing the Evidence," report for Washington College of Law, American University, Washington, DC, July 9, 2003.

4. Robert Scott, *Limuria: The Lesser Dependencies of Mauritius* (Westport, CT: Greenwood Press, 1976[1961]), 242.

5. Stuart B. Barber, letter to Paul B. Ryan, April 26, 1982, 3. My thanks to Richard Barber for his help with many important details about his father's life and for providing this and other invaluable documents.

6. Ibid., 3.

7. Horacio Rivero, "Long Range Requirements for the Southern Oceans," enclosure, memorandum to Chief of Naval Operations, May 21, 1960, NHC: 00 Files, 1960, Box 8, 5710, 2. Admiral Horacio Rivero credited Barber with doing most of the writing for the Long Range Objectives Group that produced this document.

8. Rivero, "Long Range Requirements," 2.

9. Horacio Rivero, "Assuring a Future Base Structure in the African-Indian Ocean Area," enclosure, memorandum to Chief of Naval Operations, July 11, 1960, NHC: 00 Files, 1960, Box 8, 5710; see also Monoranjan Bezboruah, *U.S. Strategy in the Indian Ocean: The International Response* (New York: Praeger Publishers, 1977), 58.

10. Barber, letter to Ryan, April 26, 1982, 3.

11. Roy L. Johnson, memorandum for Deputy Chief of Naval Operations (Plans & Policy), July 21 1958, NHC: 00 Files, 1958, Box 4, A4-2 Status of Shore Stations, 2–3. See also Bezboruah, *U.S. Strategy in the Indian Ocean,* 58; Vytautas B. Bandjunis, *Diego Garcia: Creation of the Indian Ocean Base* (San Jose, CA: Writer's Showcase, 2001), 2.

12. Massimo Calabresi, "Postcard: Diego Garcia," *Time,* September 24, 2007, 8.

13. GlobalSecurity.org, "Diego Garcia 'Camp Justice,'" http://www.globalsecurity.org/military/facility/diego-garcia.htm.

14. See, e.g., Peter Hayes, Lyuba Zarsky, and Walden Bello, *American Lake: Nuclear Peril in the Pacific* (Victoria, Australia: Penguin Books, 1986), 439–46.

15. Michael C. Desch, *When the Third World Matters: Latin American and United States Grand Strategy* (Baltimore, MD: Johns Hopkins University Press, 1993), 152–53.

16. GlobalSecurity.org, "Diego Garcia 'Camp Justice.'"

17. Neil Hinch, "A Time of Change," *Chagos News* 24 (August 2004), 6.

18. Times Online, "The Secret Downing Street Memo," May 1, 2005, available at http://timesonline.co.uk/tol/news/uk/article387374.ece.

19. Stephen Grey, *Ghost Plane: The True Story of the CIA Torture Program* (New York: St. Martin's Press, 2006); Ian Cobain and Richard Norton-Taylor, "Claims of a Secret CIA Jail for Terror Suspects on British Island to Be Investigated," *Guardian,* October 19, 2007; Council of Europe, Parliamentary Assembly, "Secret Detentions and Illegal Transfers of Detainees Involving Council of Europe Member States: Second Report," explanatory memorandum, June 7, 2007, Strasbourg, 13.

20. Democracy Now, "CIA Admits Used UK Territory for Rendition Flights," February 22, 2008, http://www.democracynow.org/2008/2/22/headlines#6.

21. Kevin Sullivan, "U.S. Fueled 'Rendition' Flights on British Soil," *Washington Post,* February 22, 2008, A16; Cobain and Norton-Taylor, "Claims of a Secret CIA Jail"; Duncan Campbell and Richard Norton-Taylor, "US Accused of Holding Terror Suspects on Prison Ships," *Guardian,* June 2, 2008; Reprieve,

"US Government Must Reveal Information about Prison Ships Used for 'Terror Suspects,'" press release, June 2, 2008, available at http://www.reprieve.org.uk.

22. See Vine, "The Former Inhabitants"; David Vine, S. Wojciech Sokolowski, and Philip Harvey, "*Dérasiné*: The Expulsion and Impoverishment of the Chagossian People [Diego Garcia]," expert report for American University Law School, Washington, DC, and Sheridans Solicitors, London, April 11, 2005.

23. I have never been employed or paid by Tigar or anyone connected with the suits. The American University law clinic that Tigar supervises paid for some of my research expenses in 2001–2 and in 2004.

24. This book builds on David Vine, "Empire's Footprint: Expulsion and the U.S. Military Base on Diego Garcia" (Ph.D. diss., Graduate Center, City University of New York, 2006). Despite the significant role that the British Government and its officials played in carrying out the expulsion, I focus on the U.S. role for three reasons: First, nearly all the literature on Diego Garcia has focused on the role of the British Government in organizing the removal process. The literature has not, other than in passing, examined the role of the U.S. Government in ordering and orchestrating the expulsion. This neglect has left some confusion about the role of the U.S. Government in creating the base and ordering the expulsion. Frequent historical and factual inaccuracies have also appeared in the journalistic and scholarly literature (e.g., to whom the base and the territory belong: as it should be clear by now, while the territory is technically controlled by Britain the base is controlled by the United States, with Diego Garcia *de facto* U.S. territory). These shortcomings have made a scholarly exploration of the history of the U.S. role long overdue. Second, because I have found that the U.S. Government ordered the expulsion, I believe any analysis of why the Chagossians were exiled must focus on the U.S. role. Third, on a personal level, as one who was born and lives in the United States, I was more immediately concerned about the U.S. Government's role in the exile.

25. Because I think social scientists have an obligation to ensure that people participating in and assisting with our research directly benefit from the research—we certainly benefit through grant money, book contracts, articles, speaking engagements, prestige, jobs—I made small contributions of food or money to families with whom I stayed. As thanks to the Chagos Refugees Group for helping to enable my research, I periodically worked in the group's office, primarily providing English translation and clerical assistance.

26. In this I was guided by the work of Hugh Gusterson, *Nuclear Rites: A Weapons Laboratory at the End of the Cold War* (Berkeley, CA: University of California Press, 1996); Carole Cohn, "'Clean Bombs' and Clean Language," in *Women, Militarism, and War: Essays in History, Politics, and Social Theory*, ed. Jean B. Elshtain and Sheila Tobias (Savage, MD: Rowman & Littlefield, 1990), 33–55, Jennifer Schirmer, *The Guatemalan Military Project: A Violence Called Democracy* (Philadelphia: University of Pennsylvania Press, 1998); Lesley Gill, *The School of the Americas: Military Training and Political Violence in the Americas*, (Durham, NC: Duke

University Press, 2004); James Mann, *Rise of the Vulcans: The History of Bush's War Cabinet* (New York: Penguin Books, 2004).

27. In total, I conducted in-depth semi-structured interviews with 18 former and 2 current U.S. Government officials. They included officials from the U.S. Navy, the U.S. departments of Defense and State, and the U.S. Congress. The interview sessions sought to elicit detailed histories of the decision-making process leading to the development of the base and the expulsion. Throughout, I continually asked interviewees to describe their thinking at the time of the events under discussion to identify their contemporaneous interests, motivations, assumptions, and understandings. I conducted more than 10 additional interviews of a similar nature with journalists, academics, military analysts, a scientist, and others who were involved in the history of Diego Garcia or who were knowledgeable about the base.

28. I used these sources and interviews not just to understand the history of Diego Garcia and the dynamics of U.S. Empire but also to understand more about the actors in the national security bureaucracy themselves. As Derek Gregory points out, the actions of states are not produced "through geopolitics and geoeconomics alone"; they are also produced by cultural, social, and psychological processes and practices, especially those that "mark other people as irredeemably 'Other'" and locate both the self and others spatially. Derek Gregory, *The Colonial Present: Afghanistan, Palestine, Iraq* (Malden, MA: Blackwell Publishing, 2004), 16, 20. The aim is not to demonize or blame particular individuals but to empathetically understand their involvement within the context in which they were living, while identifying processes and practices that conditioned their actions.

29. Stuart B. Barber, letter to Ryan, April 26, 1982.

30. Henri Marimootoo, "The Diego Files," *Week-end,* serial, May–September 1997.

31. Exchange of Notes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning a limited United States Naval Communications Facility on Diego Garcia, British Indian Ocean Territory (The Diego Garcia Agreement 1972), London, October 24, 1972, 3.

32. "Guidelines for Visits to Diego Garcia," memorandum, August 21, 1992, UKTB 3.

33. Calabresi, "Postcard," 8. Having filed such a story when he was one of the first journalists to visit the island in at last 25 years, Calabresi calculated "the equivalent in 2007 media dollars" as "probably a box of Chablis."

34. Letter to author, May 12, 2004.

35. Simon Winchester, *The Sun Never Sets: Travels to the Remaining Outposts of the British Empire* (New York: Prentice Hall Press, 1985); "Diego Garcia," *Granta* 73 (2001): 207–26.

36. See, e.g., La Barca: Blog, available at http://labarcaatsea.spaces.live.com/Blog/cns!SCEFC52FCBOE5896!167; Diane Stuemer, "Caught in a Net of Colourful Neighbours," *The Ottawa Citizen,* February 5, 2001.

37. The Department of Defense defines a "facility" as a building, structure, or utility. Department of Defense, "Base Structure Report," 8.

38. Global Security.org, "Iraq Facilities," http://www.globalsecurity.org/military/facility/iraq.htm; "Afghanistan Facilities," http://www.globalsecurity.org/military/facility/afghanistan.htm; Patrick Cockburn, "Revealed: Secret Plan to Keep Iraq under US Control," *Independent,* June 5, 2008; Joseph Gerson, "'Enduring' U.S. Bases in Iraq," CommonDreams.org, March 19, 2007; Alexander Cooley, "Base Politics," *Foreign Affairs* 84, no.6 (2005): 79–92; James Bellamy Foster, "A Warning to Africa: The New U.S. Imperial Grand Strategy," *Monthly Review* 58, no. 2(2006), available at http://www.monthlyreview.org/0606jbf.htm; Ann Scott Tyson, "Gates, U.S. General Back Long Iraq Stay," *Washington Post*, June 1, 2007, A11.

39. Guy Raz, "U.S. Builds Air Base in Iraq for Long Haul," *All Things Considered,* National Public Radio, October 12, 2007, http://www.npr.org/templates/story/story.php?storyId=15184773]; Tom Engelhardt, "Baseless Considerations," Tom Dispatch.com, November 5, 2007.

40. Mark Gillem, *American Town: Building the Outposts of Empire* (Minneapolis: University of Minnesota Press, 2007), xvi.

41. Engelhardt, "Baseless Considerations."

42. See, e.g., Theresa Hitchens, Michael Katz-Hyman, and Victoria Samson, "Space Weapons Spending in the FY 2007 Defense Budget," report, Center for Defense Information, Washington, DC, March 6, 2006.

43. E.g., David Harvey, *The New Imperialism* (Oxford, UK: Oxford University Press, 2003); Neil Smith, *American Empire: Roosevelt's Geographer and the Prelude to Globalization* (Berkeley, CA: University of California Press, 2003); Niall Ferguson, *Colossus: The Price of America's Empire* (New York: Penguin Press, 2004); Chalmers Johnson, *The Sorrows of Empire: Militarism, Secrecy, and the End of the Republic* (New York: Metropolitan Books, 2004).

44. G. John Ikenberry, "Illusions of Empire: Defining the New American Order," *Foreign Affairs* 83, no. 2(2004): 144.

45. See, e.g., Ferguson, *Colossus*; Michael Ignatieff, "The Burden," *New York Times Magazine*, January 5, 2003.

46. David Ottaway, "Islanders Were Evicted for U.S. Base," *Washington Post*, September 9, 1975, A1; *Washington Post*, "The Diego Garcians," editorial, September 11, 1975.

47. U.S. Congress, House, "Diego Garcia, 1975: The Debate over the Base and the Island's Former Inhabitants," Special Subcommittee on Investigations, Committee on International Relations, June 5 and November 4, 94th Cong., 1st sess. (Washington, DC: U.S. Government Printing Office, 1975).

48. Catherine Lutz's *Homefront*, an ethnography of Fayetteville, North Carolina and the Fort Bragg U.S. Army base, has provided a particularly effective model for exploring the costs of militarization and U.S. Empire in the United States; in many ways I sought to replicate her study with a base abroad. Catherine Lutz, *Homefront: A Military City and the American 20th Century* (Boston: Beacon,

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2001). See also Katherine T. McCaffrey, *Military Power and Popular Protest: The U.S. Navy in Vieques, Puerto Rico* (New Brunswick, NJ: Rutgers University Press, 2002); Gill, *School of the Americas*.

49. With few exceptions, anthropologists have been absent from the debates on empire. Amid earlier imperial arguments in the 1960s, Kathleen Gough criticized anthropology, "the child of Western imperialism," for having "virtually failed to study Western imperialism as a social system, or even adequately to explore the effects of imperialism on the societies we studied." More than three decades later, Catherine Lutz found there was still almost no anthropological analysis of empire. (Kathleen Gough, "New Proposals for Anthropologists," *Current Anthropology* 9, no. 5 (1968): 403, 405; Catherine Lutz, "Making War at Home in the United States: Militarization and the Current Crisis," *American Anthropologist* 104, no. 3 [2002]: 732.)

While there has been some progress in recent years, there should be little surprise that a discipline rooted in the imperialism and colonialism of Europe and the United States has shied away from making empire and imperialism its immediate subject of study (see Talal Asad, "Introduction," in *Anthropology and the Colonial Encounter*, ed. Talal Asad [London: Ithaca Press, 1973]). Notwithstanding Mina Davis Caulfield's critique of anthropologists' inattention to empire and Laura Nader's still largely ignored exhortation to study the powerful, most anthropologists have continued to study the lives of the powerless, the poor, and those whose lives have suffered the impact of large-scale forces like imperialism (Mina Davis Caulfield, "Culture and Imperialism: Proposing a New Dialectic," and Laura Nader, "Up the Anthropologist—Perspectives Gained from Studying Up," both in *Reinventing Anthropology*, ed. Dell Hymes [New York: Pantheon Books, 1969]).

In recent years, there has been progress toward the investigation of empire, paralleling important new research on elites, policymaking, and policymakers. Catherine Lutz has called for the production of "ethnographies of empire" as a way to ethnographically explore the particularities, practices, shifts, and contradictions in empire, as well as its costs. In her ethnography of Fayetteville, North Carolina, home to the Fort Bragg U.S. Army base, Lutz illustrates the domestic costs of militarization and U.S. Empire, providing an important model for investigating the international effects of militarization and empire in the lives of the Chagossians. (See Lutz, "Making War at Home"; "Empire Is in the Details," *American Ethnologist* 33, no. 4 (2006); *Homefront*. See also McCaffrey, *Military Power and Popular Protest*; Gill, *School of the Americas*.)

Too often, however, many anthropological analyses treat large-scale forces and sources of power like imperialism and the U.S. Government, which shape and structure people's lives, as abstract givens, without subjecting them to detailed analysis of any kind (Michael Burawoy, "Introduction: Reaching for the Global," in *Global Ethnography*, ed. Michael Burawoy et al. [Berkeley, CA: University of California Press, 2000], 1–40). To say, as many do, that structural forces shape

lives, constrain agency, and create suffering is one thing. To demonstrate how these things happen is another.

This book then is an attempt to build on the need to subject extralocal forces to ethnographic investigation and to realize a model for understanding widespread suffering developed by Paul Farmer: With suffering, "structured by historically given (and often economically driven) processes and forces that conspire . . . to constrain agency," the task is to detail what the historically given, economically (and politically) driven processes and forces are, how they operate, and how they have shaped Chagossians' lives. As Michael Burawoy says, forces "become the topic of investigation." (See Paul Farmer, "On Suffering and Structural Violence: A View from Below," in *Social Suffering*, ed. Arthur Kleinman, Veena Das, and Margaret Lock [Berkeley, CA: University of California Press, 1997], 261–83; William Roseberry, "Understanding Capitalism—Historically, Structurally, Spatially," in *Locating Capitalism in Time and Space*, ed. D. Nugent (Palo Alto, CA: Stanford University Press, 2002), 61-79; Michael Burawoy, "Manufacturing the Global," *Ethnography* 2, no. 2 [2001]: 147–59; Burawoy, "Introduction: Reaching for the Global"; Michel-Rolph Trouillot, "The Anthropology of the State in the Age of Globalization," *Current Anthropology* 42, no. 1 [2001]: 125–38; Eric R. Wolf, *Europe and the People without History* [Berkeley, CA: University of California Press, 1982].)

At the same time, this corrective would go too far to focus, like many traditional foreign policy scholars, only on the structural dynamics or even the actors of U.S. foreign policy while ignoring the effects of foreign policy. I began to see that a bifocaled approach offering roughly equal study of the Chagossians and U.S. Empire would offer the best way to understand Diego Garcia (see also Gill, *School of the Americas*). The book aims to contribute to scholarship on empire, militarization, and foreign policy by subjecting U.S. Empire and its actors to the same kind of ethnographic scrutiny most often reserved for imperialism's victims, while still attending to the lives affected by the U.S. Empire so often ignored by most non-anthropologist scholars. Ultimately the book attempts to do justice anthropologically to both sides of Diego Garcia, both sides of U.S. Empire, by seeking to investigate ethnographically the experience of U.S. Government officials and the Chagossians while attending to the larger structural context in which the base was created. Bringing the two sides "into the same frame of study," I aim to "posit their relationships on the basis of first-hand ethnographic research." See George Marcus, *Ethnography through Thick and Thin* (Princeton University Press, 1998), 84.

Chapter One
The Ilois, The Islanders

1. On the history of Chagos, see especially former governor of colonial Mauritius Sir Robert Scott's *Limuria: The Lesser Dependencies of Mauritius*, and former commissioner of the British Indian Ocean Territory Richard Edis, *Peak of Limuria: The Story of Diego Garcia and the Chagos Archipelago*, new ed. (London:

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Chagos Conservation Trust, 2004). The most important primary sources are those available in the Mauritius Archives and the Public Records Office (National Archives), in Kew, England.

2. Scott, *Limuria*, 68, 42–43, 48–50; Vijayalakshmi Teelock, *Mauritian History: From Its Beginnings to Modern Times* (Moka, Mauritius: Mahatma Gandhi Institute, 2000), 16–17.

3. Robert L. Stein, *The French Slave Trade in the Eighteenth Century: An Old Regime Business* (Madison: University of Wisconsin Press, 1979), 9.

4. Larry Bowman, *Mauritius: Democracy and Development in the Indian Ocean* (Boulder, CO: Westview Press, 1991), 13. See also Teelock, *Mauritian History*, 104–5; Stein, *The French Slave Trade in the Eighteenth Century*, 119.

5. Alfred J. E. Orian, "Report on a Visit to Diego Garcia," *La Revue Agricole et Sucrière* 38 (1958): 129; Scott, *Limuria*, 76.

6. Iain B. Walker, "British Indian Ocean Territory," in *The Complete Guide to the Southwest Indian Ocean* (Argelès sur Mer, France: Cornelius Books, 1993), 562; Scott, *Limuria*, 63, 69; Charles Grant, *The History of Mauritius or the Isle of France and the Neighboring Islands from Their First Discovery to the Present Time* (New Delhi: Asia Educational Services, 1995[1801]), 359.

7. It is possible that other enslaved people arrived as early as 1770.

8. H. Ly-Tio-Fane and S. Rajabalee, "An Account of Diego Garcia and its People," *Journal of Mauritian Studies* 1, no. 2 (1986): 91–92; I. Walker, "British Indian Ocean Territory," 563; Scott, *Limuria*, 20; B. d'Unienville, "Notes on the Chagos Archipelago." Mauritiana Collection, University of Mauritius, n.d.; Edis, *Peak of Limuria*.

9. "Diego Garcia Expedition 1786," India Office Records, Bombay Secret and Political Consultations, Vol. 73, 1786. See also Edis, *Peak of Limuria* , 30–31.

10. Edis, *Peak of Limuria*, 31; Scott, *Limuria*, 75, 20; I. Walker, "British Indian Ocean Territory," 562; "Diégo Garcia," report, n.d. [1825–29], MA: TB 3/2.

11. Europeans had previously referred to the Indian Ocean as an "Arab Lake." See Enseng Ho, "Empire through Diasporic Eyes: A View from the Other Boat," *Comparative Study of Society and History* 46 (2004): 219.

12. Permits to Slave Holders to Transport Slaves between Islands, 1828, MA: IA 32. See also MA: IA 32; IG 59; IG 112/5052, 5117, 5353, 5355, 5448.

13. See Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750–1925* (New York: Vintage, 1976), 185–201, on naming practices during slavery reflecting the maintenance of kinship ties among African Americans.

14. Scott, *Limuria*, 112, 119; Donald Taylor, "Slavery in the Chagos Archipelago," *Chagos News* 14 (2000): 3; Dulary Peerthum and Satyendra Peerthum, "'By the Sweat of Their Brow': A Study of Free and Unfree Labourers in the Chagos Archipelago, c. 1783–1880," preliminary paper abstract, 2002; MA: IB 12/47.

15. M. N. Lucie-Smith, "Report on the Coconut Industry of the Lesser Dependencies, Mauritius," Department of Agriculture, Port Louis, Mauritius, June 1959, 6.

16. Ly-Tio-Fane and Rajabalee, "An Account of Diego Garcia and Its People," 92; d'Unienville, "Notes on the Chagos Archipelago"; "Diégo Garcia" (report [1825–29]); I. Walker, "British Indian Ocean Territory," 563; Orian, "Report on a Visit to Diego Garcia," 129. Cyclones are only known to have hit Chagos in 1891 and 1944. See Edward P. Ashe, letter to Sir A. W. Moore, November 26, 1903, PRO: ADM 123/34, 2; Edis, *Peak of Limuria*. "Dauquet" was perhaps spelled "Danguet" or "Dauget." Six Islands actually includes a seventh.

17. Bowman, *Mauritius*, 17–18. British oversight in Mauritius and to an even greater extent in the isolated dependencies like Chagos was weak at best. The British sent the first government agent to investigate conditions in Chagos 10–15 years after taking possession of the archipelago, but otherwise simply encouraged the production of oil to supply the Mauritian market. See Scott, *Limuria*, 128; Ly-Tio-Fane and Rajabalee, "An Account of Diego Garcia and Its People," 92–93.

18. Lapotaire et al., "Mémoire," letter, October 8, 1828, MA: TB 1/41828, 13. For descriptions of life under slavery, also see Scott, *Limuria*, 99, 104–5, 149.

19. Lapotaire et al., "Mémoire," 13. Scott confirms that by law, slave owners were technically required to provide basic food rations, clothing, housing, and medical care, and that "slaves were usually supplied with various vegetables . . . [and] encouraged to rear small livestock . . . either by way of incentives to good work or to place on the slaves themselves as much as possible of the onus of providing a balanced diet." Scott, *Limuria*, 105.

20. Also known as the "plantation complex." See Sidney W. Mintz, "The Caribbean as a Socio-cultural Area," in *Peoples and Cultures of the Caribbean: An Anthropological Reader*, ed. Michael M. Horowitz (Garden City, NY: Natural History Press, 1971), 17–46; Mintz, *Caribbean Transformations* (Chicago: Aldine Publishing, 1974); Philip D. Curtin, *The Rise and the Fall of the Plantation Complex: Essays in Atlantic History* (New York: Cambridge University Press, 1990); Michael Craton, *Empire, Enslavement and Freedom in the Caribbean* (Kingston, Jamaica: Ian Bandle, 1997).

21. Curtin, *The Rise and Fall of the Plantation Complex*, 11–13; Mintz, *Caribbean Transformations,* 46.

22. Mintz, *Carribean Transformations,* 52, 54.

23. This was the case in the isolated Out Islands of the Bahamas, where similar conditions prevailed. See Howard Johnson, *The Bahamas from Slavery to Servitude, 1783–1933* (Gainesville: University of Florida Press, 1996), 50.

24. See W. J. Eccles, *The French in North America, 1500–1783* (East Lansing: Michigan State University Press, 1998), 172–74; William F. S. Miles, *Elections and Ethnicity in French Martinique: A Paradox in Paradise* (New York: Praeger Publishers, 1986), 32–34; Deryck Scarr, *Seychelles since 1770: History of a Slave and Post-Slavery Society* (Trenton, NJ: Africa World Press, 1999).

25. Scott, *Limuria*, 136; Craton, Empire, *Enslavement, and Freedom in the Caribbean*, 3; Eccles, *The French in North America, 1500–1783,* 172.

26. Eccles, *The French in North America, 1500–1783,* 172.

27. Scott, *Limuria*, 140–41.

28. L. B. Büehmüller and André Büehmüller, census record, April 8, 1861, MA: TB 3/1. The extent and rate at which Indian labor was introduced in Chagos is unclear. A visiting magistrate's report from 1880 says that there were on the order of 10 Indians in all of Chagos, a figure almost certainly far too low. See J. H. Ackroyd, "Report of the Police and Stipendary Magistrate for the Smaller Dependencies 1880," Magistrate for Lesser Dependencies 1880, Port Louis, Mauritius, March 22, MA: RA 2568, 11. Some claim a figure of 40 percent Indian descent by the 1960s, which may accurately reflect the percentage tracing at least some Indian ancestry. See Francoise Botte, "The 'Ilois' Community and the 'Ilois' Women," unpublished MS, 1980; Iain B. Walker, "*Zaffer Pe Sanze": Ethnic Identity and Social Change among the Ilois in Mauritius* (Vacoas, Mauritius: KMLI, 1986).

29. Marina Carter and Raymond d'Unienville, *Unshackling Slaves: Liberation and Adaptation of Ex-Apprentices* (London: Pink Pigeon Books, N.D), 57.

30. See Thomas V. Bulpin, *Islands in a Forgotten Sea* ([no city], Netherlands: Howard Timmins, 1958), 314; H. Labouchere, letter to Governor Higginson, February 26, 1857, MA: SA 57/47, and letter to Governor Higginson, August 20, 1857, MA: SA 59/19; Scott, *Limuria*, 263; Ackroyd, "Report of the Police and Stipendary Magistrate," 8.

31. Charles Anderson to Colonial Secretary, September 5, 1838, MA: RD 18.

32. G. Meyer, "Report on Visit to Chagos Archipelago," Port Louis, Mauritius, Labour Office, May 23, 1949, PRO: CO 859/194/8, 1.

33. Bulpin, *Islands in a Forgotten Sea*, 28, 314; Ackroyd, "Report of the Police and Stipendary Magistrate," 11; Scott, *Limuria*, 162.

34. Scott, *Limuria*, 162–65.

35. Ackroyd, "Report of the Police and Stipendary Magistrate," 11. Without hearing from Chagossians at the time, however, one must be careful about drawing conclusions based on these uncorroborated official reports.

36. Scott, *Limuria*, 253; Warner, "Report of Mr. Warner on the Dependencies of Mauritius," Port Louis, Mauritius, MA: TB 1/3.

37. H. J. Holland, letter to Colonial Secretary, February 7, 1887, MA: SA 167/25.

38. Ivanoff Dupont, "Report of the Acting Magistrate for the Lesser Dependencies of Mauritius on Diego Garcia," Bambous, Mauritius, June 4, 1883, MA: SA 142/9, 2–5; Scott, *Limuria*, 169–78.

39. Papen, "The French-based Creoles of the Indian Ocean"; John Holm, *Pidgins and Creoles*, vol. 2: *Reference Survey* (Cambridge: University of Cambridge Press, 1989), 403–4.

40. Also *Ilwa*. See Roger Dussercle, *Archipel de Chagos: En mission, novembre 10, 1933–janvier 1934* (Port Louis, Mauritius: General Printing and Stationery, 1934), 9; John Madeley, "Diego Garcia: A Contrast to the Falklands," The Minority Rights Group Report 54, London: Minority Rights Group Ltd, 1985 [1982], n. 5.

41. Ly-Tio-Fane and Rajabalee, "An Account of Diego Garcia and Its People," 105; Scott, *Limuria*, 182.

42. For a concise description of copra processing, see I. Walker, "British Indian Ocean Territory," 563.

43. The account and all quotations in this section come from W. J. Hanning, "Report on Visit to Peros Banhos," parts I and II, March 29, 1932. PRO: CO 167/879/4 102894. Unfortunately I was unable to ask Rita and other older Chagossians about the events described.

44. Ibid., I:6.

45. Ibid., I:5.

46. Ibid., I:6.

47. Ibid., I:8.

48. Ibid., I:8–9.

49. Ibid., I:9–10.

50. Ibid., attachment.

51. Ibid., II:1–3.

52. John Todd, "Notes on the Islands of the British Indian Ocean Territory," report, January 10, 1969. SNA, 33; "Notes on a Visit to Chagos by the Administrator, British Indian Ocean Territory," report, July 30, 1969, PRO, 3; Dalais 1935:18.

53. R. Lavoipierre, "Report on a Visit to the Mauritius Dependencies: 16th October–10th November, 1953," Port Louis, Mauritius, December 7, 1953, PRO: CO 1023/132 1953:5; Mary Darlow, "Report by Public Assistance Commissioner and Social Welfare Advisor," Port Louis, Mauritius, December, PRO: CO 1023/132 1953; Scott, *Limuria,* 7.

54. The plantation company had the power—and at times exercised it—to deport workers that management considered troublesome. Otherwise, everyone living on the islands was guaranteed work. The following description of working and living conditions comes from many sources, including interviews and conversations with Chagossians and other plantation employees. See also Scott, *Limuria*; I. Walker, *Zaffer Pe Sanze*, "British Indian Ocean Territory"; the reports of J. R. Todd; and a series of magistrate reports on Chagos dating to the nineteenth century.

55. See, e.g., Todd, "Notes on the Islands of the BIOT."

56. Scott, *Limuria,* 285.

57. Ibid., 266–67.

58. Ibid., 242.

59. Hilary Blood, "The Peaks of Lemuria," *Geographical Magazine* 29 (1957): 522.

60. Scott, *Limuria*, 184, 24.

61. Auguste Toussaint, *Histoire des Iles Mascareignes* (Paris: Editions Berger-Levrault, 1972), 18.

62. Scott, *Limuria*, 293. Scott meant his description to apply also to the people of the other Lesser Dependencies like Agalega.

76. "British Indian Ocean Territory," memorandum, December 14, 1966, PRO, 2. Emphasis in original.

77. Chalfont, letter to David K. E. Bruce, December 30, 1966, NARA: RG 59/150/64–65, Subject-Numeric Files 1964–1966, Box 1552.

Chapter Five
"Maintaining the Fiction"

1. McCaffrey, *Military Power and Popular Protest*; *Monthly Review*, "U.S. Military Bases and Empire."

2. A comparative study of maritime empires notes, "navies, like their governments, regard any political upheaval as dangerous to imperial stability. Rebels cannot be tolerated if order (or 'peace') is to prevail." Clark G. Reynolds, *Command of the Sea: The History and Strategy of Maritime Empires* (Malabar, FL: Robert E. Krieger Publishing, 1983), 7.

3. Bezboruah, *U.S. Strategy in the Indian Ocean*, 52, 54, 58, 60.

4. Ryan, "Diego Garcia," 133.

5. UKTB 4-132.

6. Secretary of State for the Colonies, telegram to Commissioner, British Indian Ocean Territory, February 25, 1966, UKTB.

7. Brooke-Turner, "British Indian Ocean Territory."

8. Ibid.

9. *Queen v. Secretary of State ex parte Bancoult 2006*: para. 27, emphasis in original.

10. Ibid., para. 27.

11. Anthony Aust, "Immigration Legislation for BIOT," memorandum, 16 January 1970.

12. The British Government also acquired the islands of Desroches from Paul Moulinie (the primary owner in Chagos), and Farquhar from another private owner (Aldabra was already Crown territory belonging to the Queen).

13. Some may have been prevented from returning prior to this date.

14. The contract also established the number of workers allowed on the islands, working hours, and wages.

15. See also Mauritius Ministry of Social Security, letter, July 19, 1968, PRO: FCO 31/13. This history of the expulsion process builds on Vine et al., *Dérasiné*, and is drawn from several sources. Many published accounts of the expulsion exist: see, e.g., Ottaway, "Islanders Were Evicted for U.S. Base"; Winchester, *The Sun Never Sets*; Madeley, "Diego Garcia." Most provide a broad overview of the expulsion. To document the expulsion accurately and verifiably and with more detail than previous histories, this history draws almost exclusively on primary sources: interviews and conversations with Chagossians and others in Mauritius and the Seychelles who witnessed events; court documents; and contemporaneous British Government documents describing many of the events of the expulsion as

they occurred. Although I have relied on Chagossians' eyewitness accounts, I have tried to verify their accounts with published sources as cited.

16. UKTB 5-578. In January 1969, a joint State Department–Defense Department message indicated the U.S. Government's displeasure with a new request by the BIOT administrator to rehire fifty "Chagos-born laborers" in Mauritius for work on Diego Garcia. See William P. Rogers, telegram to the U.S. Embassy London, January 31, 1969, NARA: RG 59/150/64–65, Subject-Numeric Files 1967–1969, Box 1551, 4.

17. A. Wooler, letter to Eric G. Norris, August 22, 1968, attachment to Eric G. Norris, note to Mr. Counsell, September 9, 1968, PRO: FCO 31/134.

18. John Todd, "Tour Report—Chagos May 1967," report, May 1967, British Indian Ocean Territory, PRO. 5.

19. John Todd, "Chagos," report, British Indian Ocean Territory, September 1968, PRO, 4.

20. Todd, "Tour Report—Chagos May 1967," 3; Todd, "Chagos."

21. The school later seems to have briefly reopened before closing permanently.

22. Todd, "Tour Report—Chagos May 1967," 3; Todd, "Notes on the Islands of the British Indian Ocean Territory," 33; "Notes on a Visit to Chagos by the Administrator, British Indian Ocean Territory," 3; "Notes on a Visit, July 17th to August 2nd," 1970, PRO, 2.

23. Draft contract between the Crown and Moulinie and Company (Seychelles) Limited, 1968, PRO: WO 32/21295.

24. See, e.g., Madeley, "Diego Garcia," 4.

25. K. R. Whitnall, letter to Mr. Matthews, Miss Emery, May 7, 1969, UKTB: 6-755.

26. David Greenaway and Nishal Gooroochurn, "Structural Adjustment and Economic Growth in Mauritius," in Rajen Dabee and David Greenaway, eds., *The Mauritian Economy: A Reader* (Houndsmill, UK: Palgrav, 2001), 67; Ramesh Durbarry, "The Export Processing Zone," in Dabee and Greenaway, *The Mauritian Economy,* 109.

27. Wooler, letter to Norris, August 22, 1968.

28. E.H.M. Counsell, "Defence Facilities in the Indian Ocean; Diego Garcia," letter to Mr. Le Tocq, 1969, PRO: FCO 31/401.

29. *Foreign Relations of the United States, 1964–1968,* 21:103–5.

30. Fred Kaplan, *The Wizards of Armageddon* (Stanford, CA: Stanford University Press, 1991), 254–55.

31. Ibid., 257.

32. Cohn, "'Clean Bombs' and Clean Language"; also Gusterson, *Nuclear Rites.*

33. *Foreign Relations of the United States, 1964–1968,* 21:108.

34. James W. O'Grady, memorandum for the Secretary of the Navy, September 19, 1967, NHC: 00 Files, 1967, Box 74, 11000/2.

35. F. Pearce, "An Island of No Importance," *New Scientist,* February 7, 2004, 48.

36. Ibid. Stoddart has long been troubled by his role in saving Aldabra and inadvertently helping to clear the way for the Diego Garcia removals. Since the 1970s, he has expended large amounts of his time and money collecting documents about the creation of the base and the expulsion, provided assistance to the Chagossians' struggle to return, and written detailed letters to politicians in the United States and United Kingdom advocating on their behalf. See also Charles Douglas-Home, "Scientists Fight Defence Plans for Island of Aldabra," *Times* (London), August 16, 1967.

Chapter Six
"Absolutely Must Go"

1. Kaplan, *Wizards of Armageddon*, 138.
2. Ibid., 140, 139.
3. Ibid., 141; Bob Thompson, "Arsenal of Words," *Washington Post,* 29 October 2007, C2.
4. *Foreign Relations of the United States, 1964–1968,* 21:92–93, 109–17; Bandjunis, *Diego Garcia,* 30.
5. FRUS, *Foreign Relations of the United States, 1964–1968,* 21:109–12; James W. O'Grady, memorandum to Op-002, May 2, 1968, NHC: 00 Files, 1967, Box 74, 11000/3.
6. O'Grady, memorandum to Op-002, 3.
7. Alain Enthoven, memorandum for Secretary of Defense, May 10, 1968, NHC: 00 Files, 1967, Box 74, 11000/3.
8. *Foreign Relations of the United States, 1964–1968,* 21:113–14.
9. Earl C. Ravenal, "American Strategy in the Indian Ocean: The Proposed Base on Diego Garcia," Hearings before the Subcommittee on the Near East and South Asia of the Committee on Foreign Affairs, House of Representatives, 93rd Congress, March 14, 1974.
10. Bandjunis, *Diego Garcia,* 35–36.
11. U.S. Department of State, "Senior Interdepartmental Group, Chairman's Summary," December 24, 1968, NARA: CIA records, 7.
12. Ravenal, "American Strategy in the Indian Ocean."
13. Dean Rusk, telegram to U.S. Embassy London, August 7, 1968, NARA: RG 59/150/64–65, Subject-Numeric Files 1967–1969, Box 1552.
14. Ibid. At times the U.S. Government has argued that it did not know there was an indigenous population in Chagos and that it thought the population was composed of transient workers. This argument is difficult to believe. Any cursory inspection of writings on Chagos (most importantly Scott, *Limuria;* Blood, "The Peaks of Lemuria") would have revealed the existence of generations of Chagossians living on the islands. Even without reading a word, it is hard to imagine that the Navy's first reconnaissance inspection of Diego Garcia in 1957 would have overlooked hundreds of families (unusual in the case of migrant workers) and a fully

functioning society complete with nineteenth-century cemeteries and churches and people tracing their ancestry back as many as five generations in Chagos. The British were clearly well aware of the indigenous population, as their extensive discussions on the subject in memos and letters throughout the 1960s reveal. A secret 1969 letter from the U.S. Embassy in London to the British Foreign and Commonwealth Department confirms U.S. knowledge of "Chagos-born laborers" (Gerald G. Oplinger, letter to Richard A. Sykes, February 3, 1969, PRO).

15. U.S. Embassy London, telegram to Secretary of State, August 9, 1968, NARA: RG 59/150/64–65, Subject-Numeric Files 1967–1969, Box 1551, 1.

16. R. S. Leddick, memorandum for the Record, November 11, 1969, NHC: 00 Files, 1969, Box 98, 11000.

17. R. S. Leddick, memorandum for the Record, December 3, 1969, NHC: 00 Files, 1969, Box 98, 11000; Bandjunis, *Diego Garcia*, 37.

18. Tazewell Shepard, memorandum for Harry D. Train, January 26, 1970, NHC: 00 Files, 1970, Box 111, 11000.

19. Robert A. Frosch, memorandum for the Deputy Secretary of Defense, February 27, 1970, NHC: 00 Files, 1970, Box 111, 11000; John H. Chafee, memorandum for the Secretary of Defense, January 31, 1970, NHC: 00 Files, 1970, Box 111, 11000.

20. Throughout the development of Diego Garcia and BIOT, U.S. and U.K. government officials sought at least in public to describe the military activities there not as a "base" but as a "station," a "facility," or a "post." They usually linked these terms with adjectives like "austere," "limited," or "modest." From early in the development of Diego Garcia, however, the Navy and later the Department of Defense and the Air Force had large visions for the island: first, for naval communications in the Indian Ocean (including the coordination of nuclear submarines newly deployed there to strike the Soviet Union and China); second, as a large harbor for Navy warships and submarines, with enough room to protect an aircraft carrier task force; and third, as an airfield intended first for Navy reconnaissance planes and later for nuclear-bomb-ready B-52 bombers and almost every other plane in the Air Force arsenal (see Bandjunis, *Diego Garcia*, 8–14; U.K. Colonial Office; J. H. Gibbon et al., "Brief on UK/US London Discussions on United States Defence Interests in the Indian Ocean," memorandum, March 6, 1964, PRO: CAB 21/5418, 81174, 1–2). Faced with the potential for growing opposition, U.S. and U.K. officials insistently avoided describing plans for Diego Garcia as a "base." With the British soon committing to withdraw its troops east of the Suez Canal by 1971, the U.K. Government did not want to be involved in any development perceived to be a new base. See Mewes, 1. U.S. officials faced opposition to their expansion into the Indian Ocean in Congress, from nations around the Indian Ocean like India, and even within the Pentagon. This opposition was especially intense in reaction to the escalating war in Vietnam; as in southeast Asia, this would also be a move into a region almost entirely without a prior U.S. presence.

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21. See attachment, Op-605E4, "Proposed Naval Communications Facility on Diego Garcia," briefing sheet, [January] 1970, NHC: 00 Files, 1970, Box 111, 11000.

22. Walter H. Annenberg, telegram to the Secretary of State, July 12, 1970, library of David Stoddart (see also NARA: RG 59, Subject-Numeric Files, 1970–1973 1970); Greene, telegram to the Secretary of State, December 16, 1970, library of David Stoddart (see also NARA: RG 59, Subject-Numeric Files, 1970–1973).

23. F. J. Blouin, memorandum for the Chief of Naval Operations, December 28, 1970, NHC: 00 Files, 1970, Box 115, 11000.

24. William P. Rogers, telegram to the U.S. Embassy London, June 19, 1970, library of David Stoddart (see also NARA: RG 59, Subject-Numeric Files, 1970–1973).

25. Ibid.

26. Walter H. Small, memorandum for the Chief of Naval Operations, December 11, 1970, NHC: 00 Files, 1970, Box 115, 11000.

27. William P. Rogers, telegram to the U.S. Embassy London, June 19, 1970, library of David Stoddart (see also NARA: RG 59, Subject-Numeric Files, 1970–1973).

28. Greene, telegram to the Secretary of State, December 16, 1970, library of David Stoddart (see also NARA: RG 59, Subject-Numeric Files, 1970–1973).

29. Bandjunis, *Diego Garcia*, 46.

30. William P. Rogers, telegram to the U.S. Embassy London, December 14, 1970, NARA: RG 59/150/67/1/5, Subject-Numeric Files 1970–1973, Box 1744.

31. Elmo R. Zumwalt, Jr., *On Watch: A Memoir* (New York: Quadrangle, 1976), 17–19. Matching his own elite background, Zumwalt married Mouza Coutelais-du-Roche, a woman of French and Russian parentage, whom he met at the end of World War II among the White Russian community-in-exile in Harbin, Manchuria.

32. Ibid., 203–4.

33. Ibid., 27–29.

34. Ibid., 34.

35. Ibid., 28.

36. U.S. Naval Institute, "Reminiscences by Staff Officers of Admiral Elmo R. Zumwalt, Jr., U.S. Navy, vol. I," Annapolis, MD, U.S. Naval Institute, 1989, 311–12.

37. Ibid., 313.

38. J. H. Dick, memorandum for the Chief of Naval Operations, December 18, 1970, NHC: 00 Files, 1970, Box 115, 11000.

39. I. Watt, letter to Mr. D.A. Scott, Sir L. Monson, and Mr. Kerby, January 26, 1971, PRO: T317/162, 1–2.

40. Blouin, memorandum for the Chief of Naval Operations, December 28, 1970.

41. Attachment to Walter H. Small, memorandum for the Chief of Naval Operations, January 11, 1971, NHC: 00 Files, 1971, Box 172, 11000. See also Walter H. Small, memorandum for the Vice Chief of Naval Operations, January 28, 1971, NHC: 00 Files, 1971, Box 172, 11000.

42. Small, memorandum for the Chief of Naval Operations, January 11, 1971, 1.

43. Attachment to Small, memorandum for the Chief of Naval Operations, January 11, 1971.

44. John Todd, letter to Allan F. Knight, February 17, 1971, PRO: T317/1625.

45. According to Madeley, "One Ilois woman, Marie Louina, died on Diego when she learned she would have to leave her homeland." Madeley, "Diego Garcia," 5. I have been unable to confirm this account.

46. See also Sunday Times, "The Islanders that Britain Sold," September 21, 1975, 10.

47. Marcel Moulinie, statement of Marcel Moulinie, application for judicial review, *Queen v. The Secretary of State for the Foreign and Commonwealth Office, ex parte Bancoult*, 1999.

48. Small, memorandum for the Vice Chief of Naval Operations, January 28, 1971, 1.

49. U.S. Department of State, telegram to U.S. Embassy Port Louis, U.S. Embassy London, February 4, 1971, library of David Stoddart. See also NARA: RG 59, Subject-Numeric Files 1970–1973.

50. Bruce Greatbatch, FCO Telno BIOT 52, telegram to Foreign and Commonwealth Office, August 26, 1971, PRO.

51. Attachment to E. L. Cochrane, Jr., memorandum for the Deputy Chief of Naval Operations (Plans and Policy), March 24, 1971, NHC: 00 Files, 1971, Box 174, 11000, 2.

52. Ibid., 1.

53. Ibid.

54. Ibid. The Deputy Chief of Naval Operations for Plans and Policy explained to Zumwalt that Diego's inhabitants were a mix of Ilois, Mauritians, and Seychellois. He also explained the Navy's position on employing any locals: "The decision not to hire local labor, even for domestic work, was made on the basis that no local economy dependent on the facility should be created. To do so would make it more difficult to remove the workers when the facility becomes operational. If a native community of bars, laundries, etc. grew and then was required to be disbanded, the resultant publicity could become damaging. Another important factor is that presentations to Congress have stressed that there will be no indigenous population and no native labor utilized in the construction." Zumwalt scrawled

the following in response: "Better than I had hoped." See Blouin, memorandum for the Chief of Naval Operations, December 28, 1970.

Chapter Seven
"On the Rack"

1. Bandjunis, *Diego Garcia*, 47.
2. Ibid., 47–49.
3. See also Marimootoo, "Diego Files," 46, 48.
4. Ottaway, "Islanders Were Evicted for U.S. Base."
5. D. D. Newsom, letter to James K. Bishop, Jr., February 1, 1972, NARA: RG 59/150/67/1/5, Subject-Numeric Files 1970–1973, Box 1715, 1.
6. Bruce Greatbatch, FCO Telno BIOT 52, telegram to Foreign and Commonwealth Office, August 26, 1971, PRO.
7. U.S. Congress, House, "Diego Garcia, 1975," 61.
8. See also Marcel Moulinie, "Statement of Marcel Moulinie," application for judicial review, *Queen v. The Secretary of State for the Foreign and Commonwealth Office*, ex parte Bancoult [1999], para. 14; Pilger, *Freedom Next Time*, 26–27, 35.
9. Moulinie, "Statement," para. 14. See also Madeley, "Diego Garcia," 4–5.
10. Some of the voyages to the Seychelles took as many as six days. Pilger, *Freedom Next Time*, 28.
11. Moulinie "Statement," para. 16.
12. Greatbatch, FCO Telno BIOT 52, August 26, 1971; Dale, telegram to Foreign and Commonwealth Office, Telno personal 176, September 23, 1971, PRO.
13. William D. Brewer, memorandum to Department of State, December 20, 1971, NARA: RG 59/150/67/27/6, Subject-Numeric Files 1970–1973, Box 3010, 4.
14. Ibid., 1, 4.
15. Ibid., 1, 3.
16. Ibid., 5, 1.
17. William D. Brewer, letter to Herman J. Cohen, January 5, 1972, NARA: RG 59/150/67/1/5, Subject-Numeric Files 1970–1973, Box 1715, 2, 5. Although Brewer's State Department superiors knew the Air Force undersecretary was being "intemperate and at times illogical," they chose not to challenge him (and the Air Force) on an issue they considered minor and which they perceived might harm other departmental priorities. See Herman J. Cohen, letter to David D. Newsom, January 20, 1972, NARA: Subject-Numeric 1970–1973, 59/150/67/1/5.
18. Brewer, letter to Cohen, January 5, 1972.
19. Ibid., 1.
20. Adam Hochschild, *King Leopold's Ghost: A Story of Greed, Terror, and Heroism in Colonial Africa* (Boston: Houghton Mifflin, 1999), 121–22. The possibility that others might have challenged the expulsion becomes more improbable when

one considers that to challenge any policy of the U.S. Government is not simply to challenge one's immediate superior or an office within the Government, but to challenge one's entire department, the department's secretary, and to a significant extent the U.S. Government as a whole. This lesson is communicated explicitly in most telegrams, which, in the case of the State Department, for example, deliver most orders and instructions not in the name of a State Department superior but in the name of the "Department of State," under the signature of the Secretary of State. This contributed to the feeling among many officials that they were carrying out the policy dictates of the U.S. Government writ large, matters about which they generally believed they had no input.

21. Charles Lemert, *Social Theory: The Multicultural and Classic Readings* (Boulder, CO: Westview Press, 1993), 119.

22. U.S. Department of State, telegram to U.S. Embassy London, February 5, 1972, NARA: RG 59/150/67/27/6, Subject Numeric Files 1970–1973, Box 3010.

23. Anthony Lake and Roger Morris, "Pentagon Papers (2): The Human Reality of Realpolitik," *Foreign Policy* 4 (1971): 159. See Samantha Power, *"A Problem from Hell": America and the Age of Genocide* (New York: Perennial, 2002), 365.

24. PRO: Foreign & Commonwealth Office, Overseas Development Administration, London, 1972; Henry Precht, airgram to Department of State, May 2, 1972, NARA: RG 59/150/67/1/5, Subject-Numeric Files 1970–1973, Box 1715, 2.

25. John Todd, letter to Allan F. Knight, June 17, 1972, PRO.

26. UKTB: M. T. Mein, 2002, para. 14.

27. C. A. Seller, Letter to Morris, June 20, 1967, PRO: T317/1347.

28. Bandjunis, *Diego Garcia*, 49, 58.

29. Ibid., 62.

30. C. S. Minter, Jr., memorandum for Chief of Naval Operations, July 20, 1972, NHC: 00 Files, 1972, Box 161, 11000.

31. Bandjunis, *Diego Garcia*, 64–71.

32. U.S. Congress, House, "Diego Garcia, 1975," 12

33. See Bandjunis, *Diego Garcia*, 309.

34. U.S. Congress, House, "Diego Garcia, 1975," 41.

35. Ibid., 42.

36. Ibid., 42–45.

37. Ibid., 79.

38. Ibid., 66.

Chapter Eight
Derasine: The Impoverishment of Expulsion

1. Anahita World Class Sanctuary Mauritius, "Paradise Found," available from http://www.anahitamauritius.com/anahita_location.php?langue=uk.

Annex 152

Sadie Gray, "Giant Marine Park Plan for Chagos - Islanders may return to be environmental wardens", *The Independent* (9 Feb. 2009)

9 February 2009

Giant Marine Park Plan for Chagos
Islanders may return to be environmental wardens

Sadie Gray

An ambitious plan to preserve the pristine ocean habitat of the Chagos Islands by turning them into a huge marine reserve on the scale of the Great Barrier Reef or the Galapagos will be unveiled at the Royal Society next Monday.

Unpopulated for 40 years since the British government forcibly evicted inhabitants so the Americans could build a strategic military base on Diego Garcia, the Chagos Islands offer a stunning diversity of aquatic life.

The absence of human habitation has been a key factor in the preservation of the pristine coral atolls, the unpolluted waters, rare bird colonies and burgeoning turtle populations that give the archipelago its international importance.

The plan will be launched in London by the Chagos Environment Network, which includes the Chagos Conservation Trust, the RSPB, the Zoological Society and the Pew Environmental Group, a powerful US charity which successfully lobbied the Bush administration for marine reserves in America.

The Chagos Islands, which belong to the British Indian Ocean Territory, were emptied of about 2,000 residents between 1967 and 1971 to meet US demands that the islands be uninhabited. Most islanders were exiled to Mauritius and the Seychelles, where many ended up in poverty. Proposals for the new reserve tentatively broach the possible return of some of the Chagossian refugees to their homeland as environmental wardens.

"It is going to be compatible with defence and do something for the Chagossians," said William Marsden, the chairman of the Chagos Conservation Trust, adding that the islands were "by far Britain's richest area of marine biodiversity" and that at 250,000 square miles, the reserve would be in the "big league" globally.

Professor Callum Roberts, a marine biologist at the University of York, said the plan would mean far better environmental monitoring, especially where incursions from Sri Lankan fishing boats had depleted fish stocks. "The attitude of the British towards the Chagos Islands has been one of benign neglect," he said.

A formidable hurdle lies in the shape of US security fears and the refugees' continuing legal battles with the British Government over the court rulings that have prevented them going home.

Refugee groups say that of the 5,000 people eligible to return, half wished to do so permanently. Resettlement plans have called for the construction of a small airport and limited development to allow environmentally sustainable tourism, raising fears that designation as a reserve would be a further blow to the islanders' hopes. In 2000, the Chagossians won the right to return to 65 of the islands - although not Diego Garcia, the largest - only to see the ruling nullified in 2004 by the Government, using the Royal Prerogative.

The islanders succeeded in overturning that action in the High Court and the Court of Appeal, but in June last year the Government went to the House of Lords, arguing that allowing the islanders to return would damage defence and security.

The Government appeal was allowed by the law lords in October, and now experts say the case may be taken to the European Court of Human Rights. The Diego Garcia base has been used for bombing raids on Iraq and Afghanistan, and as a staging post in CIA "extraordinary rendition" flights.

A Foreign Office spokesman told Economist.com that the Government "welcomes and encourages recognition of the global environmental importance of the British Indian Ocean Territory", adding that it would "work with the international environmental and scientific community to develop further the preservation of the unique environment".

Haven of safety: Species at risk

Red-footed booby (Sula sula)

This seabird is the smallest of all the boobies, with distinctive red legs and pink and blue bill and throat. The spectacular diver has elaborate greeting rituals between mates.

Green turtle (Chelonia mydas)

Endangered; feeds mostly on seagrass; has found the waters around the Chagos Islands a haven. Elsewhere, it has suffered from habitat loss, pollution and fishing nets.

Variable flying fox (Pteropus hypomelanus maris)

A species of "megabat", it feeds on fruit and roosts in large colonies in forests, usually on small islands or near the coast. Under threat elsewhere because of deforestation and hunting.

Cuvier's beaked whale (Ziphius cavirostris indicus)

Also known as the goose-beaked whale, this mammal was thought in the Middle Ages to have a fish's body and an owl's head. Can live up to 40 years and grow to seven metres long. Occasionally seen off western and northern Scotland.

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Annex 153

Note Verbale from the Mauritius Ministry of Foreign Affairs to the U.K. Foreign and Commonwealth Office, No. 1197/28 (10 Apr. 2009)

REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

Note No: 1197/28

10 April 2009

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland and has the honour to refer to the latter's Note No. OTD 04/03/09 of 13 March 2009 in reply to the note verbale no. 2009(1197/28) dated 5 March 2009 of the Ministry of Foreign Affairs, Regional Integration and International Trade.

The Ministry of Foreign Affairs, Regional Integration and International Trade wishes to reiterate that it has no doubt of its sovereignty over the Chagos Archipelago and does not recognize the existence of the so-called British Indian Ocean Territory. The Government of Mauritius deplores the fact that Mauritius is still not in a position to exercise effective control over the Chagos Archipelago as a result of its unlawful excision from the Mauritian territory by the British Government in 1965.

The Government of the Republic of Mauritius, whilst also supportive of domestic and international initiatives for environmental protection, would like to stress that any party initiating proposals for promoting the protection of the marine and ecological environment of the Chagos Archipelago, should solicit and obtain the consent of the Government of Mauritius prior to implementing such proposals.

The Ministry of Foreign Affairs, Regional Integration and International Trade wishes to reiterate to the Government of the United Kingdom that the Government of United Kingdom has an obligation under international law to return the Chagos Archipelago in its pristine state to enable Mauritius to exercise and enjoy effectively its sovereignty over the Chagos Archipelago.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, REG. INTEGRATION & INT. TRADE * MAURITIUS

Foreign and Commonwealth Office
King Charles Street
London SW1A 2AH
United Kingdom

Annex 154

"U.S. embassy cables: Foreign Office does not regret evicting Chagos islanders", *The Guardian* (15 May 2009)

theguardian

US embassy cables: Foreign Office does not regret evicting Chagos islanders

Thu 2 Dec '10 18.45 EST

Friday, 15 May 2009, 07:00
C O N F I D E N T I A L LONDON 001156
NOFORN
SIPDIS
EO 12958 DECL: 05/13/2029
TAGS MARR, MOPS, SENV, UK, IO, MP, EFIS, EWWT, PGOV, PREL
SUBJECT: HMG FLOATS PROPOSAL FOR MARINE RESERVE COVERING
THE CHAGOS ARCHIPELAGO (BRITISH INDIAN OCEAN TERRITORY)
REF: 08 LONDON 2667 (NOTAL)
Classified By: Political Counselor Richard Mills for reasons 1.4 b and d

1. (C/NF) Summary. HMG would like to establish a "marine park" or "reserve" providing comprehensive environmental protection to the reefs and waters of the British Indian Ocean Territory (BIOT), a senior Foreign and Commonwealth Office (FCO) official informed Polcouns on May 12. The official insisted that the establishment of a marine park -- the world's largest -- would in no way impinge on USG use of the BIOT, including Diego Garcia, for military purposes. He agreed that the UK and U.S. should carefully negotiate the details of the marine reserve to assure that U.S. interests were safeguarded and the strategic value of BIOT was upheld. He said that the BIOT's former inhabitants would find it difficult, if not impossible, to pursue their claim for resettlement on the islands if the entire Chagos Archipelago were a marine reserve. End Summary.

Protecting the BIOT's Waters

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2. (C/NF) Senior HMG officials support the establishment of a "marine park" or "reserve" in the British Indian Ocean Territory (BIOT), which includes Diego Garcia, Colin Roberts, the Foreign and Commonwealth Office's (FCO) Director, Overseas Territories, told the Political Counselor May 12. Noting that the uninhabited islands of the Chagos Archipelago are already protected under British law from development or other environmental harm but that current British law does not provide protected status for either reefs or waters, Roberts affirmed that the bruited proposal would only concern the "exclusive zone" around the islands. The resulting protected area would constitute "the largest marine reserve in the world."

3. (C/NF) Roberts iterated strong UK "political support" for a marine park; "Ministers like the idea," he said. He stressed that HMG's "timeline" for establishing the park was before the next general elections, which under British law must occur no later than May 2010. He suggested that the exact terms of the proposals could be defined and presented at the U.S.-UK annual political-military consultations held in late summer/early fall 2009 (exact date TBD). If the USG would like to discuss the issue prior to those talks, HMG would be open for discussion through other channels -- in any case, the FCO would keep Embassy London informed of development of the idea and next steps. The UK would like to "move forward discussion with key international stakeholders" by the end of 2009. He said that HMG had noted the success of U.S. marine sanctuaries in Hawaii and the Marianas Trench. (Note: Roberts was referring to the Papahanaumokuakea Marine National Monument and Marianas Trench Marine National Monument. End Note.) He asserted that the Pew Charitable Trust, which has proposed a BIOT marine reserve, is funding a public relations campaign in support of the idea. He noted that the trust had backed the Hawaiian reserve and is well-regarded within British governmental circles and the larger British environmental community.

Three Sine Qua Nons: U.S. Assent...

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4. (C/NF) According to Roberts, three pre-conditions must be met before HMG could establish a park. First, "we need to make sure the U.S. government is comfortable with the idea. We would need to present this proposal very clearly to the American administration...All we do should enhance base security or leave it unchanged." Polcouns expressed appreciation for this a priori commitment, but stressed that the 1966 U.S.-UK Exchange of Notes concerning the BIOT would, in any event, require U.S. assent to any significant change of the BIOT's status that could impact the BIOT's strategic use. Roberts stressed that the proposal "would have no impact on how Diego Garcia is administered as a base." In response to a request for clarification on this point from Polcouns, Roberts asserted that the proposal would have absolutely no impact on the right of U.S. or British military vessels to use the BIOT for passage, anchorage, prepositioning, or other uses. Polcouns rejoined that

designating the BIOT as a marine park could, years down the road, create public questioning about the suitability of the BIOT for military purposes. Roberts responded that the terms of reference for the establishment of a marine park would clearly state that the BIOT, including Diego Garcia, was reserved for military uses.

5. (C/NF) Ashley Smith, the Ministry of Defense's (MOD) International Policy and Planning Assistant Head, Asia Pacific, who also participated in the meeting, affirmed that the MOD "shares the same concerns as the U.S. regarding security" and would ensure that security concerns were fully and properly addressed in any proposal for a marine park. Roberts agreed, stating that "the primary purpose of the BIOT is security" but that HMG could also address environmental concerns in its administration of the BIOT. Smith added that the establishment of a marine reserve had the potential to be a

"win-win situation in terms of establishing situational awareness" of the BIOT. He stressed that HMG sought "no constraints on military operations" as a result of the establishment of a marine park.

...Mauritian Assent...

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6. (C/NF) Roberts outlined two other prerequisites for establishment of a marine park. HMG would seek assent from the Government of Mauritius, which disputes sovereignty over the Chagos archipelago, in order to avoid the GOM "raising complaints with the UN." He asserted that the GOM had expressed little interest in protecting the archipelago's sensitive environment and was primarily interested in the archipelago's economic potential as a fishery. Roberts noted that in January 2009 HMG held the first-ever "formal talks" with Mauritius regarding the BIOT. The talks included the Mauritian Prime Minister. Roberts said that he "cast a fly in the talks over how we could improve stewardship of the territory," but the Mauritian participants "were not focused on environmental issues and expressed interest only in fishery control." He said that one Mauritian participant in the talks complained that the Indian Ocean is "the only ocean in the world where the fish die of old age." In HMG's view, the marine park concept aims to "go beyond economic value and consider bio-diversity and intangible values."

...Chagossian Assent

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7. (C/NF) Roberts acknowledged that "we need to find a way to get through the various Chagossian lobbies." He admitted that HMG is "under pressure" from the Chagossians and their advocates to permit resettlement of the "outer islands" of the BIOT. He noted, without providing details, that "there are proposals (for a marine park) that could provide the Chagossians warden jobs" within the BIOT. However, Roberts stated that, according to the HGM,s current thinking on a reserve, there would be "no human footprints" or "Man Fridays" on the BIOT's uninhabited islands. *He asserted that establishing a marine park would, in effect, put paid to resettlement claims of the archipelago's former residents.* Responding to Polcouns' observation that the advocates of Chagossian resettlement continue to vigorously press their case, Roberts opined that the UK's "environmental lobby is far more powerful than the Chagossians' advocates." (Note: One group of Chagossian litigants is appealing to the European Court of Human Rights (ECHR) the decision of Britain's highest court to deny "resettlement rights" to the islands' former inhabitants. See below at paragraph 13 and reftel. End Note.)

Je Ne Regrette Rien

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8. (C/NF) Roberts observed that BIOT has "served its role very well," advancing shared U.S.-UK strategic security objectives for the past several decades. The BIOT "has had a

great role in assuring the security of the UK and U.S. -- much more than anyone foresaw" in the 1960s, Roberts emphasized. *"We do not regret the removal of the population," since removal was necessary for the BIOT to fulfill its strategic purpose, he said. Removal of the*

population is the reason that the BIOT's uninhabited islands and the surrounding waters are in "pristine" condition. Roberts added that Diego Garcia's excellent condition reflects the responsible stewardship of the U.S. and UK forces using it.

Administering a Reserve

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9. (C/NF) Roberts acknowledged that numerous technical questions needed to be resolved regarding the establishment and administration of a marine park, although he described the governmental "act" of declaring a marine park as a relatively straightforward and rapid process. He noted that the establishment of a marine reserve would require permitting scientists to visit BIOT, but that creating a park would help restrict access for non-scientific purposes. For example, he continued, the rules governing the park could strictly limit access to BIOT by yachts, which Roberts referred to as "sea gypsies."

BIOT: More Than Just Diego Garcia

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10. (C/NF) Following the meeting with Roberts, Joanne Yeadon, Head of the FCO's Overseas Territories Directorate's BIOT and Pitcairn Section, who also attended the meeting with Polcouns, told Poloff that the marine park proposal would "not impact the base on Diego Garcia in any way" and would have no impact on the parameters of the U.S.-UK 1966 exchange of notes since the marine park would "have no impact on defense purposes." Yeadon averred that the provision of the UN Convention on the Law of the Sea guaranteed free passage of vessels, including military vessels, and that the presence of a marine park would not diminish that right.

11. (C/NF) Yeadon stressed that the exchange of notes governed more than just the atoll of Diego Garcia but expressly provided that all of the BIOT was "set aside for defense purposes." (Note: This is correct. End Note.) She urged Embassy officers in discussions with advocates for the Chagossians, including with members of the "All Party Parliamentary Group on Chagos Islands (APPG)," to affirm that the USG requires the entire BIOT for defense purposes. Making this point would be the best rejoinder to the Chagossians' assertion that partial settlement of the outer islands of the Chagos Archipelago would have no impact on the use of Diego Garcia. She described that assertion as essentially irrelevant if the entire BIOT needed to be uninhabited for defense purposes.

12. (C/NF) Yeadon dismissed the APPG as a "persistent" but relatively non-influential group within parliament or with the wider public. She said the FCO had received only a

handful of public inquiries regarding the status of the BIOT. Yeadon described one of the Chagossians' most outspoken advocates, former HMG High Commissioner to Mauritius David Snoxell, as "entirely lacking in influence" within the FCO. She also asserted that the Conservatives, if in power after the next general election, would not support a Chagossian right of return. She averred that many members of the Liberal Democrats (Britain's third largest party after Labour and the Conservatives) supported a "right of return."

13. (C/NF) Yeadon told Poloff May 12, and in several prior meetings, that the FCO will vigorously contest the Chagossians' "right of return" lawsuit before the European Court of Human Rights (ECHR). HMG will argue that the ECHR lacks jurisdiction over the BIOT in the present case. Roberts stressed May 12 (as has Yeadon on previous occasions) that the outer islands are "essentially uninhabitable" and could only be rendered livable by modern, Western standards with a massive infusion of cash.

Comment

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14. (C/NF) Regardless of the outcome of the ECHR case, however, the Chagossians and their advocates, including the "All Party Parliamentary Group on Chagos Islands (APPG)," will continue to press their case in the court of public

opinion. Their strategy is to publicize what they characterize as the plight of the so-called Chagossian diaspora, thereby galvanizing public opinion and, in their best case scenario, causing the government to change course and allow a "right of return." They would point to the government's recent retreat on the issue of Gurkha veterans' right to settle in the UK as a model. Despite FCO assurances that the marine park concept -- still in an early, conceptual phase -- would not impinge on BIOT's value as a strategic resource, we are concerned that, long-term, both the British public and policy makers would come to see the existence of a marine reserve as inherently inconsistent with the military use of Diego Garcia -- and the entire BIOT. In any event, the U.S. and UK would need to carefully negotiate the parameters of such a marine park -- a point on which Roberts unequivocally agreed. In Embassy London's view, these negotiations should occur among U.S. and UK experts separate from the 2009 annual Political-Military consultations, given the specific and technical legal and environmental issues that would be subject to discussion.

15. (C/NF) Comment Continued. We do not doubt the current government's resolve to prevent the resettlement of the islands' former inhabitants, although as FCO Parliamentary Under-Secretary Gillian Merron noted in an April parliamentary debate, "FCO will continue to organize and fund visits to the territory by the Chagossians." We are not as sanguine as the FCO's Yeadon, however, that the Conservatives would oppose a right of return. Indeed, MP Keith Simpson, the Conservatives' Shadow Minister, Foreign Affairs, stated in the same April parliamentary debate in which Merron spoke that HMG "should take into account what I suspect is the all-party view that the rights of

the Chagossian people should be recognized, and that there should at the very least be a timetable for the return of those people at least to the outer islands, if not the inner islands." Establishing a marine reserve might, indeed, as the FCO's Roberts stated, be the most effective long-term way to prevent any of the Chagos Islands' former inhabitants or their descendants from resettling in the BIOT. End Comment.

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- The US embassy cables
- US foreign policy
- Human rights
- US military

Annex 155

Africa-South America Summit, 2nd Summit, *Declaration of Nueva Esparta* (26-27 Sept. 2009)

Declaration of Nueva Esparta, 2nd Africa-South America Summit, 26-27 September 2009, Isla de Margarita, Venezuela [extract]

ASAVenezuela 2009

[…]

37. WE HIGHLIGHT the importance of fostering an Agenda, within the framework of WIPO, with a view to promote the transfer and dissemination of technology and access to knowledge and education to the benefit of developing countries and countries of less relative development, and the most vulnerable social groups.

38. WE CALL UPON the international community not to approve unilateral illegal and coercive measures as a means of exerting political, military or economic pressure against any country, in particular against developing countries, according to the Charter of the United Nations.

39. WE URGE the United Kingdom of Great Britain and Northern Ireland and the Argentine Republic to resume negotiations in order to find, as a matter of urgency, a fair, peaceful and lasting solution to the dispute concerning sovereignty over the Falklands/Malvinas Islands and South Georgia and South Sandwich Islands and surrounding maritime spaces, in accordance with the resolutions of the United Nations and other pertinent regional and international organizations.

40. WE URGE the United Kingdom of Great Britain and Northern Ireland, France and the Republic of Mauritius to pursue negotiations in order to find, as a matter of urgency, a fair, peaceful and definitive solution to the issues regarding the sovereignty over Chagos Archipelago, including Diego Garcia and Tromelin and the surrounding maritime spaces, in accordance with the resolutions of the United Nations and the other pertinent regional and international organizations.

[…]

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Assembly of the African Union, 15th Ordinary Session, *Decision on the Sovereignty of the Republic of Mauritius Over the Chagos Archipelago*, Assembly/AU/Dec.331(XV) (27 July 2010)

DECISION ON THE SOVEREIGNTY OF THE REPUBLIC OF MAURITIUS OVER THE CHAGOS ARCHIPELAGO

The Assembly,

1. **RE-AFFIRMS** that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius in violation of UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence, forms an integral part of the territory of the Republic of Mauritius and **CALLS UPON** the United Kingdom to expeditiously put an end to its continued unlawful occupation of the Chagos Archipelago with a view to enabling Mauritius to effectively exercise its sovereignty over the Archipelago.

MAKE PEACE HAPPEN 2010

Annex 157

I. Henry & S. Dickson, *British Overseas Territory Law* (2011)

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British Overseas Territories Law

Ian Hendry
and
Susan Dickson

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PUBLISHING
OXFORD AND PORTLAND, OREGON
2011

Annex 157

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.H46
2011

Published in the United Kingdom by Hart Publishing Ltd
16C Worcester Place, Oxford, OX1 2JW
Telephone: +44 (0)1865 517530
Fax: +44 (0)1865 510710
E-mail: mail@hartpub.co.uk
Website: http://www.hartpub.co.uk

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA
Tel: +1 503 287 3093 or toll-free: (1) 800 944 6190
Fax: +1 503 280 8832
E-mail: orders@isbs.com
Website: http://www.isbs.com

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British Library Cataloguing in Publication Data
Data Available

ISBN: 978-1-84946-019-4

Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by
TJ International Ltd, Padstow, Cornwall

Foreword

The historian WEH Lecky once said that empires, like the sun, often throw out their most glorious colours when they are on the point of disappearing. In legal terms, it might be said that the twilight of the British Empire has thrown out a more confused, kaleidoscopic range of colours than any sunset could hope to emulate. The ad hoc evolution of the British Empire over a period of centuries, and its piecemeal breakup since the Second World War have between them produced 'an overall pattern of complexity and obscurity'.[1] To modern eyes the problem is further compounded by the fact that many of the legal principles which underlay the development of colonial law, and even the legal vocabulary in which it is expressed, are now so rarely encountered by practitioners that the case-law can seem impenetrable. Indeed, it has even been suggested by one academic commentator that English judges are now so unfamiliar with the applicable principles of colonial law that the House of Lords recently accepted a submission which 'every Colonial or Foreign and Commonwealth Office draftsman during the past 200 years would ... have regarded ... as a theory defunct since the time of William and Mary'.[2] But in fairness to contemporary judges, even the judiciary of an earlier age which was more accustomed to dealing with arcane questions such as the indivisibility of the Crown sometimes found that the relevant legal concepts tended to 'dissolve into verbally impressive mysticism'.[3]

There are now only 14 British Overseas Territories, and their combined population is slightly less than that of Norwich. Some, like South Georgia and the South Sandwich Islands, Pitcairn and the British Antarctic Territory, have either a tiny human population or none at all. But others, such as Bermuda, the Cayman Islands and the British Virgin Islands, have substantial populations and thriving economies based on financial services and tourism. And in any event, the mere size of a territory's civilian population bears no relation to the frequency with which legal problems may come before the courts, nor the complexity of the constitutional issues which they may raise. For example, the long-running litigation brought by a number of Chagossians seeking to return to the British Indian Ocean Territory was prompted precisely by the fact that the islands had been depopulated and the islanders were prevented from living where they or their forbears had been born. In recent years there have also been other complex disputes in the English courts covering a range of issues from electoral boundary changes in Bermuda to the capacity in which the Crown acts in relation to South Georgia and the South Sandwich Islands, and from the application to the territories of the Human Rights Act 1998 to the jurisdiction of

[1] K Roberts-Wray, *Commonwealth and Colonial Law* (London, Stevens, 1966) 138.

[2] J Finnis, *Common Law Constraints: Whose Common Good Counts?* University of Oxford Faculty of Law Legal Studies Research Paper no 10/2008, §18, commenting on the decision in *R (Quark Fishing Limited) v Secretary of State for Foreign & Commonwealth Affairs* [2006] 1 AC 529.

[3] *Minister for Works for Western Australia v Gulson* (1944) 69 CLR 338, 350, per Latham CJ.

licences to whaling companies. The Falkland Islands Dependencies Survey, since 1962 called the British Antarctic Survey, started operations in 1943, when the first of its bases was established.[38]

The British Antarctic Territory was legally established as a separate colony in 1962 by the British Antarctic Territory Order in Council 1962.[39]

Status

The British Antarctic Territory is a British overseas territory acquired by annexation, but it is treated as a British settlement for the purposes of the British Settlements Acts 1887 and 1945.[40] Power to provide for the government of the British Antarctic Territory by Order in Council is conferred by those Acts.

Constitution

The current Constitution of the British Antarctic Territory is contained in the British Antarctic Territory Order 1989.[41] It establishes the office of Commissioner for the Territory, who is appointed by the Queen. In practice the office of Commissioner is held by a senior official in the Foreign and Commonwealth Office. The Commissioner exercises executive authority, may appoint a deputy to exercise functions on his or her behalf, and may constitute offices for the Territory and make appointments to them.

The Commissioner may make laws, styled Ordinances, for the peace, order and good government of the Territory. Any Ordinance made by the Commissioner may be disallowed by Her Majesty through a Secretary of State. The Commissioner is given express power to establish, by Ordinance, courts for the Territory, to constitute judgeships and other related offices and to make appointments to such offices. Power is reserved to Her Majesty to legislate by Order in Council for the peace, order and good government of the Territory.

Courts

The British Antarctic Territory Order 1989 does not itself establish any courts. The Supreme Court and Magistrate's Court are established by Ordinance.[42] The

[38] The history of British occupation and administration of the Falkland Islands Dependencies is set out in detail in the UK Applications instituting proceedings against Argentina and Chile at the International Court of Justice in May 1955: see *ICJ Pleadings, Antarctica Cases (United Kingdom v Argentina; United Kingdom v Chile), 1955*. The cases were not determined because neither Argentina nor Chile accepted the jurisdiction of the Court.

[39] SI 1962.400, amended by SI 1964/1396.

[40] 1887 c 54 and 1945 c 7.

[41] SI 1989/842. This Order revoked the Orders of 1962 and 1964 referred to in n 39 above.

[42] Administration of Justice Ordinance 1990 (Laws of the British Antarctic Territory, Ordinance No 5 of 1990).

British Antarctic Territory Order 1989 enables courts established by Ordinance to sit within the Territory or in the United Kingdom or 'any other colony' with the concurrence of the Governor of such colony. By virtue of the Falkland Islands Courts (Overseas Jurisdiction) Order 1989,[43] the Supreme Court and Magistrate's Court of the Falkland Islands respectively have jurisdiction to hear and determine any civil or criminal proceedings in respect of matters arising under the law of the British Antarctic Territory which are within the jurisdiction of the Supreme Court or the Magistrate's Court of the Territory. Local magistrates are appointed from among the British Antarctic Survey personnel serving at the scientific stations in the Territory.

There is a Court of Appeal for the Territory, established by Order in Council, which may sit outside the Territory.[44] Final appeal lies to the Judicial Committee of the Privy Council.[45]

Law

The statute law in force in the British Antarctic Territory mainly comprises Ordinances enacted by the Commissioner and instruments made under them. These local laws are supplemented by certain Acts of the United Kingdom Parliament and Orders in Council that have been extended to the Territory. The incorporation of English statutes, common law and rules of equity is provided for in detail in sections 5 and 6 of the Administration of Justice Ordinance 1990.[46]

Economy

The main source of income is the sale of postage stamps and local tax paid by over-wintering scientists. Tourism is a growing industry, mostly ship-based. The currency is the pound sterling.

BRITISH INDIAN OCEAN TERRITORY

The British Indian Ocean Territory is a group of islands lying about 1,770 kilometres east of Mahe in Seychelles. It comprises the following islands, known collectively as the Chagos Archipelago: Diego Garcia; Egmont or Six Islands; Peros Banhos; Salomon Islands; Three Brothers Islands; Nelson or Legour Island; Eagle Islands; and Danger Islands.[47] While the Territory covers about 54,400 square kilometres of sea, the total land area is 60 square kilometres, the largest island, Diego

[43] SI 1989/2399, as amended by SI 2009/1737.

[44] British Antarctic Territory Court of Appeal Order 1965 (SI 1965/590, as amended by SI 1989/2399).

[45] British Antarctic Territory Court of Appeal (Appeal to Privy Council) Order 1965 (SI 1965/592, as amended by SI 2009/224).

[46] Laws of the British Antarctic Territory, Ordinance No 5 of 1990.

[47] British Indian Ocean Territory (Constitution) Order 2004 (see n 58 below) s 2(2) and sch.

Garcia, being 44 square kilometres. The Territory was constituted and is set aside for the defence purposes of the United Kingdom and the United States of America,[48] and has no permanent population. The temporary inhabitants are the armed forces at the United States defence facility on Diego Garcia, civilian employees of contractors to the United States military, and a small Royal Navy contingent. All of these reside on Diego Garcia, the other islands (sometimes called 'the outer islands') being uninhabited. Mauritius has asserted a sovereignty claim to the Territory since 1980. While the United Kingdom rejects this claim, successive British Governments have given undertakings to the Government of Mauritius that the Territory will be ceded to Mauritius when it is no longer required for defence purposes.[49]

History

The islands of the Chagos Archipelago were charted by Vasco da Gama in the early sixteenth century, and Portuguese seafarers named the archipelago and some of the atolls. The islands were administered by France from Mauritius during the late eighteenth century. France ceded the islands to the United Kingdom, along with Mauritius and Seychelles, by the Treaty of Paris, 1814.[50] They were administered as a dependency of the colony of Mauritius until 1965 when, with the agreement of the Mauritius Council of Ministers, they were detached to form the major part of a new colony called the British Indian Ocean Territory. The United Kingdom Government paid the Government of Mauritius £3 million in consideration of the detachment of the islands. Three other island groups,[51] previously part of the colony of Seychelles, made up the Territory as originally constituted,[52] but these were returned to Seychelles when that country became independent in 1976.[53]

The new colony was established for the defence purposes of the United Kingdom and the United States, as provided for in an Exchange of Notes between their two Governments of 30 December 1966.[54] This agreement is expressed to last for 50 years, followed by a further period of 20 years unless, not more than two years before the end of the 50 year period, notice of termination has been given by either Government, in which case it shall terminate two years after the date of such notice.[55] Further Exchanges of Notes were concluded between the United Kingdom and United States Governments on 24 October 1972 and 25 February 1976 relating to the United States naval facility on Diego Garcia.[56]

[48] British Indian Ocean Territory (Constitution) Order 2004 s 9(1).

[49] UK White Paper 'Partnership for Progress and Prosperity, Britain and the Overseas Territories' (Cm 4264) p 51.

[50] State Papers vol 1 pt 1 p 151.

[51] The Farquar Islands, the Aldabra Group and the Island of Desroches.

[52] British Indian Ocean Territory Order 1965 (SI 1965/1920), amended by SI 1968/111. These Orders recited powers granted by the Colonial Boundaries Act 1895 (1895 c 34) as well as prerogative powers.

[53] British Indian Ocean Territory Order 1976 (SI 1976/893) s 14. This Order also recited the Colonial Boundaries Act 1895 and prerogative powers.

[54] UKTS No 15 (1967); Cmnd 3231.

[55] See paragraph (11).

[56] UKTS No 126 (1972); Cmnd 5160 and UKTS No 19 (1976); Cmnd 6413. The 1976 agreement replaced the 1972 agreement.

The Chagos islands had been exploited for copra from the late eighteenth century. After emancipation in the nineteenth century the former slaves on the islands became contract employees working the copra plantations, and some chose to remain on the islands, having children who also stayed there. Following the 1966 Exchange of Notes, in 1967 the Crown purchased the freehold title to all land in the islands that was not already Crown land. The copra plantations were run down as they had become commercially unviable. The plantation workers were progressively relocated, mostly to Mauritius and Seychelles, and the last of them left the Territory in 1973. The United Kingdom Government paid the Government of Mauritius £650,000 in 1973, and a further £4 million in 1982 into a Trust Fund, to assist in the resettlement of the workers in Mauritius. Attempts by the former inhabitants, originally called 'Ilois' but now more commonly called 'Chagossians', to win the right to return to the islands or to obtain further compensation in the English courts have been ultimately unsuccessful.[57]

Status

The British Indian Ocean Territory is a British overseas territory, the islands comprising which were acquired by cession. The government of the Territory is provided for by Royal prerogative powers.

Constitution

The current Constitution of the Territory is set out in the British Indian Ocean Territory (Constitution) Order 2004.[58] This establishes the office of Commissioner, who is appointed by the Queen. In practice the office of Commissioner is held by a senior official in the Foreign and Commonwealth Office. The Commissioner exercises executive powers, may constitute offices for the Territory and make appointments to such offices. In practice the Commissioner is assisted by an Administrator, resident in London, and by the Commissioner's Representative, who is the officer in charge of the Royal Navy contingent on Diego Garcia.

The Commissioner may make laws for the peace, order and good government of the Territory. Exceptionally, section 10(2) of the Order declares, without prejudice to the generality of the provision granting legislative power and 'for the avoidance of doubt', that

> the Commissioner may make any such provision as he considers expedient for or in connection with the administration of the Territory, and no such provision shall be deemed to be invalid

[57] See *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067; *Chagos Islanders v Attorney General* [2003] EWHC 2222 (QB); [2003] All ER (D) 166; *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61, [2009] 1 AC 453 (HL). The history is recounted most comprehensively and authoritatively, on the basis of extensive documentary and oral evidence, in the judgment of Ouseley J in *Chagos Islanders v Attorney General* (above).

[58] This is a prerogative Order, and therefore not a statutory instrument. It was published in the (2004) 36(1) British Indian Ocean Territory Official Gazette. For convenience it is reproduced at pp 305–10 below.

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except to the extent that it is inconsistent with the status of the Territory as a British overseas territory or with this Order or with any other Order of Her Majesty in Council extending to the Territory or otherwise as provided by the Colonial Laws Validity Act 1865.

Any law made by the Commissioner may be disallowed by Her Majesty through a Secretary of State. Power to legislate for the Territory by Order in Council is reserved in unusual detail, and power is also expressly reserved to Her Majesty to amend or revoke the 2004 Order.[59]

The 2004 Order also expressly provides in section 9:

(1) Whereas the Territory was constituted and is set aside to be available for the defence purposes of the Government of the United Kingdom and the Government of the United States of America, no person has the right of abode in the Territory.

(2) Accordingly, no person is entitled to enter or be present in the Territory except as authorised by or under this Order or any other law for the time being in force in the Territory.[60]

Courts

The Territory has a Supreme Court and a Magistrates' Court established by Ordinance.[61] The Supreme Court consists of a Chief Justice, and the British Indian Ocean Territory (Constitution) Order 2004 makes provision for the Court to sit in the United Kingdom 'as the Chief Justice may direct'.[62] There is a legally qualified, but non-resident, Senior Magistrate, and the officer in charge of the Royal Navy component on Diego Garcia is in practice appointed as a local magistrate.

The Territory has a Court of Appeal, established by Order in Council.[63] Final appeal lies to the Judicial Committee of the Privy Council.[64]

Law

The statute law in force in the British Indian Ocean Territory comprises Ordinances made by the Commissioner and instruments made under them, and certain Acts of the United Kingdom Parliament and Orders in Council that have been extended to

[59] See s 15. The detail of these provisions, and the exceptional provision in s 10(2), were occasioned by the judgment in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* [2001] QB 1067, which had held that the power to legislate for 'peace, order and good government' was not unlimited, a finding later overruled by the House of Lords in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61, [2009] 1 AC 453 (HL).

[60] The validity of this section was challenged, and upheld by the majority in the House of Lords, in *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2008] UKHL 61, [2009] 1 AC 453 (HL).

[61] Courts Ordinance 1983, Parts II and III (Laws of the British Indian Ocean Territory, Ordinance No 3 of 1983).

[62] See s 13(4) and (5)–(8).

[63] British Indian Ocean Territory (Court of Appeal) Order 1976 (published in SI 1976, II, p 3815).

[64] British Indian Ocean Territory (Appeals to Privy Council) Order 1983 (SI 1983/1888, as amended by SI 2009/2241).

the Territory. The incorporation of English statutes, common law and rules of equity is provided for in detail by sections 3 to 5 of the Courts Ordinance 1983.[65]

Economy

There are no commercial, industrial or agricultural activities in the Territory, the population being solely military personnel and people employed to support the defence facility. The currency in use is the US dollar.

****

BRITISH INDIAN OCEAN TERRITORY
(CONSTITUTION) ORDER 2004

At the Court at Buckingham Palace

THE 10th DAY OF JUNE 2004

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY

IN COUNCIL

Her Majesty, by virtue and in exercise of all the powers in Her Majesty vested, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Citation and Commencement

1. This Order may be cited as the British Indian Ocean Territory (Constitution) Order 2004 and shall come into force forthwith.

Interpretation

2.—(1) The Interpretation Act 1978 shall apply, with the necessary modifications, for the purpose of interpreting this Order, and otherwise in relation thereto, as it applies for the purpose of interpreting, and otherwise in relation to, Acts of Parliament.

(2) In this Order, unless the contrary intention appears—

'the Commissioner' means the Commissioner for the Territory and includes any person for the time being lawfully performing the functions of the office of Commissioner;

[65] Laws of the British Indian Ocean Territory, Ordinance No 3 of 1983. These provisions need to be read with section 3(2) of the British Indian Ocean Territory (Constitution) Order 2004.

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Assembly of the African Union, 16th Ordinary Session, *Resolution adopted at the 16th Ordinary Session*, Assembly/AU/Res.1(XVI) (30-31 Jan. 2011)

Assembly/AU/Res.1(XVI)

RESOLUTION

The Assembly of the Union, at its 16th Ordinary Session held in Addis Ababa, Ethiopia from 30 to 31 January 2011,

Recalling that the Chagos Archipelago, including Diego Garcia, was unlawfully excised by the United Kingdom, the former colonial power, from the territory of Mauritius prior to independence of Mauritius, in violation of UN Resolution 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence;

Reaffirming that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius;

Recalling in this regard, inter-alia:

(i) Resolution AHG/Res.99 (XVII) of July 1980 of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU);

(ii) Decision AHG/Dec.159 (XXXVI) of July 2000 of the Assembly of Heads of State and Government of the Organisation of African Unity (OAU);

(iii) Decision Assembly/AU/Dec.331(XV) of July 2010 of the Assembly of the African Union.

Noting with grave concern that notwithstanding the OAU/AU Resolution/Decisions and the strong opposition expressed by the Republic of Mauritius, the United Kingdom has proceeded to establish a 'marine protected area' around the Chagos Archipelago on 01 November 2010, in a manner that was inconsistent with its international legal obligations, thereby further impeding the exercise by the Republic of Mauritius of its sovereignty over the Archipelago;

Noting further that the Government of the Republic of Mauritius has, on 20 December 2010, initiated proceedings against the United Kingdom in relation to the dispute concerning the legality of the purported 'marine protected area' as set forth in the Notification of that date, to an Arbitral Tribunal to be constituted under Article 287 and Annex VII of the United Nations Convention on the Law of the sea;

Considering that the Government of the Republic of Mauritius is committed to taking other measures to protect its rights under international law relating to its legitimate aspiration to be able to exercise sovereignty over the Chagos Archipelago, including action at the United Nations General Assembly:

1. **DECIDES** to support fully the action of the Government of the Republic of Mauritius at the United Nations General Assembly with a view to enabling Mauritius to exercise its sovereignty over the Archipelago.

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Note Verbale from the Permanent Mission of the Republic of Mauritius to the United Nations Office and other International Organisations in Geneva to the Permanent Mission of Switzerland to the United Nations Office and other International Organisations in Geneva, No. 361/2011 MMG/HR/19 (28 Nov. 2011)

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANISATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES ET DES AUTRES ORGANISATIONS INTERNATIONALES

No. 361/2011 MMG/HR/19

The Permanent Mission of the Republic of Mauritius to the United Nations Office and other International Organisations in Geneva presents its compliments to the Permanent Mission of Switzerland to the United Nations Office and other International Organisations in Geneva and, with reference to the Notification (Ref. 242-512.0-GEN 3/11) dated 1 July 2011 from the Swiss Federal Council, in its capacity as depositary of the Geneva Conventions of 12 August 1949 for the Protection of War Victims and Additional Protocols, addressed to the Governments of the States parties to the Geneva Conventions, has the honour to state as follows:

The Government of the Republic of Mauritius strongly objects to the declaration deposited by the United Kingdom of Great Britain and Northern Ireland with the Swiss Federal Council on 15 June 2011 concerning the applicability of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III), done at Geneva on 8 December 2005, in so far as it purports to extend the ratification by the United Kingdom of the said Protocol to the so-called "British Indian Ocean Territory".

The Government of the Republic of Mauritius does not recognise the so-called "British Indian Ocean Territory" which the United Kingdom purported to create by illegally excising the Chagos Archipelago from the territory of Mauritius prior to its independence. This excision was carried out in violation of the United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples (UN General Assembly Resolution 1514 (XV) of 14 December 1960) prohibiting the dismemberment of any colonial territory prior to independence, and UN General Assembly Resolutions 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.

The Government of the Republic of Mauritius reaffirms the sovereignty of the Republic of Mauritius over the Chagos Archipelago, including Diego Garcia. The Chagos Archipelago forms an integral part of the territory of the Republic of Mauritius under both Mauritian law and international law. The United Kingdom is therefore not

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entitled to adhere to any international legal instrument on behalf of the Chagos Archipelago.

The Permanent Mission of the Republic of Mauritius would appreciate if the contents of this Note could be transmitted to the Swiss Federal Council and circulated to the High Contracting Parties to Protocol III Additional to the Geneva Conventions of 12 August 1949.

The Permanent Mission of the Republic of Mauritius would also appreciate if the Permanent Mission of Switzerland could acknowledge receipt of this Note Verbale.

The Permanent Mission of the Republic of Mauritius to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Permanent Mission of Switzerland to the United Nations Office and other International Organisations in Geneva the assurances of its highest consideration.

MAURITIUS PERMANENT MISSION TO UNITED NATIONS OFFICE IN GENEVA

Geneva, 28 November 2011

The Permanent Mission of Switzerland
to the United Nations and other
International Organisations
9 – 11, rue de Varembé
1201 Geneva

Fax: 022 749 2437

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Stefan Oeter, "Self-Determination" in THE CHARTER OF THE UNITED NATIONS: *A COMMENTARY* (Bruno Simma et al. eds., 2012)

The Charter of the United Nations

A Commentary

THIRD EDITION

VOLUME I

Edited by

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OXFORD
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Great Clarendon Street, Oxford, OX2 6DP,
United Kingdom

Oxford University Press is a department of the University of Oxford.
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and education by publishing worldwide. Oxford is a registered trade mark of
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Second Edition published in 2002

Impression: 1

Recommended mode of citation:
Contributor, 'Art. X, MN Y' in B Simma, DE Khan, G Nolte, and A Paulus (eds),
The Charter of the United Nations (3rd edition, 2012)

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British Library Cataloguing in Publication Data
Data available

ISBN 978–0–19–963976–2

Printed in Great Britain by
CPI Group (UK) Ltd., Croydon, CR0 4YY

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A. The Right of Self-Determination as a Concept of the UN Charter

The right of self-determination is mentioned in the UN Charter in Art. 1 (2). The Charter in its first mention refers to self-determination as a 'purpose' of the United Nations, giving the political principle that had been so disputed since the nineteenth century a clearly programmatic character for the new Organization.[1] With this reference, guaranteeing self-determination of all nations became a central political purpose of the UN, inextricably linked with the purpose of achieving friendly relations among nations. Such friendly relations should be based—according to the Charter—on respect for the principle of equal rights and self-determination of peoples. Such wording indicates that the drafters considered self-determination to be a fundamental principle of international law.[2] It remains doubtful whether the formula in Art. 1 (2) of the UN Charter originally intended to codify self-determination as a legal right upon which an individual claim of a specific 'people' may be based—most authors initially negated such an interpretation and viewed it (with good reasons) as a not directly applicable principle, a kind of political prescription.[3] But with the passage of time such construction increasingly lost its persuasive force. Subsequent development in the UN, in particular the practice of decolonization, transformed the old (political) principle of self-determination into a collective right—a trend which became more or less irrebuttable with the codification of the right of self-determination in the two UN Human Rights Covenants of 1966.[4] In hindsight it is clear that self-determination, as it was referred to in Art. 1 (2) of the Charter, constitutes an elementary structuring principle of the legal world order created by the UN Charter, a normative programme 1

[1] See only H Kelsen, *The Law of the United Nations* (Stevens 1950) 9; G Dahm, *Völkerrecht*, vol 1 (Kohlhammer 1958) 150.

[2] See, however, K Doehring, 'Self-Determination' in B Simma (ed), *The Charter of the United Nations: A Commentary*, vol 1 (2nd edn, OUP 2002) 48.

[3] See the references with Doehring (n 2) 48 at n 1.

[4] Doehring (n 2) 48–49.

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oscillating between the basic purpose of the Organization and fundamental legal principle.[5] In most writings on '*ius cogens*' it is even mentioned as one of the few norms of international law of a peremptory character.[6] Article 2 (4) of the Charter corroborates such a reading when it prohibits any use of force 'inconsistent with the Purposes of the United Nations Charter'. Accordingly, it is beyond doubt that self-determination, as a purpose and principle of the UN Charter, constitutes a legally binding norm for all member States of the United Nations, as has been confirmed by a series of resolutions of the GA and SC, but also the jurisprudence of the ICJ, and State practice in the process of decolonization as well as in the cases of creation of new States in Europe after 1990.[7] Although Art. 1 (2), due to its programmatic character, cannot define in detail the content and scope of a right to self-determination, it sets forth beyond dispute that it forms part of the law of the Charter and is binding upon all members of the UN. Convincing arguments may be made also for the claim that State practice subsequent to the adoption of the Charter has transformed self-determination into a principle of customary international law, too.[8]

2 Self-determination is also explicitly mentioned in Art. 55 of the Charter. Article 55 gives some hints as to the operational measures to be taken by the UN in order to give more substance to the purpose of peaceful and friendly relations among nations 'based on respect for the principle of equal rights and self-determination of peoples'. Article 55 states that friendly relations among nations (in a normative perspective inextricably linked with self-determination) should be promoted by trying to achieve higher standards of living for peoples; solutions of international economic, social, and health problems; international cultural and educational cooperation; and universal respect for human rights and fundamental freedoms. Art. 55 is of a declaratory character concerning the principle of self-determination—it does not guarantee it, but it presupposes its existence.[9] Interestingly enough, there is no further explicit mention of self-determination in the text of the Charter, not even in Chapter XI which played a decisive role in UN practice concerning self-determination during the process of decolonization.[10]

[5] See also Doehring (n 2) 49, para 3.

[6] See only HG Espiell, 'Self-Determination and Jus Cogens' in A Cassese (ed), *UN Law/Fundamental Rights* (Sijhoff & Noorthoff 1979) 167–73; A Cassese, *Self-Determination of Peoples* (CUP 1995) 133–36; EA Laing, 'The Norm of Self-Determination' (1991) 22 Calif W Intl LJ 209, 248–52; D Turp, 'Le droit de sécession en droit international public' (1982) 20 Can YB Intl L 24, 28–29; D Raić, *Statehod and the Law of Self-Determination* (Kluwer 2002) 218–19; U Saxer, *Die internationale Steuerung der Selbstbestimmung und der Staatsentstehung* (Springer 2010) 213–15.

[7] Doehring (n 2) 49, para 1.

[8] ibid.

[9] Doehring (n 2) 49, para 2.

[10] ibid, para 4.

B. Historical Developments

I. Evolution of Self-Determination as a Legal Concept

As already mentioned, self-determination as a political principle dates back at least to the nineteenth century. However, the first document that might be seen as a revocation of such a principle is the American Declaration of Independence of 1776 which claimed that men have the right to freedom and the right to participate in the exercise of State power, with the ensuing right to alter or to abolish a form of government which fails to guarantee or which disregards such freedom.[11] In a comparable manner, the French Revolution claimed a right to freely organize its form of government without any intervention by third States.[12] These declarations were rooted in an ancient tradition of political and legal thinking in Europe, dating back to medieval concepts of a right of resistance against an unjust ruler.[13] In addition, it was normal for European authors of the seventeenth and eighteenth centuries, like Grotius, Pufendorf, and Kant, to link the legitimacy of transfer of territory from one ruler to another to the consent of the estates possessing a right of (co-)determination in political affairs.[14] But only when these concepts started to merge with the new ideas of peoples' sovereignty, as happened in the American and French revolution, did the arguments become revolutionary. In the context of the US movement of independence, the cause was still largely argued in terms of a right to resistance against a despotic ruler. But with the independence of the Spanish colonies in Latin America, an additional element came up—the declarations of independence in the early nineteenth century stated also a 'natural right' of peoples in the colonies to determine their own political fate, and this might take the form of independent statehood. In order to avoid violent conflicts over territory,[15] Latin American diplomatic practice linked this new right with a preservation of the inherited territorial status quo, in the form of the principle of *uti possidetis*.[16] 3

European powers of course did not accept such title to independent statehood, although they finally had to accept the independence of the Latin American States. Some years later, the same claim was also made in Europe, with revolutionary movements striving for 'national' self-determination in the form of new nation-states, irrespective of traditional monarchical titles of sovereignty.[17] The modern terminology of 'self-determination' also evolved in the mid-nineteenth century, as a conceptual weapon of revolutionary nationalism.[18] National self-determination became inextricably intertwined with concepts of peoples' sovereignty.[19] Although some minor concessions were made in a number of exceptional cases, in the form of (very limited) plebiscites,[20] 4

[11] See J Fisch, *Das Selbstbestimmungsrecht der Völker* (CH Beck 2010) 80–82; Saxer (n 6) 51.
[12] See Saxer (n 6) 52; see also in more detail Fisch (n 11) 93–103.
[13] Fisch (n 11) 72–74.
[14] See Fisch (n 11) 76–78.
[15] See in detail Fisch (n 11) 82–88.
[16] See also Fisch (n 11) 88–93.
[17] See S Oeter, 'Demokratieprinzip und Selbstbestimmungsrecht der Völker—Zwei Seiten einer Medaille?' in H Brunkhorst (ed), *Demokratischer Experimentalismus* (Suhrkamp 1998) 329–32; see also Saxer (n 6) 61–79.
[18] Fisch (n 11) 133–39.
[19] See Oeter (n 17) 330–33.
[20] See Fisch (n 11) 123–33.

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the European 'concert of powers' remained by and large opposed to accepting self-determination as a guiding concept of international law.

5 This changed only with World War I. Lenin and the Bolsheviks forged 'national self-determination' into a political weapon to be used against the Tsarist Russian Empire.[21] And US President Wilson, with his famous 'fourteen points', used it as a tool to destroy the traditional multinational empires in Central and Eastern Europe, by promising people in the east of Europe their own nation-state.[22] The victorious powers were not really consistent in operationalizing the principle in the peace treaties after 1918, and had to compensate many national groups by complex arrangements for minority protection.[23] This system of minority protection, which was based on the international treaties and unilateral declarations of some new States, seemed promising, but in the late 1920s proved to be a failure, due to the benign neglect of the major powers, which were not interested in enforcing the international guarantees upon the new States.[24] The system of 'Mandates' entrusted to the victorious powers in order to lead former colonies of the Entente powers into self-government was also not very successful, since the tendency to control these territories as a kind of protectorate was difficult to contain.[25] The new international legal order of the League of Nations thus compromised its high-sounding promises. But the principle of self-determination had made its way into international diplomacy and international legal discourse, transforming it from a revolutionary concept of the left into a political principle operated by international diplomacy.

II. Chapters XI and XII of the UN Charter

6 With the prominence which self-determination had gained as a concept in political-legal discourse, it was difficult to avoid mentioning it in the UN Charter, as the constitutive document of the new international legal order. Nevertheless the first draft of the Charter prepared in Dumbarton Oaks attempted to do exactly this—writing the Charter without mentioning explicitly the term 'self-determination'.[26] The colonial powers sitting at the table knew very well that any reference to self-determination would backfire against them, and would in particular encourage claims of local elites in the colonies to independent statehood. But the Soviet Union blocked these attempts and insisted on mentioning self-determination at a prominent place in the Charter.[27] The final result o

[21] See Doehring (n 2) MN 50 para 9; Raić (n 6) 184–88; Fisch (n 11) 136–39, 148–51.

[22] Concerning Wilson's 'fourteen points' see K Rabl, *Das Selbstbestimmungsrecht der Völker* (Kor 1963) 76–80; M Pomerance, 'The United States and Self-Determination: Perspectives on the Wilsonian Conception' (1976) 70 AJIL 1, 16–20; Raić (n 6) 177–84; Fisch (n 11) 151–57.

[23] As to the failures of the system of the Paris peace treaties see Rabl (n 22) 96–102; H Hannum *Autonomy, Sovereignty, and Self-Determination* (University of Pennsylvania Press 1990) 28–31; P Allot, 'Self Determination—Absolute Right or Social Poetry?' in C Tomuschat (ed), *Modern Law of Self-Determinatio* (Nijhoff 1995) 202–05; A Whelan, 'Wilsonian Self-Determination and the Versailles Settlement' (1994) 4 ICLQ 99–115; A Cassese, *Self-Determination of Peoples: A Legal Reappraisal* (CUP 1995) 24–28; Raić (n 6 190–4; Fisch (n 11) 157–66.

[24] See only P Thornberry, *International Law and the Rights of Minorities* (Clarendon 1991) 46–49; C Weisbrod, 'Minorities and Diversities: The Remarkable Experiment of the League of Nations' (1993) Connecticut J Intl L 359–406; PB Finney, 'An Evil for All Concerned: Great Britain and Minority Protectio after 1919' (1995) 30 J Contemporary History 533–31; Fisch (n 11) 182–88.

[25] See Raić (n 6) 193–96; see also Doehring (n 2) MN 51 para 11.

[26] See Fisch (n 11) 216; see also M Mazower, *No Enchanted Palace. The End of Empire and the Ideologica Origins of the United Nations* (Princeton UP 2009) 149–51.

[27] See Raić (n 6) 200; Fisch (n 11) 216–18.

the dispute between the United Kingdom and France on the one hand and the Soviet Union on the other hand was Art. 1 (2) with its reference to self-determination as a fundamental purpose of the UN. Self-determination was not clearly phrased as a collective right but merely as a purpose and principle of the Organization—although the (similarly authoritative) French text speaks of a 'principe de l'égalité des droits des peuples et de leur droit à disposer d'eux-mêmes', thus using the language of rights. In essence, the reference was a formula compromise—self-determination was provided for as a guiding principle of the new order, but the modalities of its implementation were left in the dark. There is no doubt that this happened deliberately, since it conformed to the dominant position of colonial powers—all men were in principle equal and entitled to self-determination, but the inhabitants of colonial territories had not progressed enough in the civilizational process to form their own States, and needed benevolent supervision and assistance by European powers to achieve full self-government (the famous 'sacred trust of civilization').[28] With the new formula, it was put beyond doubt that in principle colonial peoples had a right to self-determination, but it was left to the discretion of the governing powers to decide when these peoples would be ready for full self-government.[29]

Chapter XI and XII of the Charter to a certain degree try to operationalize such a 7
procedural concept of self-determination.[30] Article 73 provides that members of the UN 'which have to assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government' (the so-called 'non-self-governing territories') with the adoption of the Charter recognize 'the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost … the well-being of the inhabitants of these territories'. To this end, the administering powers shall 'ensure, with the respect for the culture of the peoples concerned, their political, economic, social, and educational advancement'. They shall also 'develop self-government, to take due account of the political aspirations of these peoples', as well as 'promote constructive measures of development'. In order to achieve a minimal control of the United Nations over these measures, they were obliged—according to Art. 73 (e) of the Charter—'to transmit regularly to the Secretary-General for information purposes' relevant information concerning the conditions in the non-self-governing territories. The obligations imposed upon the administering powers of so-called 'trusteeship territories' (the former 'mandates' of the League of Nations) were in substance more or less the same, with the exception of the much more stringent control exercised by the UN over the policies of the administering powers, through the Trusteeship Council. The path towards self-determination of colonial territories thus was set; the colonial powers could only try to gain time by arguing that the societies in the colonies were still not ready for full self-government.[31]

[28] Concerning this classical line of argumentation see Fisch (n 11) 199–200; see also Mazower (n 26) 28–65.

[29] See Fisch (n 11) 234.

[30] Raić (n 6) 200–02; K Knop, *Diversity and Self-Determination in International Law* (CUP 2002) 329–32; Fisch (n 11) 224–25.

[31] See Fisch (n 11) 234.

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III. UN Practice and Decolonization

8 The colonial powers proved unable to stem the tide of growing claims for self-determination in their colonial territories. With the incorporation of the principle of self-determination in the UN Charter, the Soviet Union had taken the lead—and it managed to become the spokesman of colonial peoples' aspirations for independent statehood. It took some time until a stable anti-colonial developed—although a powerful current of anti-colonial sentiment had existed in the GA from the beginning.[32] More and more colonies had to be allowed independence, and the majority in the GA was gradually changing as a consequence. This became evident with UNGA Res 1514 (14 December 1969), the so-called 'Declaration on the Granting of Independence to Colonial Countries and Peoples', expressing a strong condemnation of all forms of colonialism and calling for decolonization.[33] Even the traditional excuses for upholding colonial structures as a transitional arrangement with a view to achieving 'civilizational progress' were not accepted any more; instead the 'right of self-determination' of all peoples was stressed, including in particular their right to freely decide upon their political status.[34] Article 2 of the resolution stated self-determination, as the goal of decolonization, to be not only a principle, but characterized it as a collective right of all peoples still suffering under colonial rule.

9 An immense number of GA resolutions making similar points followed during the 1960s and 1970s, culminating in the 'Friendly Relations Declaration' of 24 October 1970.[35] In its Preamble, the 'Friendly Relations Declaration' stresses the States' conviction 'that the subjection of peoples to alien subjugation, domination and exploitation constitutes a major obstacle to the promotion of international peace and security' and subsequently:

> that the principle of equal rights and self-determination of peoples constitutes a significant contribution to contemporary international law, and that its effective application is of paramount importance for the promotion of friendly relations among States; based on respect for the principles of sovereign equality.

10 This is supplemented by the formula: 'Convinced in consequence that any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a State or country or at its political independence is incompatible with the purposes and principles of the Charter'. The operative part of the Declaration further elaborates this anti-colonial thrust, under the heading of the 'principle of equal rights and self-determination of peoples', by stressing at the outset that 'all peoples have the right freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the provisions of the Charter'. What the last formula means is spelled out a little later by emphasizing:

> Every State has the duty to refrain from any forcible action which deprives peoples referred to above in the elaboration of the present principle of their right to self-determination and freedom and independence. In their actions against, and resistance to, such forcible action in pursuit of

[32] See Mazower (n 26) 152.

[33] Declaration on the Granting of Independence to Colonial Countries and Peoples, UNGA Res 1514 (XV) (14 December 1960) UN Doc A/RES/1514(XV).

[34] See also Doehring (n 2) 51–52, para 14; Raić (n 6) 202–09; Fisch (n 11) 226; Saxer (n 6) 234–8.

[35] Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations, UNGA Res 2625 (XXV) (24 December 1970) UN Doc A/RES/2625(XXV).

the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter.

The following paragraph makes the message even clearer by demanding that non-self-governing territories should be governed in 'a status separate and distinct from the territory of the State administering it'—a status that should prevail 'until the people of the colony or non-self-governing territory have exercised their right of self-determination in accordance with the Charter'. That such emphasis on self-determination should not be misunderstood as an invitation to secessionist movements is made clear in the next paragraph of the Declaration, which stresses that: 11

nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.

The anti-colonial orientation of these formulations is beyond any doubt—colonialism must find its end, but the 'newly independent States' should be protected in their territorial integrity and political independence.[36] Only in cases of discriminatory, racist regimes where a part of the population denies the rest of the people any political participation and full citizenship rights might a denial of the respect for political independence and territorial integrity be justified (the last part of the formula cited above must be understood as a reaction to the problem of 'apartheid'). 12

The enormous number of GA resolutions with an analogous message cannot be enumerated here, or dealt with in detail.[37] The content of these resolutions, however, is of the utmost clarity. Self-determination is more or less identified with decolonization.[38] What self-determination means in detail is not worked out—except for cases of decolonization.[39] Furthermore, it remains doubtful whether there is much room for self-determination outside the context of decolonization (and illegal occupation).[40] 13

The practice of UN organs, in particular the GA, thus construed self-determination purely in terms of decolonization—and the strong pressure towards decolonization proved at the same time to be the driving force behind the consolidation of self-determination as a collective entitlement of peoples, as a 'right'.[41] More than a hundred new States were born in the course of decolonization, and the reference to self-determination played a decisive role in these processes of gaining independent statehood.[42] Decolonization thus played a decisive role in transforming self-determination from a mere (objective) principle to a (subjective) right, although of a collective nature; but at the same time, decolonization gave rise to doubts as to whether self-determination still constitutes a general principle, or has been narrowed down to a collective entitlement of a merely anti-colonial nature.[43] 14

[36] See also Fisch (n 11) 228–32; Saxer (n 6) 250–59.
[37] See more in detail Raić (n 6) 210–19.
[38] See Raić (n 6) 219; S Wheatley, *Democracy, Minorities and International Law* (CUP 2005) 66–77.
[39] See, however, Doehring (n 2) 52, paras 15 and 16.
[40] See Doehring (n 2) 53, para 18; Raić (n 6) 220–25; Wheatley (n 38) 77–85.
[41] See also Doehring (n 2) 53, para 18.
[42] See in detail W Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* (Nellen 1977) 349–52; Laing (n 6) 216–25.
[43] See Wheatley (n 38); see also Doehring (n 2) 53, para 18.

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IV. The UN Human Rights Covenants

15 The transformation of self-determination into a legal entitlement under positive international law was consolidated by the two UN Human Rights Covenants of 1966, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.[44] Each Covenant declares (in identical wording) in its Art. 1: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' Paragraph 2 of this Art. 1 stresses the right to 'freely dispose of their natural wealth and resources'. Only para 3 then makes an explicit reference to decolonization, by stating that all State parties, including the administering powers having responsibility for non self-governing territories, 'shall promote the realization of the right of self-determination and shall respect that right, in conformity with the provisions of the Charter of the United Nations'. The two Covenants thus not only transformed self-determination into a collective right under (positive) international law, by codifying it in the form of a treaty obligation but disconnected the right of self-determination from its strict coupling to the context of decolonization. The systematic structure of the two Covenants makes clear that the right of self-determination is a general entitlement, and that the purpose of decolonization is only a specific emanation of such general right.

16 The initiative for including the right of self-determination in the two Covenants again came from the Soviet Union.[45] With a view to the systematic structure of the Covenants the codification of the right of self-determination as the starting-point for the subsequent codification of (individual) human rights is to a certain degree surprising, since the right of self-determination definitively is a collective right, and not an individual human right. In systematic terms, however, its inclusion may be justified with the argument—prominently put forward by Third World States—that the exercise of the right of self-determination must be seen as a precondition for the exercise of all other human rights.[46] One may debate such a claim, but evidently it formed the basis of the construction of Art 1 of both Covenants. The (more or less declaratory) description of the major component of self-determination in the second sentence of Art. 1 (1) of both Covenants—'by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'—cannot be read as an exhaustive definition of the components of the right of self-determination. Article 1 of the Covenants again does not give an authoritative definition of what kinds of operational entitlements may be deduced from the right of self-determination. If it is understood as a right linked solely to people of existing States (and colonial territories), it would be superfluous—beyond decolonization. For the established people of a recognized State the guarantees contained in such a formula would be more or less redundant—they cover entitlements to decide freely on its own political affairs that already follow from the principle of non-intervention. But whether such an argument of potential redundancy may be used as the basis of a claim that Art. 1 of both Covenants also covers ethnic groups not constituting a 'state people' ie 'minorities', is open to doubt[47]—and still very much disputed. The question will in substance be dealt with below.

[44] See Doehring (n 2) 53, para 19; Saxer (n 6) 238–49.
[45] Doehring (n 2) 53, para 20.
[46] ibid.
[47] See in this regard the arguments of Doehring (n 2) 54, para 21.

V. The Practice of the ICJ

The right of self-determination was also referred to in the jurisprudence of the ICJ, which 17
corroborates its nature as a norm of positive international law. There is relatively little case-law explicitly referring to self-determination, however.[48] It took some time until self-determination made its way into the judgments of the ICJ. In the case between Portugal and India over *Right of Passage over Indian Territory*, for example, the Court did not mention self-determination at all, although India had explicitly invoked such a right and had included it in the arguments of its memorials.[49] The first reference made to self-determination in a case happened in the *Namibia* Advisory Opinion.[50] In that case, the GA contested that South Africa had a right to maintain governmental authority over Namibia, with the argument that such continued colonial rule violated the right of self-determination. In referring explicitly to such a right of self-determination, the Court seems to have simply assumed that it constituted a norm of positive international law.[51] Except for the fact that the argumentation of the Court in that case confirmed the existence of a right of self-determination in modern international law, the opinion is not that helpful, since the Court did not say anything in detail on the components and contents of such a right.

In the *Western Sahara* Advisory Opinion, the Court again based its conclusions on 18
the existence of a right of self-determination.[52] In referring to UNGA Res 1514 on decolonization, and characterizing the situation in Western Sahara as a case of decolonization, it reaffirmed the right of the people of such colonial territory to decide freely on its political status. A decade later, self-determination was referred to in the judgment on the *Frontier Dispute between Burkina Faso and Mali*, where the application of the principle *uti possidetis* was confirmed outside the Latin American context.[53] Self-determination—thus goes the argument—does not grant a basis to challenge established frontiers, since in the course of decolonization these are inherited from the colonial powers, according to *uti possidetis*. The Court went a step further in the *Eastern Timor Case (Portugal v Australia)*[54] where it confirmed the *erga omnes* character of the right of self-determination. Eastern Timor had remained (throughout the decades of Indonesian occupation) a non-self-governing territory, with its peoples enjoying a right to self-determination which had to be respected by all third parties. Some mention of self-determination has also been made in more recent cases, as in the *Lockerbie* Case *(Libya v United States)*[55] and the *Bosnian Genocide* Case against the Federal Republic of Yugoslavia[56], as well as in advisory opinions such as the *Wall Advisory Opinion (Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory)*.[57] However, new insights

[48] See also Doehring (n 2) 54, para 22.

[49] *Right of Passage over Indian Territory (Portugal v India)* (Merits) [1960] ICJ Rep 6.

[50] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 267* (Advisory Opinion) [1971] ICJ Rep 16.

[51] See Doehring (n 2) 54, para 24.

[52] *Western Sahara* (Advisory Opinion) [1975] ICJ Rep 12.

[53] *Frontier Dispute (Burkina Faso v Republic of Mali)* (Merits) [1986] ICJ Rep 566.

[54] *Case Concerning East Timor (Portugal v Australia)* (Merits) [1995] ICJ Rep 90.

[55] *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v United States of America)* (Merits) [1992] ICJ Rep 210.

[56] *Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia)* (Preliminary Objections) [1996-II] ICJ Rep 595.

[57] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (Advisory Opinion) [2004] ICJ Rep 136, paras 118, 122.

into the legal character and the contents of the right of self-determination cannot be gained from these cases.

19 The same in essence also holds true for the 2010 *Kosovo* Advisory Opinion. Although the issue of self-determination (and of the legality of third State recognition) was clearly at stake when the request for the Advisory Opinion was formulated, the Court did not give clear-cut answers to all the implicit questions. As a reaction to the various references made in the course of the proceedings to the opinion of the Supreme Court of Canada relating to the secession of Québec, the ICJ stressed: 'The Court is not required by the question it has been asked to take a position on whether international law conferred a positive entitlement on Kosovo unilaterally to declare its independence or, a fortiori, on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it.'

20 Nevertheless, the Court reaffirmed that during the second half of the twentieth century, 'the international law of self-determination developed in such a way as to create a right to independence for the peoples of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation'. A great many new States—it continued—'have come into existence as a result of the exercise of this right'. There were, however, also instances of declarations of independence outside this context. The practice of States in these latter cases does not point to the emergence in international law of a new rule prohibiting the making of a declaration of independence in such cases.

21 Concerning the issue of secession, the Court stated:

> Whether, outside the context of non-self-governing territories and peoples subject to alien subjugation, domination and exploitation, the international law of self-determination confers upon part of the population of an existing State a right to separate from that State is, however, a subject on which radically different views were expressed by those taking part in the proceedings and expressing a position on the question. Similar differences existed regarding whether international law provides for a right of "remedial secession" and, if so, in what circumstances. There was also a sharp difference of views as to whether the circumstances which some participants maintained would give rise to a right of "remedial secession" were actually present in Kosovo.

The Court considered, however, that it was not necessary to resolve these questions in the present case. 'The General Assembly has requested the Court's opinion only on whether or not the declaration of independence is in accordance with international law. Debates regarding the extent of the right of self-determination and the existence of any right of "remedial secession", however, concern the right to separate from a State.' As the Court noted, 'that issue is beyond the scope of the question posed by the General Assembly'.

22 Such deliberate omission to tackle the (implicitly raised) questions of self-determination and of legality of secession was heavily criticized by some of the judges in dissenting opinions. 'The unilateral declaration of independence of 17 February 2008 was not intended to be without effect', as Judge Koroma observed. 'It was unlawful and invalid. It failed to comply with laid down rules. It was the beginning of a process aimed at separating Kosovo from the State to which it belongs and creating a new State. Taking into account the factual circumstances surrounding the question put to the Court by the General Assembly, such an action violates UNSC Res 1244 (1999) and general international law.' What in fact was primarily at stake was the proper interpretation and application of UNSC Res 1244 (1999). The resolution, Judge Koroma continues, 'reaffirms the sovereignty and territorial integrity of the Federal Republic of Yugoslavia, of which Kosovo is a component part'. Moreover, the resolution provides for 'substantial autonomy

[for the people of Kosovo] within the Federal Republic of Yugoslavia'.[58] 'In other words, it was intended that Kosovo enjoy substantial autonomy and self-government during the international civil presence but that it remain an integral part of the Federal Republic of Yugoslavia.' Some of the other judges raised similar concerns in their separate opinions. Even some judges generally in favour of the majority decision appended declarations in which they criticized the far too narrow construction the Court had given to the question put before it. The General Assembly's request would have deserved—so argued Judge Simma—a more comprehensive answer, assessing whether the right of self-determination (or any other rule, like remedial secession) 'permit or even warrant independence (via secession) of certain Peoples/territories'. That the Court did not have the courage to try to give an answer to these heatedly discussed questions should be interpreted as an indication of how divisive and controversial the issues of doctrinal construction of the right of self-determination (and of a potential right of secession) still are today.

C. Basic Preconditions and Components of the Right of Self-Determination

I. The Bearers of the Right of Self-Determination

The overview of the historical evolution of the right of self-determination has demonstrated that there is a clear core area where the bearer of the right is beyond dispute. This is the case of decolonization, where State practice has confirmed that non-self-governing territories (as well as trusteeship territories) enjoy a clear right to self-determination, understood as a right freely to determine their political status. The 'people' in the sense of self-determination in these cases is the autochtonous population of the non-self-governing territories that has been grouped together to a polity by carving out a certain territory in colonial times in order to form a distinct political entity.[59] These territories became independent States on the basis of the principle of *uti possidetis*, which means that the geographical shape of the territories had been definitely established in colonial times—and they simply inherited the boundaries from their colonial rulers.[60] Self-determination did not mean that there was any scope for a decision of the local people concerned regarding whether they wanted to belong to the newly independent State, or to a neighbouring State. State practice clearly banned such a far-reaching claim, making the inherited territorial boundaries inviolable.[61] 23

Whether this excludes other 'peoples' from the right of self-determination is still an open issue, despite a fierce debate on the matter for decades. An important strand in international legal scholarship argues that every group of persons bound together by common objective characteristics, like language, culture, religion, race, might be qualified as a 'people', as long as such a group has also a common (subjective) understanding of belonging together and being distinct from all the other surrounding groups.[62] 24

[58] United Nations SCOR 4011th meeting UN Doc S/RES/1244 (1999) para 10.

[59] See only Saxer (n 6) 278–81.

[60] On the details of *uti possidetis* see Saxer (n 6) 763–79.

[61] See only Fisch (n 11) 56–61.

[62] See D Ronen, *The Quest for Self-Determination* (Yale UP 1979) 39–45; C Gusy, 'Selbstbestimmungsrecht im Wandel. Von der Selbstbestimmung durch den Staat zur Selbstbestimmung im Staat' (1992) 30 AVR 385–410; Doehring (n 2) 55–56, paras 28–30.

Annex 160

Such an understanding might be termed as a 'naturalist' concept of peoples. Another strand insists on the territorial element of self-determination. Self-determination, thus the argument goes, has always been linked to historically pre-constituted political entities with a specific territory. 'People' in this understanding is not simply a group of persons, one could also say an 'ethnic group', but the constituent people of a certain territorial entity formed by history.[63]

25 A careful analysis of State practice clearly supports the second understanding. Beyond the context of decolonization, there has never been any serious international support for a claim of self-determination raised by a simple 'ethnic group' having no firm territorial basis in a pre-existing political entity.[64] Colliding claims of self-determination of (non-territorial) ethnic groups cannot be solved without having recourse to a defined territory—only when there is a given territory does a plebiscite or referendum make sense in order to then let a majority determine the political status of the territory. Although a traditional, 'naturalist' understanding of a 'people' can point to the intuition that the term 'people' does not in itself have a territorial connotation, a functional perspective of self-determination, construing the concept in the light of the political and legal system in which it is embedded, leads to the insight that a certain degree of 'territoriality' is unavoidable if the concept of self-determination is to operate productively under our current political circumstances.

26 In essence, the whole debate turns on the question whether 'ethnic groups', which qualify as 'minorities' in the sense of modern concepts of minority protection, may also qualify also as 'peoples' enjoying a right of self-determination.[65] In principle one should definitely keep these concepts separate.[66] The term 'minorities' covers all groups linked together by commonalities like language, culture, religion, race—as long as these groups do not form the majority in a given State. Some of these minorities might have a clear territorial basis, a historical settlement area where they used to live together in high concentration. In modern times even such groups will tend to lose their territorial roots to a certain degree, because personal mobility and the resulting waves of migration will spread these groups over a much larger area. Other groups never had clear territorial strongholds but were always scattered among other population groups. Accepting a 'right of self-determination' for each of these historically-formed groups would mean opening a Pandora's box of never-ending disputes on territory and political dominance.[67] The only way to avoid such endless quarrelling is the way taken by the community of States in twentieth-century State practice, namely the insistence upon a close linkage between (pre-determined) political entities and self-determination. Self-determination is a right that can only sustainably be granted to polities linked to a historically defined territory. Here self-determination may well work, with a majority deciding in a plebiscite upon its political status, and clearly defined boundaries that must be accepted by neighbours according to the principle of *uti possidetis*.

[63] See TM Franck, 'Clan and Superclan: Loyalty, Identity and Community in Law and Practice' (1996) 90 AJIL 359–83; Saxer (n 6) 310–26.

[64] Saxer (n 6) 324–26.

[65] See, on the one hand, Doehring (n 2) 55–56 paras 28–30, on the other hand Saxer (n 6) 286–300, 310–25.

[66] See also Wheatley (n 38) 124–26.

[67] See TM Franck, 'Postmodern Tribalism and the Right to Secession' in C Brölmann and others (eds), *Peoples and Minorities in International Law* (Nijhoff 1993) 3–27 as well as Franck (n 62) 359–83.

Such pre-determined entities may be established States, where it is beyond dispute that the peoples of such States enjoy a continuing right of self-determination protecting them against foreign intervention, alien domination, or illegal occupation.[68] They may also be historical entities traditionally enjoying a certain degree of autonomy within States, or member States of federations and federal States.[69] The fact that a certain territory has formed a distinct political entity, with a population living together in such an entity for a long time, usually also results in a strong sense of collective identity, irrespective of language, culture, or religion. This does not exclude divergences of opinion—the members of the previously dominant group will not wish to be separated from their kin-state and thus become a minority in a new State, as was the case with Russians in the former republics of the Soviet Union.[70] But the international community accepted the claims of such republics, as well as the claims of the former republics constituting the Socialist Federative Republic of Yugoslavia, to form their own States.[71] Although in both cases the recognition was mostly based on arguments of dismemberment of the former federations, the international community had no problems in accepting their claims of self-determination. Other cases are more disputed, like the unilateral declaration of independence of the former Autonomous Province of Kosovo within Serbia.[72] But all in all State practice is clear—the subjects of self-determination which are recognized as States are pre-determined political entities with a clear territorial basis, not 'peoples' in a purely personalist, group-based form. 27

II. Components of the Right of Self-Determination

1. Internal Self-Determination

As has become clear from the description of the potential bearers of the right of self-determination, the consequence of such a right cannot always be independent statehood. The principled presumption in favour of territorial integrity that was so strongly emphasized in the 'Friendly Relations Declaration' definitely goes against such an assumption. The historical characteristic of federated States, autonomous regions, and member States of federations is precisely the fact that they are federated or integrated into another State, although provided with a certain degree of political and institutional autonomy. The principle of territorial integrity works not only in favour of centralized, unitary States, but protects also federations, federal States, and quasi-federal constructs. The result of such precedence of territorial integrity is the legal assumption that in these cases self-determination is bound up in the constructs of federation or autonomy. The 'peoples' of such entities historically had reasons for entering into a close relationship with another political entity, and as long as there are no exceptional grounds rebutting 28

[68] See Doehring (n 2) 56, para 33.

[69] See eg O Kimminich, 'A "Federal" Right of Self-Determination?' in C Tomuschat (ed), *Modern Law of Self-Determination* (Kluwer 1993) 83–99, as well as P Thornberry, 'The Democratic or Internal Aspect of Self-Determination with some Remarks on Federalism' ibid, 101–38.

[70] See only WC Allison, 'Self-Determination and Recent Developments in the Baltic States' (1991) 19 Denver J Intl L & Pol'y 625–84.

[71] See M Weller, 'The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia' (1992) 86 AJIL 569–607.

[72] See the contributions in P Hilpold (ed), *Das Kosovo-Gutachten des IGH vom 22. Juli 2010* (Brill 2012).

Annex 161

National Assembly of Mauritius, *Reply to Private Notice Question* (12 June 2012)

PRIME MINISTER REPLIES TO PRIVATE NOTICE QUESTION AND PARLIAMENTARY QUESTIONS OF 12th JUNE 2012

12.06. 2012

Private Notice Question

To ask Dr the Honourable Prime Minister, Minister of Defence, Home Affairs and External Communications, Minister for Rodrigues -

Whether, in regard to the sovereignty of Mauritius over the Chagos Archipelago, he will state –

(a) if he discussed same with Mr David Cameron, Prime Minister of the United Kingdom, during his last visit thereto and, if so, indicate the outcome thereof;

(b) if he proposes to meet Mr Barack Obama, President of the United States of America, in relation thereto and, if so, when;

(c) if Government proposes to take new initiatives to make out our case in relation thereto and, if so, give details thereof; and

(d) the stand taken by Government, if any, at the April/May 2012 Meeting of the Indian Ocean Tuna Commission held in Australia, following the intervention of the officials of the so-called "British Indian Ocean Territory"?

REPLY

Mr Speaker, Sir,

Following my meeting with the British Prime Minister, Mr David Cameron on Friday 08 June 2012, I announced through the media that I shall make a statement at the National Assembly today on the outcome of the meeting. I thank the Hon. Leader of the Opposition for his Private Notice Question which gives me an opportunity to inform the House and the population at large on the discussions I had with the British Prime Minister.

I should like to stress that the main purpose of my mission to the UK last week was to have a bilateral meeting with Mr David Cameron, the British Prime Minister. While in the UK, I

also participated in the celebrations marking Her Majesty's Diamond Jubilee at Her Majesty's invitation

The meeting with the British Prime Minister was held at 10, Downing Street. On the British side the Hon. Henry Bellingham, Parliamentary Under Secretary of State of the Foreign and Commonwealth Office Mr John Dennis, Head of Africa Desk at the Foreign and Commonwealth Office and Private Secretaries of Prime Minister Cameron and Hon. Henry Bellingham were also present. In attendance on the Mauritius side were the Secretary to the Cabinet, the Solicitor-General, our High Commissioner in London and our Permanent Representative to the United Nations in New York.

Both sides highlighted the long-standing ties between our two countries and looked forward to the successful hosting of CHOGM in Mauritius in 2015. I observed, however, that the dispute on the Chagos issue remained a blot in this otherwise excellent relationship.

I reminded the British Prime Minister of the repeated undertakings by the UK that the Chagos Archipelago would be returned to Mauritius when no longer needed for defence purposes. I indicated that there is an excellent window of opportunity to redress the injustice caused by the excision of the Chagos Archipelago from the territory of Mauritius with the expiry of the UK-US arrangements on the use of the archipelago in 2016. And, in this connection, I stressed on the need for formal talks between Mauritius, UK and the US to be initiated with a view to reaching an agreement on the effective exercise of sovereignty by Mauritius while safeguarding the continued use of Diego Garcia for US defence purposes.

The British Prime Minister observed that there were some concerns about the multiplicity of litigations pertaining to the Chagos Archipelago that are currently ongoing. He added that the presence of a military base in Diego Garcia further added to the complexity of the issue.

In the course of the discussions an understanding was reached for both parties to start a process of positive dialogue on the future use of the Chagos Archipelago. I informed the British Prime Minister that I will make a formal announcement about this process. I will follow up on this matter for a prompt start of such talks and will propose that these be held at Ministerial level.

In regard to part (b) of the Question I informed the British Prime Minister that I intend, during a proposed visit to Washington, to put across our proposal that all three States sit together and come to an agreement on the sovereignty issue without causing any prejudice to the continued use of Diego Garcia as a military base to meet prevailing security needs. The British Prime Minister took note of this initiative vis-à-vis the US.

Mr Speaker, Sir,

Regarding part (c) of the Question, we all know the circumstances in which the Chagos Archipelago was excised from the territory of Mauritius prior to our accession to independence when the UK was the colonial master dictating the laws and policies of Mauritius. The excision was in violation of international law and various United Nations General Assembly Resolutions.

Mr Speaker, Sir,

The House will surely appreciate that in view of the sensitive and complex nature of discussions on this subject, it will not be in our interest to delve into details of the strategy we have chartered out for attaining our ultimate objective.

It will be recalled that, when in June 2004, media gave headline publicising a leaked information that Mauritius intended to leave the Commonwealth in order to take the UK to the International Court of Justice, the British Government promptly came up with a declaration at the UN stating that it did not recognize the jurisdiction of the International Court of Justice in relation to any dispute with the Government of any other country which is or has been a member of the Commonwealth.

Mr Speaker, Sir,

In the light of what I have just said the Leader of the Opposition and the House will appreciate that we should be very careful in engaging in a public debate about each and every of our initiatives. However, the House can rest assured that we will continuously explore all legal and diplomatic initiatives with the assistance of our local and external lawyers or advisers.

I must, however, inform the House that at the diplomatic level, a number of initiatives have been successfully undertaken by Mauritius, as evidenced by Declarations, Decisions and Resolutions supporting the sovereignty of Mauritius over the Chagos Archipelago adopted by the African Union Summits in July 2010 and January 2011, the Non-Aligned Movement Summit in July 2009, and the Non-Aligned Movement Ministerial Conferences in May 2011 and May 2012. In particular, for the first time, the Group of 77 and China in April 2012 adopted a Ministerial Declaration on the occasion of UNCTAD XIII which, inter alia, reaffirms the need to find a peaceful solution to the dispute over the Chagos Archipelago, including Diego Garcia, which was unlawfully excised from the territory of Mauritius.

Mr Speaker, Sir,

Regarding part (d) of the Question, I am informed that Mauritian Officials attending the Indian Ocean Tuna Commission held in April 2012 in Australia had made the following statement, I quote,

"*The Government of the Republic of Mauritius does not recognise the so-called "British Indian Ocean Territory" ("BIOT") which the United Kingdom purported to create by illegally excising the Chagos Archipelago from the territory of Mauritius prior to its independence. This excision was carried out in violation of United Nations General Assembly Resolutions 1514 (XV) of 14 December 1960, 2066 (XX) of 16 December 1965, 2232 (XXI) of 20 December 1966 and 2357 (XXII) of 19 December 1967.*

The Government of the Republic of Mauritius reiterates that the Chagos Archipelago including Diego Garcia forms an integral part of the territory of Mauritius under both Mauritian law and international law.

The Government of the Republic of Mauritius does not also recognise the existence of the 'marine protected area' which the United Kingdom had purported to establish around the Chagos Archipelago. On 20 December 2010, Mauritius initiated proceedings against the United Kingdom under Article 287 and Annex VII to the United Nations Convention on the Law of the Sea to challenge the legality of the 'marine protected area'."

Unquote

In fact I should inform the House that my office has issued a circular to all supervising officers of Ministries/Departments in January 2012, requesting to ensure that officials attending international conferences, meetings or seminar adopt a consistent stand on the Mauritius position on the Chagos and Tromelin issue whenever so related questions arise.

The sovereignty of Mauritius over the Chagos Archipelago is an issue which, in my view, should transcend party politics. We should all act with a unity of purpose to achieve our objective for our country to effectively exercise sovereignty over the Chagos Archipelago. I would, therefore, appeal to all members of this august Assembly to support the initiative of Government regarding what the late Mr Robin Cook, former British Foreign Secretary described as, I quote

"*one of the most sordid and morally indefensible episodes in our post colonial history*"

Unquote.

Mr Speaker, Sir,

Let me assure the House that I will keep all members informed of any development on the Chagos Archipelago issue.

Annex 162

Ministers for Foreign Affairs of the Member States of the Group of 77, *Ministerial Declarations adopted at the Thirty-Sixth and Thirty-Seventh Annual Meetings of Ministers for Foreign Affairs of the Member States of the Group of 77* (28 Sept. 2012 & 26 Sept. 2013)

EXTRACT

THIRTY-SIXTH ANNUAL MEETING
OF MINISTERS FOR FOREIGN AFFAIRS
OF THE MEMBER STATES OF THE GROUP OF 77
New York, 28 September 2012

MINISTERIAL DECLARATION

114. The Ministers reaffirmed the need to find a peaceful solution to the sovereignty issues facing developing countries, including among others the dispute over Chagos Archipelago, including Diego Garcia, which was unlawfully excised from the territory of Mauritius in violation of international law and United Nations General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Failure to resolve these decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries.

EXTRACT

THIRTY-SEVENTH ANNUAL MEETING
OF MINISTERS FOR FOREIGN AFFAIRS
OF THE MEMBER STATES OF THE GROUP OF 77
New York, 26 September 2013

MINISTERIAL DECLARATION

141. The Ministers reaffirmed the need to find a peaceful solution to the sovereignty issues facing developing countries, including among others the dispute over the Chagos Archipelago, including Diego Garcia, which was unlawfully excised from the territory of Mauritius in violation of international law and United Nations General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Failure to resolve these decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries.

Annex 163

Africa-South America Summit, 3rd Summit, *Malabo Declaration* (20-22 Feb. 2013)

THIRD AFRICA-SOUTH AMERICA SUMMIT, MALABO, EQUATORIAL GUINEA, 20-22 FEBRUARY 2013

MALABO DECLARATION (EXTRACT)

28. ***We reaffirm*** that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of the Republic of Mauritius in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius. In this regard, ***we note with grave concern*** that despite the strong opposition of the Republic of Mauritius, the United Kingdom purported to establish a 'marine protected area' around the Chagos Archipelago which contravenes international law and further impedes the exercise by the Republic of Mauritius of its sovereignty over the Archipelago and of the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom. ***We resolve*** to fully support all peaceful and legitimate measures already taken and which will be taken by the Government of Mauritius to effectively exercise its sovereignty over the Chagos Archipelago and, in this respect, ***call upon*** the United Kingdom to expeditiously end its unlawful occupation of the Chagos Archipelago. ***We recall***, in this regard, the Resolutions / Decisions adopted by the African Union at the highest political level including Decision Assembly/AU/Dec.331 (XV) of 27 July 2010 of the AU Assembly and Resolution Assembly/AU/Res.1(XVI) adopted by the 16th Ordinary Session of the AU Assembly held in Addis Ababa, Ethiopia, from 30-31 January 2011.

Annex 164

Assembly of the African Union, 21st Ordinary Session, *Solemn Declaration on the 50th Anniversary of the OAU/AU*, Assembly/AU/2(XXI)Rev.1 (26 May 2013)

SOLEMN DECLARATION ON THE 50th ANNIVERSARY OF THE OAU/AU

We, Heads of State and Government of the African Union assembled to celebrate the Golden Jubilee of the OAU/AU established in the city of Addis Ababa, Ethiopia on 25 May 1963,

Evoking the uniqueness of the history of Africa as the cradle of humanity and a centre of civilization, and dehumanized by slavery, deportation, dispossession, apartheid and colonialism as well as our struggles against these evils, which shaped our common destiny and enhanced our solidarity with peoples of African descent;

Recalling with pride, the historical role and efforts of the Founders of the Pan-African Movement and the nationalist movements, whose visions, wisdom, solidarity and commitment continue to inspire us;

Reaffirming our commitment to the ideals of Pan-Africanism and Africa's aspiration for greater unity, and paying tribute to the Founders of the Organization of African Unity (OAU) as well as the African peoples on the continent and in the Diaspora for their glorious and successful struggles against all forms of oppression, colonialism and apartheid;

Mindful that the OAU/AU have been relentlessly championing for the complete decolonization of the African continent and that one of the fundamental objectives is unconditional respect for the sovereignty and territorial integrity of each of its Member States;

Stressing our commitment to build a united and integrated Africa;

Guided by the vision of our Union and affirming our determination to "*build an integrated, prosperous and peaceful Africa, driven and managed by its own citizens and representing a dynamic force in the international arena*";

Determined to take full responsibility for the realisation of this vision;

Guided by the principles enshrined in the Constitutive Act of our Union and our Shared Values, in particular our commitment to ensure gender equality and a people centred approach in all our endeavours as well as respect for sovereignty and territorial integrity of our countries.

ACKNOWLEDGE THAT:

I. ***The Organisation of African Unity (OAU)*** overcame internal and external challenges, persevered in the quest for continental unity and solidarity; contributed actively to the liberation of Africa from colonialism and apartheid; provided a political and diplomatic platform to generations of leaders on

continental and international matters; and elaborated frameworks for Africa's development and integration agenda through programmes such as NEPAD and APRM.

II. ***The African Union (AU)*** carried forward our struggle for self-determination and drive for development and integration; formulated a clear vision for our Union; agreed that the ultimate goal of the Union is the construction of a united and integrated Africa; instituted the principle of non-indifference by authorizing the right of the Union to intervene in Member States in conformity with the Constitutive Act; and laid the groundwork for the entrenchment of the rule of law, democracy, respect for human rights, solidarity, promotion of gender equality and the empowerment of Women and Youth in Africa.

III. The implementation of the integration agenda; the involvement of people, including our Diaspora in the affairs of the Union; the quest for peace and security and preventing wars and genocide such as the 1994 Rwandan genocide; the alignment between our institutional framework and the vision of the Union; the fight against poverty; inequality and underdevelopment; and, assuring Africa's rightful place in the world, remain challenges.

WE HEREBY DECLARE:

A. On the African Identity and Renaissance

i) Our strong commitment to accelerate the African Renaissance by ensuring the integration of the principles of Pan Africanism in all our policies and initiatives;

ii) Our unflinching belief in our common destiny, our Shared Values and the affirmation of the African identity; the celebration of unity in diversity and the institution of the African citizenship;

iii) Our commitment to strengthen AU programmes and Member States institutions aimed at reviving our cultural identity, heritage, history and Shared values, as well as undertake, henceforth, to fly the AU flag and sing the AU anthem along with our national flags and anthems;

iv) Promote and harmonize the teaching of African history, values and Pan Africanism in all our schools and educational institutions as part of advancing our African identity and Renaissance;

v) Promote people to people engagements including Youth and civil society exchanges in order to strengthen Pan Africanism.

B. The struggle against colonialism and the right to self-determination of people still under colonial rule

i) The completion of the decolonization process in Africa; to protect the right to self-determination of African peoples still under colonial rule; solidarity with people of African descend and in the Diaspora in their struggles against racial discrimination; and resist all forms of influences contrary to the interests of the continent;

ii) The reaffirmation of our call to end expeditiously the unlawful occupation of the Chagos Archipelago, the Comorian Island of Mayotte and also reaffirm the right to self-determination of the people of Western Sahara, with a view to enable these countries and peoples, to effectively exercise sovereignty over their respective territories.

C. On the integration agenda

Our commitment to Africa's political, social and economic integration agenda, and in this regard, speed up the process of attaining the objectives of the African Economic Community and take steps towards the construction of a united and integrated Africa. Consolidating existing commitments and instruments, we undertake, in particular, to:

i) Speedily implement the Continental Free Trade Area; ensure free movement of goods, with focus on integrating local and regional markets as well as facilitate African citizenship to allow free movement of people through the gradual removal of visa requirements;

ii) Accelerate action on the ultimate establishment of a united and integrated Africa, through the implementation of our common continental governance, democracy and human rights frameworks. Move with speed towards the integration and merger of the Regional Economic Communities as the building blocks of the Union.

D. On the agenda for social and economic development

Our commitment to place the African people, in particular women, children and the youth, as well as persons with disabilities, at the centre of our endeavours and to eradicate poverty. In this regard, we undertake to:

i) Develop our human capital as our most important resource, through education and training, especially in science, technology and innovation, and ensure that Africa takes its place and contributes to humanity, including in the field of space sciences and explorations;

ii) Eradicate disease, especially HIV/AIDS, Malaria and Tuberculosis, ensure that no African woman dies while giving life, address maternal, infant and child mortality as well as provide universal health care services to our citizens;

iii) Accelerate Africa's infrastructural development, to link African peoples, countries and economies; and help to drive social, cultural and economic development. In this regard, we commit to meet our strategic targets in transport, ICT, energy and other social infrastructure by committing national, regional and continental resources to this end;

iv) Create an enabling environment for the effective development of the African private sector through meaningfull public-private sector dialogue at all levels, in order to foster socially responsive business, good corporate governance and inclusive economic growth;

v) Take ownership of, use and develop, our natural endowments and resources, through value addition, as the basis for industrialization; promote intra-Africa trade and tourism, in order to foster economic integration, development, employment and inclusive growth to the benefit of the African people;

vi) Also take ownership, preserve, protect and use our oceanic spaces and resources, improve our maritime and transport industries to the benefit of the continent and its peoples, including by contributing to food security;

vii) Preserve our arable land for current and future generations, develop our rural economies, our agricultural production and agro-processing to eradicate hunger and malnutrition, as well as achieve food security and self-sufficiency;

viii) Expand and develop urban infrastructure and develop planned approaches to rapid urbanization and the emergence of new cities;

ix) Make our development agenda responsive to the needs of our peoples, anchored on the preservation of our environment for current and future generations, including in the fight against desertification and mitigation of the effects of climate change, especially with regards to island states and land-locked countries.

E. On peace and security

Our determination to achieve the goal of a conflict-free Africa, to make peace a reality for all our people and to rid the continent of wars, civil conflicts, human rights violations, humanitarian disasters and violent conflicts, and to prevent genocide. We pledge not to bequeath the burden of conflicts to the next generation of Africans and undertake to end all wars in Africa by 2020. In this regard, we undertake to:

i) Address the root causes of conflicts including economic and social disparities; put an end to impunity by strengthening national and continental judicial institutions, and ensure accountability in line with our collective responsibility to the principle of non-indifference;

ii) Eradicate recurrent and address emerging sources of conflict including piracy, trafficking in narcotics and humans, all forms of extremism, armed rebellions, terrorism, transnational organized crime and new crimes such as cybercrime.

iii) Push forward the agenda of conflict prevention, peacemaking, peace support, national reconciliation and post-conflict reconstruction and development through the African Peace and Security Architecture; as well as, ensure enforcement of and compliance with peace agreements and build Africa's peace-keeping and enforcement capacities through the African Standby Force;

iv) Maintain a nuclear-free Africa and call for global nuclear disarmament, non-proliferation and peaceful uses of nuclear energy;

v) Ensure the effective implementation of agreements on landmines and the non-proliferation of small arms and light weapons;

vi) Address the plight of internally displaced persons and refugees and eliminate the root causes of this phenomenon by fully implementing continental and universal frameworks.

F. On democratic governance

Our determination to anchor our societies, governments and institutions on respect for the rule of law, human rights and dignity, popular participation, the management of diversity, as well as inclusion and democracy. In this regard, we undertake to:

i) Strengthen democratic governance including through decentralized systems, the rule of law and the capacities of our institutions to meet the aspirations of our people;

ii) Reiterate our rejection of unconstitutional change of government, including through any attempts to seize power by force but recognize the right of our people to peacefully express their will against oppressive systems;

iii) Promote integrity, fight corruption in the management of public affairs and promote leadership that is committed to the interests of the people;

iv) Foster the participation of our people through democratic elections and ensure accountability and transparency.

G. On Determining Africa's Destiny

Our determination to take responsibility for our destiny. We pledge to foster self-reliance and self-sufficiency. In this regard, we undertake to:

i) Take ownership of African issues and provide African solutions to African problems;

ii) Mobilize our domestic resources, on a predictable and sustainable basis to strengthen institutions and advance our continental agenda;

iii) Take all necessary measures, using our rich natural endowments and human resources, to transform Africa and make it a leading continent in the area of innovation and creativity;

H. Africa's place in the world

Our endeavour for Africa to take its rightful place in the political, security, economic, and social systems of global g overnance towards the realization of its Renaissance and establishing Africa as a leading continent. We undertake to:

i) Continue the global struggle against all forms of racism and discrimination, xenophobia and related intolerances;

ii) Act in solidarity with oppressed countries and peoples;

iii) Advance international cooperation that promotes and defends Africa's interests, is mutually beneficial and aligned to our Pan Africanist vision;

iv) Continue to speak with one voice and act collectively to promote our common interests and positions in the international arena;

v) Reiterate our commitment to Africa's active role in the globalization process and international forums including in Financial and Economic Institutions;

vi) Advocate for our common position for reform of the United Nations (UN) and other global institutions with particular reference to the UN Security Council, in order to correct the historical injustice with Africa as the only region without a permanent seat.

We pledge to articulate the above ideals and goals in our national development plans and in the development of the Continental Agenda 2063, through a people-driven process for the realization of our vision for an integrated, people-centred, prosperous Africa at peace with itself.

As Heads of State and Government, mindful of our responsibility and commitment, we pledge to act together with our Peoples and the African Diaspora to realize our vision of Pan Africanism and African Renaissance.

Adopted by the 21st Ordinary session of the Assembly of Heads of State and Government of the African Union, at Addis Ababa, on 26 May 2013.

Annex 165

Declaration on the Report of the Peace and Security Council on its Activities and the State of Peace and Security in Africa, Assembly/AU/Decl.1(XXI) (26-27 May 2013)

EXTRACT

AFRICAN UNION
الاتحاد الأفريقي

UNION AFRICAINE
UNIÃO AFRICANA

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ASSEMBLY OF THE UNION
Twenty-First Ordinary Session
26 - 27 May 2013
Addis Ababa, ETHIOPIA

Assembly/AU/Dec.474-489(XXI)
Assembly/AU/Decl.1-2(XXI)
Assembly/AU/Res.1(XXI)

DECISIONS, DECLARATIONS AND RESOLUTION

Annex 165

DECLARATION ON THE REPORT OF THE PEACE AND SECURITY COUNCIL ON ITS ACTIVITIES AND THE STATE OF PEACE AND SECURITY IN AFRICA
Doc. Assembly/AU/5(XXI)

The Assembly,

Having reviewed the state of peace and security on the continent and the steps we need to take to hasten the attainment of our common objective of a conflict-free Africa, on the basis of the report of the Peace and Security Council on its activities and the state of peace and security in Africa;

Welcoming the significant progress made in the operationalization of the African Peace and Security Architecture (APSA), the adoption of a number of instruments on democracy, human rights and good governance, which represent a consolidated framework of norms and principles towards the structural prevention of conflicts, the advances in conflict resolution and peace building on the continent, as well as the partnerships built with relevant international stakeholders;

Noting, however, the challenges that continue to be encountered in the full operationalization of the APSA, including key components such as the African Standby Force (ASF), continued prevalence of conflict, insecurity and instability in some parts of the continent, with its attendant humanitarian consequences and socio-economic impact, as well as the resurgence of unconstitutional changes of Government, the frequent recourse to armed rebellion to further political claims, the threats posed by terrorism, hostage taking and the attendant payment of ransoms, illicit proliferation of arms, transnational organized crime, drug trafficking, piracy, and illicit exploitation of natural resources to fuel conflicts;

Noting *also* the need for increased funding from within the continent to assert Africa's ownership and leadership, as well as the challenges faced in building innovative and flexible partnership with the United Nations and other stakeholders;

Stressing that the 50th anniversary of the OAU/AU offers a unique opportunity to review progress made and challenges encountered, as well as to chart the way forward, and *reiterating*, in this respect, our determination to address decisively the scourge of conflict and violence on our continent, with the view to bequeath to the next generation of Africans a prosperous continent at peace with itself:

1. **RECOMMIT OURSELVES** to accelerate the full operationalization of the APSA, including refinement, where necessary, of existing provisions to facilitate their implementation. WE **CALL FOR** the strengthening of the relations between the AU and the Regional Economic Communities/Regional Mechanisms for Conflict Prevention, Management and Resolution (RECs/RMs), notably through the effective implementation of the relevant provisions of the PSC Protocol and the Memorandum of Understanding between the AU and the RECs/RMs, bearing in mind AU's primary responsibility in the maintenance of peace and security in

Africa. WE **ENDORSE** the establishment of the Pan-Wise network comprising the Panel of the Wise, similar structures within the RECs/RMs and all other African actors contributing to peace-making through preventive action and mediation, as agreed to during the second retreat of these organs held in Addis Ababa from 11 to 12 April 2013;

2. **UNDERTAKE** to make renewed efforts to address the root causes of conflicts in a holistic and systematic manner, including through implementing existing instruments in the areas of human rights, rule of law, democracy, elections and good governance, as well as programmes relating to cooperation, human development, youth and employment. In this respect, WE **CALL ON** all Member States that have not yet done so, to become parties to these instruments, by the end of 2013, and **REQUEST** the Commission to review thoroughly the implementation status of these instruments and programmes and to submit to the Assembly, by January 2014, concrete proposals on how to improve compliance;

3. **COMMIT OURSELVES**, within the framework of the African Solidary Initiative, to extend full support to those African countries emerging from conflict, to assist them to consolidate their hard-won peace and avoid relapse into violence. WE **LOOK FORWARD** to the convening of the planned African Solidary Conference (ASC), in Addis Ababa, in September 2013, and **COMMIT** to making significant pledges on that occasion;

4. **STRESS** the need for all Member States to extend full cooperation and support to the PSC, bearing in mind that, in carrying out its duties under the Protocol, the PSC acts on behalf of the entire membership of the AU;

5. **COMMIT** ourselves to increase substantially our contribution to the Peace Fund, for Africa truly to own the efforts to promote peace, security and stability on the continent. In this respect, we request the Commission to submit concrete proposals to the Assembly, in January 2014, including with respect to the statutory transfer from the AU regular budget to the Peace Fund. In the meantime, WE **ENCOURAGE** all Member States to make exceptional voluntary contributions to the Peace Fund on the occasion of the OAU Golden Jubilee, and **REQUEST** the Commission to report, by January 2014, to the Assembly on Member States response to this appeal;

6. **STRESS THE NEED** to build an innovative, flexible action-oriented and balanced partnership with the international partners, notably the United Nations, to ensure that Africa's concerns and positions are adequately taken into account by the Security Council when making decisions on matters of fundamental interest to Africa, **REITERATE** the terms of the communiqué issued by the PSC at its 307th meeting held on 9 January 2012, and **REQUEST** the PSC to convene an open session at Summit level, in order to review the partnership with the United Nations in light of the challenges encountered recently regarding the situation in Mali and other issues related to peace and security on the continent;

7. **CALL ON** the African civil society to continue to play its positive role in promoting peace, security and stability as called for by the PSC Protocol and **REQUEST** the Commission and the PSC to take all necessary steps to enhance interaction with civil society;

8. **WELCOME** the progress made in the relations between Sudan and South Sudan, with the signing of the Implementation Matrix for the Agreements signed of 27 September 2012 and **CALL FOR** a transparent inquiry into the killing of the paramount Chief of the Ngok Dinga Community in Abyei, as well as the strengthening and acceleration of the process of resolving the Abyei issue; in Somalia, with the consolidation of the security and political gains recorded over the past few years; the Great Lakes Region, with the signing of Peace, Security and Cooperation Framework; and in Mali, with the liberation of the northern part of the country and on-going efforts for the holding of elections. WE **CALL ON** all concerned stakeholders to spare no efforts in consolidating these achievements, and addressing the challenges at hand, in line with the relevant PSC communiqués. WE also **WELCOME** the progress made in peace building and post-conflict recovery in Burundi, Comoros, Côte d'Ivoire, Democratic Republic of Congo, Liberia and Sierra Leone, **ENCOURAGE** the countries concerned to pursue their efforts and **CALL ON** fellow African countries and the rest of the international community to continue assisting them in their efforts;

9. **REITERATE** the AU's concern at the continued challenges in the peace processes between Eritrea and Ethiopia and the relations between Eritrea and Djibouti, and **REQUEST** the Chairperson of the Commission to take appropriate steps to facilitate progress in these situations, in line with the powers entrusted to her by the PSC Protocol and earlier relevant decisions of the Assembly, and to report to the PSC, no later than October 2013, on the steps taken in this regard. WE **ALSO REITERATE OUR CONCERN** at the continued impasse in the conflict in Western Sahara, and **CALL FOR** renewed efforts based on relevant OAU/AU and UN resolutions, in order to overcome this impasse;

10. **ALSO EXPRESS CONCERN** at the prevailing situation in Madagascar and fully support the PSC and SADC decisions on the issue of candidatures to the forthcoming presidential elections. WE **CONDEMN** the illegal seizure of power in Central African Republic and the serious violations of human rights committed by the Seleka rebel group and in this regard, **COMMEND** the efforts of the Economic Community of Central African States (ECCAS), **ENDORSE** the PSC decisions on the matter and **CALL FOR** renewed efforts to restore security and ensure the return to constitutional order, bearing in mind the relevant PSC decisions and conclusions of the inaugural meeting of the International Contact Group on CAR (ICG-CAR). WE **STRESS THE NEED** for the early return to constitutional order in Guinea Bissau, noting with satisfaction ECOWAS, AU, CPLP, EU and UN coordinated efforts;

11. **REITERATE** our support to the sovereignty of the Union of the Comoros over the island of Mayotte, as well as the sovereignty of the Republic of Mauritius over the Chagos Archipelago;

12. **REQUEST** the PSC to actively keep under review the implementation of the Declaration and Plan of Action adopted by the Special Session on the Consideration and Resolution of Conflicts in Africa, held in August 2009, at its Summit meeting referred to in paragraph 6 above;

13. **PLEDGE OUR FULL COMMITMENT** to the effective implementation of this Declaration and to adopting new measures, as and of necessary, so as to open a new chapter in our collective action in favor of peace, security, stability and shared prosperity throughout Africa and the rest of the world.

Annex 166

Republic of Mauritius, *National Report of the Republic of Mauritius in view of the Third International Conference on Small Island Developing States* (July 2013)

Republic of Mauritius

THIRD INTERNATIONAL CONFERENCE ON SMALL ISLAND DEVELOPING STATES

National Report of the Republic of Mauritius

UNDESA

Acknowledgements

The Government of Mauritius would like to express its gratitude to the United Nations Department of Economic and Social Affairs, the United Nations Development Programme Country Office and also to all the Ministries, organisations, major groups' representatives and individuals who have contributed to the preparation of this report.

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List of Abbreviations

BPO	Business Process Outsourcing
BPoA	Barbados Programme of Action
CEB	Central Electricity Board
CERT	Computer Emergency Response Team
CFL	Compact Fluorescent Lamp
DAI	Digital Access Index
EE	Energy Efficiency
EEMO	Energy Efficiency Management Office
EEZ	Exclusive Economic Zone
ESD	Education for Sustainable Development
ESTP	Economic and Social Transformation Plan
FIT	Feed In Tariff
GEF	Global Environment Facility
ICT	Information and Communication Technology
IOC	Indian Ocean Commission
LED	Light Emitting Diode
LTES	Long Term Energy Strategy
MID	Maurice Ile Durable (Mauritius Sustainable Island)
MSI	Mauritius Strategy for Implementation
NDS	National Development Strategy
NTM	Non-Tariff Measure
PBB	Programme Based Budget
RE	Renewable Energy
S&T	Science and Technology
SCP	Sustainable Consumption and Production
SDGs	Sustainable Development Goals
SIDS	Small Island Developing States
SIPP	Small Independent Power Producers
SSDGS	Small Scale Distribution Generation System
TNA	Technology Needs Assessment
UNDESA	United Nations Department of Economic and Social Affairs
UNDP	United Nations Development Programme
URA	Utility Regulatory Authority

Message by the Hon. Minister of Foreign Affairs, Regional Integration and International Trade

The Government of the Republic of Mauritius is pleased to present this report on the occasion of the Third Global Conference of Small Island Developing States to be held in Samoa in 2014.

As an essential preparatory exercise for the Conference, the Republic of Mauritius has itself undertaken a review of its implementation of the Barbados Plan of Action (BPoA) for the sustainable development of Small Island Developing States adopted at the Global Conference on the Sustainable Development of Small Island Developing States in 1994 and of the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States adopted at the International Meeting to Review the Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States in 2005. The national report produced as a result of this review highlights the successes and constraints, the new and emerging challenges, the best practices, the way forward and the vision of the future. This report underscores, in particular, the sustained efforts made by the Republic of Mauritius to build resilience to adapt to unfavourable regional and international conjectures as well as to the negative effects of climate change.

Small Island Developing States remain a special case for sustainable development and continue to face unique and increasing challenges including the negative effects of climate change and a unique vulnerability of natural disasters but also to the degradation of key eco systems. They face built in constraints such as small economies, remoteness and limited fresh water, land and other natural resources. Waste disposal is a growing problem and energy costs are high meaning that more must be done to promote renewable energy. Barely above sea level and remote from world markets, many Small Island Developing States occupy the margins of our global community and for some their very existence is in jeopardy. Average vulnerability of Small Island Developing States has worsened over the last decade because of their high exposure to external shocks such the fuel, food and financial crises – events of a truly global character – combined with lower coping capacity as well as inadequate international support.

As a Small Island Developing State with an export oriented economy, the Republic of Mauritius is both economically and ecologically, fragile and vulnerable. It is therefore essential to frame and implement the right policies and create appropriate conditions and environment so as not only to meet the challenges but also to take advantage of the opportunities offered by this new paradigm of globalization. All this is perfectly in line with the vision of the Government to make the Republic of Mauritius a Modern and Sustainable Society through the *Maurice Ile Durable* Vision. The Government of the Republic Mauritius, thus, is fully committed to integrating Sustainable Development concepts and norms into its overall projects policies.

We look forward to the outcome of the 2014 Samoa Global Conference on Small Island Developing States to guide us in our efforts towards meeting new and emerging challenges of sustainable development. Finally, I would like to express my sincere appreciation to all those who have contributed to the preparation of this report.

Dr the Honourable Arvin Boolell G.O.S.K,
Minister of Foreign Affairs, Regional Integration and International Trade

Message by the Hon. Minister of Environment & Sustainable Development

The 3rd Global SIDS Conference will be held in Samoa from 1 to 4 September 2014. The conference will undertake a comprehensive review of the implementation of the Barbados Programme of Action (BPoA) for the sustainable development of SIDS and the Mauritius Strategy (MSI) for further implementation of the BPoA. As an essential preparatory exercise, Mauritius has undertaken, in advance of the conference, a review of the implementation of the BPoA and the MSI with a view to proposing concise, action oriented and pragmatic recommendations for the forthcoming Conference to enhance the resilience of SIDS. The preparation of the National Report has adopted an all-inclusive and broad based approach by involving a range of stakeholders for its preparation.

This National Report takes us through the achievements of the Republic of Mauritius in the quest for a more resilient society. It highlights the resources and investment injected in sustainable development programmes and projects and also the constraints that sometimes stall efforts towards building resilience. Constraints that are heralding our efforts towards sustainable development are essentially related to finance, infrastructural and human capacity, technology, smallness and remoteness of our markets.

Taking these constraints into consideration, the report presents some new and emerging challenges. Those are cross cutting in nature and range from water resources management, food security and global economic crises to migration and development. These constraints and new challenges should however, not dampen down our motivation and drive to seek opportunities in this ever dynamic world.

This is why the report has made pragmatic recommendations for further action as we aim to establish a new agenda for the sustainable development of SIDS. We need to move ahead keeping in mind the immense potential already available among all SIDS and give SIDS/SIDS partnerships an opportunity to flourish. In so doing, we have to be particularly careful in managing our fragile ecosystems and natural resources. We need to continuously table the adverse effects of climate change on our economies and people. We are ready to turn challenges into opportunities and for SIDS; the Ocean Economy is an opportunity that has to be tapped for our future development. We have also pointed out that for an action plan to be successful, it needs to be properly monitored. The setting up of the right institutional framework at national, regional and international levels will help us measure success and take timely action to address hurdles on the way.

Solidarity, collaboration and cooperation among us SIDS will take us a long way towards our destination. We also expect the international community to commit themselves with more tangible support for an effective outcome of the 2014 Samoa meeting.

Devanand Viransawmy, GOSK
Minister of Environment and Sustainable Development

The Republic of Mauritius

The Republic of Mauritius comprises a group of islands in the South West Indian Ocean, consisting of the main island Mauritius and the outer islands of Rodrigues, Agalega, Saint Brandon, Tromelin and the Chagos Archipelago. The total land area of the Republic of Mauritius is 2040 km^2 and the country has jurisdiction over a large Exclusive Economic Zone of approximately 2.3 million km^2 with significant potential for the development of a modern and prosperous marine and fisheries-based sustainable industry. The population, estimated at 1.3 million, is composed of several ethnicities, mostly people of Indian, African, Chinese and European descent. Most Mauritians are multilingual and speak and write in English, French, Creole and several Asian languages.

The Republic of Mauritius is a democracy with a Government elected every five years. The 2012 Mo Ibrahim Index of African Governance ranked Mauritius first in good governance. According to the 2012 Democracy Index compiled by the Economist Intelligence Unit and which measures the state of democracy in 167 countries, Mauritius ranks 18th worldwide.

Mauritius has a well-established welfare system. Free health care services and education to the population have contributed significantly to the economic and social advancement of the country. Support to inclusive development, gender equality and women empowerment are being addressed through the development of strategies, action plans and activities geared to meet the social targets set by the Government. To facilitate social integration and empowerment of vulnerable groups, a Ministry of Social Integration and Economic Empowerment has been set up in 2010.

Significant structural changes have been brought to ensure that Mauritius transforms itself from a sugar, manufacturing, tourism economy to a high-tech, innovative financial and business services hub. Policy and institutional reforms programmes have been articulated to enhance competitiveness; consolidate fiscal performance and improve public sector efficiency; improve the business climate and widen the circle of opportunity through participation, social inclusion and sustainability. The adoption of the “Maurice Ile Durable” framework and the Economic and Social Transformation Plan are the new development paradigm for the Republic of Mauritius as they strive to promote sustainable development and transform itself into a middle-income country.

Section I: INTRODUCTION

Sustainable development emphasises a holistic, equitable and far-sighted approach to decision-making at all levels. It rests on integration and a balanced consideration of social, economic and environmental goals and objectives in both public and private decision-making.

This concept of sustainability is very important in Small Island Developing States (SIDS) and this was first acknowledged at the Earth Summit in 1992. The vulnerabilities of SIDS arise from a number of physical, socio-economic and environmental factors. SIDS small size, limited resources, geographical dispersion and isolation from markets, place them at a disadvantage economically and prevent economies of scale. For instance, due to the small size of their economies, SIDS are highly dependent on trade but lack the factors that are decisive for competitiveness. Similarly, international macroeconomic shocks tend to have higher relative impacts on SIDS small economies. The combination of small size and remoteness leads to high production and trade costs, high levels of economic specialisation and exposure to commodity price volatility. Furthermore, in SIDS, the following natural resource base: energy, water, mineral and agricultural resources are limited and resource extraction tends quickly to meet the carrying capacities of the small islands. The latter also face unique threats related to global environmental issues, mainly climate change, biodiversity loss, waste management, pollution, freshwater scarcity, and acidification of the oceans.

As a SIDS, much progress has been achieved in Mauritius due to benefits derived from the Welfare State, namely: free access to education from pre-primary to university levels, transport to students and the elderly and health services to all and also from bilateral and multilateral trading agreements, the skilled work force, entrepreneurship, a stable democratic government and peace. However, despite its performance, the country is now facing the brunt of a number of global challenges, namely, the global economic, financial, energy and food security crises. The impacts of climate change, sea level rise, natural disasters and biodiversity loss are also having their toll on progress achieved so far.

Third International Conference on Small Island Developing States

The 3rd International Conference on SIDS to be held from 1 - 4 September 2014 in Apia, Samoa, will seek a renewed political commitment to address the special needs and vulnerabilities of SIDS by focusing on practical and pragmatic actions. Building on assessments of the Barbados Programme of Action (BPoA) and the Mauritius Strategy for Implementation (MSI), the Conference will aim to identify new and emerging challenges and opportunities for sustainable development of those States, particularly through the strengthening of partnerships between small islands and the international community.

In addition, the Conference will provide an opportunity for the elaboration of sustainable development issues of concern to SIDS in the process of charting the Post-2015 Development Agenda, including the sustainable development goals. Towards this end, the Conference is intending to serve as a platform for the international community to strengthen existing partnerships and voluntary commitments, as well as act as a launch pad of new initiatives, all with the common objective of advancing the implementation of the BPoA/MSI.

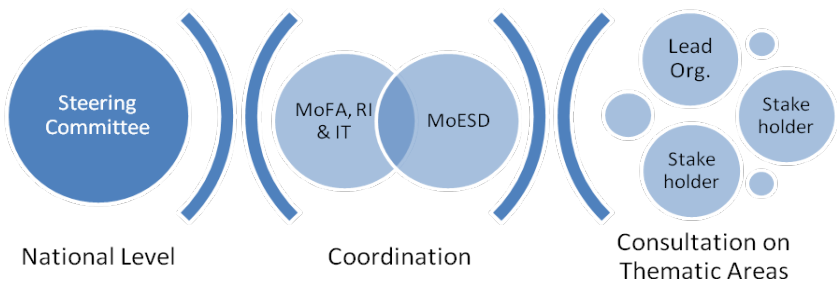
National Preparatory Process

The effectiveness of the Samoa SIDS Conference will depend first and foremost on national level preparations that will feed into the regional, interregional and global processes. National preparations for the 3rd International SIDS Conference are currently underway. The preparatory process has begun with the preparation of a National Assessment Report. The results of the national consultations will in turn feed into the discussions at regional and inter-regional meetings, leading up to the conference itself.

National Steering Committee

Broad based consultation, an inclusive approach and ownership are at the heart of the national preparatory process. To this effect, the Ministries of Environment & Sustainable Development and Foreign Affairs, Regional Integration and International Trade are jointly chairing a multi-stakeholder Steering Committee comprising Government, the private sector and civil society representatives[1]. The Committee is the platform for the 2014 SIDS meeting and mandated to among others to:

a) Provide support and guidance for the preparation of the National Report;
b) Provide guidance on any other matters and activities related to the conference until the Samoa Meeting in 2014; and
c) Follow up on the 2014 Samoa outcome.



The National Report – The Methodology for the consultative process

The national report is based on both the responses to the guiding questions[i] prepared by the United Nations to steer discussions at the national level and on a bottom-up, inclusive consultative process. This report needs to be read in conjunction with the following documents which provide detailed background information on the actions already undertaken by the Government of Mauritius to implement the BPoA and the MSI and the challenges thereof:

- State of the Environment Report prepared for 1992 UN Earth Summit;
- Report of the International meeting to review the Implementation of the Programme of Action for the sustainable Development of small Islands Developing States 1994;
- Mauritius Staking Out the Future - National Report for Mauritius International Meeting 2005;
- The Mauritius Strategy for Implementation National Assessment Report of 2010;
- Mauritius Environment Outlook Report 2011;
- National Synthesis report 2012 for the RIO+20 Conference
- Mauritius Report on the Post 2015 UN Development Agenda – The Future we want, and
- Maurice Ile Durable report, June 2013

[1] *The list of the members of the National Steering Committee is at Annex* 1

A. Summary of the consultations with the 18 thematic focus groups

A series of consultations were undertaken with key stakeholders to ensure cross-sectoral participation and diversity of views. 18 thematic focus groups were set up on the MSI thematic areas. A lead Ministry was identified with regard to each of the 18 thematic themes of the BPoA and MSI:

1. Climate Change & Sea Level Rise
2. Natural & Environmental Disasters
3. Management of Waste
4. Coastal & Marine Resources
5. Freshwater Resources
6. Land Resources
7. Energy Resources
8. Tourism Resources
9. Biodiversity Resources
10. Transport & Communication
11. Science & Technology
12. Trade: Globalization & Trade Liberalization
13. Sustainable Capacity Development & Education For Sustainable Development
14. Sustainable Production & Consumption
15. National & Regional Enabling Environments
16. Health
17. Knowledge Management & Information For Decision-Making
18. Culture

Each focus thematic group was composed of relevant stakeholders from both public and private sector and most of these groups met on at least two occasions[2]. Each group considered the 8 guiding questions and responded accordingly. The main recommendations from the group reports are given under the relevant sections II, III, IV and V of this report.

B. National Consultative Workshops

Three national workshops were held. The first national workshop[3] was held on 21 May 2013 and saw the participation of representatives from various sub-sections of society such as the youth, women, NGOs, civil society, trade unionists and local authorities. A second workshop[4] was held on 11 June 2013 in Rodrigues to ensure that the specific concerns of that particular territory of Mauritius were fed into the process. The Mauritius Private sector was also briefed on the process and their views were sought on 11 June 2013. Finally, a national validation workshop[5] was held to present the report, and to seek its endorsement from the representatives of all stakeholders who participated in the focus group meetings and consultations.

1) Summary of the National Dialogue with Major Groups

- Need for better adapted education, employment and a better quality of life, including through the promotion of family values, protection of traditions and cultures;
- Need for increased transparency, equity, security and good governance and in this respect better enforcement of laws and regulations at national level;
- Need for more education/information on sustainable development since some of the participants had limited knowledge of the existence and implementation of Agenda 21, BPoA, MSI, MDGs and the Post 2015 UN Development Agenda process;
- Need for more information on climate change, Disaster Risk Reduction and its impacts cross-sectorally;
- Concern over unpredictable changes in weather conditions and its consequences and the need for mitigative measures to be taken as well as contingency plans to be prepared;

[2] *Please see annex 2 for consolidated paper on the themes identified in the Mauritius Strategy.*
[3] *Please see annex 3 for agenda and list of participants*
[4] *Please see annex 4 for agenda and list of participants*
[5] *Please see annex 5 for agenda and list of participants*

- Concern over waste management, protection of water resources, and the lack of proper urbanisation controls;
- Concern with regard to the ageing population and the economic and social effects thereof;
- Concern over the lack of recognition of the important role NGOs play in society and their lack of human and financial support

2) Summary of consultations held in Rodrigues

- Water Resources Management remains their main priority. Water harnessing, storage and distribution is the main island challenge;
- Optimal use of land through judicious planning and zoning is considered essential for sustainable development. Incompatible development has been responsible for severe erosion and coastal siltation and conflictual co-habitation;
- A management strategy and action plan for optimal protection of coastal areas from sea level rise, erosion, inundation etc. (Rodrigues was severely impacted by Tsunami in 2004) and exploitation of marine resources should be prepared and implemented;
- Energy is produced from imported fossil fuel which is expensive and there are concerns over the regularity of supply during cyclonic seasons. There is a need to develop optimally renewable energy from wind and sun. They need affordable resources and technology;
- Waste characterisation has shown new challenges as there an increasing amount of E-waste (batteries, aluminium cans, bottles and plastic waste) entering the waste stream. Lack of capacity and scale of economies are not conducive to recycling and therefore poses serious problem of disposal; and
- The meeting also recognised and recommended that the concept of Education for Sustainable Development should be further strengthened in the formal education curriculum from primary to tertiary levels. Other issues discussed were in relation to the creation of employment, transparency in decision making and governance, security, enhancing equity for all and new and additional funding to attend to the above.

3) Summary of the dialogue with the Private Sector

- The private sector renewed its commitment to partner with the Government of Mauritius in its initiatives to meet the challenges of implementing the BPOA and MSI;
- The Private sector remains concerned over the poor coordination at the national/regional levels with regard to a holistic implementation of the BPOA and MSI;
- The private sector is keen to work towards sustainable consumption and production as long as this does not negatively impact the competitiveness of Mauritian products which already suffer from diseconomies of scale;
- In this respect, in order to avoid duplicative processes, the private sector would like the national consultative process to include the ideas/views already expressed/submitted through their participation in the 6 working groups working on finalising the national action plan to implement the MID initiative over the long term;
- The private sector has begun work on an energy efficiency initiative whereby it is working to seek energy conservation in production;
- The private sector has also embarked on a project to map the carbon footprint of the main industries with a view to reviewing and reducing same.
- The other issues raised were: protection and coastal and marine resources, especially in relation to the fisheries and aquaculture sectors and the need for SIDS to be provided with special trade preferences in order to increase their competitiveness given their remote geographical location from major exporting markets.

4) Summary of issues raised during the National validation Workshop

During the National Validation workshop, six sub-groups were set up to reflect on the six chosen themes and their recommendations were as follows:

A. Climate Change Group

Adaptation would be focused on the following three sectors: health sector; coastal zone sector and infrastructure, in this respect, there would be a need to prepare national plan of action for implementation.

B. Ocean Economy & Development of a land based Oceanic Industry

- *Objective*: To reduce use and reliance on fossil fuel
- *Way and means*: Exploitation of deep sea water for cooling systems, generation of power etc.
- *Benefit*: Provides sustainably; Integrates MDG principle; Fits in national MID policies
- *Needed:* Funding and transfer of technologies

C. Energy:

Focus should be on having technical and financial assistance with regard to energy auditing, energy efficiency and energy management.

D. Waste Management:

To promote and enhance waste segregation at source for eventual recycling and re-use

E. Food Security:

Make Agriculture more resilient; Involve vulnerable groups in the production chain; provide support to small planters to adapt to new technologies; prime arable land should be protected and used only for agricultural purposes; SIDS to benefit from an Insurance Scheme operated internationally to cater for food shortages resulting from natural disasters.

F. Culture:

Enhancement of cultural Values through education and adoption of the Gross National Happiness Index

Section II:
PROGRESS IN BPOA & MSI IMPLEMENTATION

The sustainable development agenda of small islands states like Mauritius has been largely shaped by the BPoA and MSI. Since its adoption in 1994, the BPoA has been to a great extent implemented in Mauritius. As regards the MSI, since 2005, Mauritius has been very committed in implementing this strategy at the domestic level as well as in advocating SIDS issues at regional, multilateral and international levels. Overall, there has been substantial progress in areas such as biodiversity protection and the establishment of terrestrial, coastal and marine protected areas. Political commitment to advance sustainable development has also been observed with the adoption of the new long term vision "Maurice Ile Durable".

National Sustainable Development Frameworks

Mauritius embraced sustainable development as the guiding paradigm to promote national development in the early 90s, with the adoption of the Integrated Management Approach to Sustainable Environmental Management under the in the Environment Protection Act of 1991. With environmental protection at its heart, this approach also had cross-cutting bearings across a range of sectoral concerns, development patterns and in decision making. It promoted broad-based administrative and consultative mechanisms and ensure that all stakeholders were party to decision-making in a structured manner.

In 1997, "Vision 2020: The National Long- Term Perspective Study" was adopted as the core development strategy to promote sustainable development in the country. The Vision 2020 set out the scenario for promoting development based on gains in agricultural efficiency, tourism, industrial production and development of financial and value-added services. As a result, the sugar and textile sectors were restructured; an offshore financial sector was established; the telecommunications system was strengthened and liberalised; new incentive schemes were offered to IT and pioneer firms; a Cyber Park was established, state secondary school capacity was doubled; port facilities were modernised, and a Freeport was established, among others.

In the face of looming global challenges like the triple economic-food-energy crises, in 2008 Government adopted "Maurice Ile Durable" as the new sustainable vision to guide national development. Maurice Ile Durable (MID) can be considered as the ***ground breaking, unique, innovative milestone project leading to a reinforced integrated, participatory approach to sustainable development and which seeks to include each and every citizen of Mauritius***. The MID Policy, Strategy and Action Plan has been developed in a broad-based participatory approach and focuses on 5 sectors, commonly referred to as the 5 Es: Energy; Environment; Employment and Economy; Education; and Equity. The MID goals are as follows:

> **Energy** sector is to ensure that the Republic of Mauritius is an efficient user of energy, with its economy decoupled from fossil fuel. The main targets are to achieve the national target of 35% renewable energy by 2025; and reduce energy consumption in non-residential and public sector buildings by 10% by 2020.
> **Environment** sector is to ensure sound environmental management and sustainability of our ecosystem services. Goals are to meet the environmental sustainability targets of the Millennium Development Goals; and reduce the ecological footprint to be in the upper quartile of performance of similar income nations, by 2020.

Employment/Economy sector is to green the economy with decent jobs, offering long term career prospects. The targets are to increase the percentage of green jobs, from 6.3% in 2010, to 10% by 2020 and maintain or improve position in the World Economic Forum's International Competitiveness Index.

Education sector is to have an education system that promotes the holistic development of all citizens. The goals are to achieve 100% MID literacy by 2020 and be an internationally recognised knowledge hub for sustainable development in the region by 2020.

Equity is to ensure that all citizens are able to contribute to the Republic's continuing growth and share its combined wealth. Specific goals are to improve the position of the Republic of Mauritius in the World Poverty Index and improve current status in the Gini coefficient of income inequality.

Policies and Strategies:

The policy framework of Mauritius is anchored in the concept of sustainable development and incorporates the relevant recommendations of the major international conferences, since the 1992 Rio Earth Summit. In this context, various sectoral policies and strategies have been developed and are being implemented across various thematic areas such as: energy, coastal zone management, land, biodiversity, forests, wastewater, solid waste, and tourism among others. To report on progress achieved in BPoA and MSI implementation, the following cluster has been used:

ENVIRONMENT	EDUCATION	TRADE AND ECONOMY	HEALTH	TRANSPORT & COMMUNICATION
✓ Climate change and sea level rise ✓ Natural & environmental disasters ✓ Management of wastes ✓ Coastal & marine resources ✓ Freshwater resources ✓ Land resources ✓ Biodiversity resources ✓ Sustainable production & consumption	✓ Sustainable capacity development & education for sustainable development ✓ Science & technology ✓ Knowledge management & information for decision-making ✓ Culture	✓ Energy resources ✓ Tourism resources ✓ Trade: globalization & trade liberalization ✓ National & regional enabling environments	✓ Health	✓ Transportation & communication

1) Climate Change

Fully aware of the possible impacts of climate change on its economy, citizens and their livelihoods, Government of the Republic of Mauritius has made climate change adaptation and mitigation a national priority. This is reflected in the Maurice Ile Durable programme as well as the Government Programme 2010-2015. In this endeavour, Government has adopted a multi-pronged approach to address impacts of climate change and enhance the resilience of Mauritius. To that effect, a climate

change mitigation and adaptation framework has been developed. Several priority sectors like disaster risk reduction and management, renewable energy, water, coastal zones, fisheries, tourism, public infrastructure, health and agriculture have been targeted and actions are being taken at different levels ranging from policy and legislative review, application of long term dynamic tools, institutional strengthening, infrastructural works, promotion of research and development, awareness raising, education and training. A Technology Needs Assessment (TNA) has also been undertaken to define a set of clean technologies which are best suited for an enhanced climate change mitigation and adaptation approach. The outcome of this study will help mobilise international funding.

2) Disaster Risks Reduction and Management

In order to make the country resilient to the impacts of extreme events and climate change, a Disaster Risk Reduction and Management project was undertaken. Climate risk analysis, comprising comprehensive climate modelling studies has been conducted for inland flooding, landslides and coastal inundation. National Risk Profiles (Risks and Hazards Maps), Strategy Framework and Action Plan for disaster risk management have been developed under this project. These will contribute to designing robust disaster risk policies, management practices and enhance the country's preparedness in the face of disasters.

3) Management of Waste

A Solid Waste Management Strategy (2011 - 2015) was adopted in 2011 with the overall policy objective of reducing, reusing and recycling waste. Moreover, a number of actions are being taken to reduce the volume of wastes in Mauritius. For example, of the 420,000 tons of wastes being generated annually, about 63,000 tons are composted at the newly established composting plant. It is expected that by 2014, the capacity of the composting plant would be doubled, thus implying that a total amount of 126,000 tons of waste would be diverted from the landfill annually. Government has also embarked on a range of projects since the mid-term review to assess Mauritius Strategy Implementation. These include: Recycling of e-wastes from Government bodies; drafting of a regulation for the registration of recyclers; feasibility Study for the setting up and operation of recycling facilities for used tyres and Compact Fluorescent lamps and feasibility on Anaerobic Digestion for selected wastes such as: food, market and farming waste

4) Coastal and Marine Resources

The regulation of large scale development in the coastal zone is undertaken through the Environment Impact Assessment/Preliminary Environment Report mechanism as well as the Building and Land Use Permit requirements, which take into consideration the provisions of the Planning Policy Guidelines, Outline Schemes on setbacks, plot coverage and development density of coastal development. An Integrated Coastal Zone Management Framework for the Republic of Mauritius was adopted in 2010 and is presently under implementation to ensure effective management of the coastal zone. Coastal protection works, beach re-profiling and other restoration works are being taken to abate the impacts of erosion. Coral reef ecosystem monitoring and lagoonal water quality monitoring are undertaken at various sites across the island.

During the past 20 years, Mauritius has progressively established a system of marine protected areas to include fishing reserves, marine parks and marine reserves in the waters around Mauritius and Rodrigues. This has been done with a view to manage, conserve marine resources, ecosystems, natural habitats and species biodiversity and to enhance fish productivity. The Republic of Mauritius has, so far, proclaimed six Fishing Reserves and two Marine Parks in Mauritius and four marine reserves, one Marine Park and three fisheries reserved areas in Rodrigues. A National Plan of Action to prevent, deter and eliminate Illegal, Unregulated and Unreported, Fishing for Mauritius

is being implemented. An Aquaculture Master Plan was prepared to develop marine and inland aquaculture.

5) Freshwater resources

A Master Plan for "*Development of the Water Resources in Mauritius*" was prepared in 2012 with ultimate objective to satisfy the water demand in the different supply zones for the various sectors of the economy by ensuring continuous supply over the island even during the dry season. According to the Master Plan, the main challenges of the water sector are to identify additional water resources mobilisation options; review the existing legislative framework governing the water resources sector; assess the existing water rights system and present proposals for its rationalisation; and review the institutional set-up governing the water resources sector. In addition to the above, the key long-term national development goals for the water sector comprise of mobilisation of additional water resources through rehabilitation of existing dams and water infrastructures, water management through the use of treated wastewater for irrigation purposes, public water conservation campaigns and reduction of non-revenue water.

6) Land resources

In the Republic of Mauritius, the National Development Strategy (NDS) provides the basis for land use planning. The policies and proposals of the NDS have been successfully translated at the local level through the preparation and approval of local development plans for both Urban and rural areas. A series of Planning Policy Guidance have been prepared to assist developers, local bodies and the general public in complying with principles of good design, appropriate siting and location of activities.

7) Biodiversity resources

To ensure that biodiversity is managed in a sustainable manner, a number of strategies are under implementation. These include the National Biodiversity Strategy and Action Plan (2006 – 2015), National Invasive Alien Species Strategy and Action Plan (2010 – 2019), National Forest Policy 2006, and the Islet National Park Strategic Plan (2004) for 16 offshore islets and a management plan for the shallow water demersal fish species of the Saya de Malha and the Nazareth banks.

Furthermore, in line with its international commitments, Mauritius ratified the Nagoya Protocol in 2013. Mauritius has also been working in close collaboration with the international community and has received funding and technical assistance in the preparation of policy and projects such as National Forest Policy, Sustainable Land Management Project, Forest Land Information System and ongoing NAP alignment as well as preparation of the Management Plans for the inland nature reserves. Moreover, Government is also implementing the Protected Areas Network project to manage the protected areas in collaboration with the private land owners.

To tackle food security, the following plans are also being implemented: Multiannual Adaptation Strategy – Sugar sector Action plan (2006 – 2015); Food Security Plan (2008 – 2013); Blueprint for a diversified Agri-Food Strategy for Mauritius (2008 – 2015) and the Mauritius Food Security Fund Strategic Plan (2013 – 2015). The Plant Genetic Resources Unit at the Agricultural Services of the Ministry of Agro-Industry and Food Security is also conserving plant genetic resources through in situ and ex situ agro-biodiversity collections. A food security Fund of USD 33 million has been set up.

8) Sustainable consumption and production

Mauritius was the first country in Africa to develop its National Programme on Sustainable Consumption and Production (SCP), under the guidance of UNEP to implement the 10-Year

Framework of Programmes of the Marrakech Process. Adopted in 2008, the National Programme on SCP aspires to decouple economic growth from use of natural resources, bring a change in consumption patterns, promote technological shifts and encourage the adoption of more sustainable lifestyles.

The national programme focuses on 5 priority areas, namely: Resource efficiency in energy, water and sustainable buildings and constructions; Education and communication for sustainable lifestyles; Waste management; Sustainable public procurement, and Market opportunities for sustainable products. To date, 13 projects have successfully been implemented and include among others the development of Minimum Energy Performance Standards for key household appliances, capacity building of Energy Audit providers, Green Building Rating system with Integrated Guidelines to promote sustainable buildings and an Action plan for Green Public Procurement.

9) Sustainable capacity development & education for sustainable development

A range of programmes being offered for teachers at various levels including Special education needs, remedial education, entrepreneurship education. Measures are being taken to ensure equal opportunity, gender equity and provision of appropriate education to bring about appropriate behavioural change among learners (e.g. through ESD related projects). Ongoing capacity building sessions focus on a range of ESD related themes such as HIV and AIDS, Climate change, Disaster Risk reduction and on Education, Communication and Sustainable Lifestyles. At tertiary level, Sustainable Development is being mainstreamed in a range of undergraduate and post graduate programmes.

10) Science & Technology

Science and Technology (S&T) has been mainstreamed in all sectors of the economy. In the Education sector, ICT facilities have been improved in all schools. Government has set up a Ministry, namely the Ministry of Tertiary Education, Science Research and Technology, which has taken a number of initiatives to boost Research in Science and Technology. However, broad-band speed needs to be increased with installation of fibre optics.

Mobile telephony and access to Internet facilities have grown exponentially and has facilitated communication to the world. The Digital Access Index (DAI) for Mauritius was 0.5 in 2011 as compared to Sweden, the leader, which was 0.85. The percentage subscription to Mobile cellular has increased from 14% in 2000 to 92% in 2010. Usage of technology in the Mauritian households as well as offices has also improved in line with international trends. To ensure proper implementation of priority areas of the country, better collaboration between research institutions and public bodies, the Government of the Republic of Mauritius has set up five National Research Groups to address priority issues.

11) Knowledge management & information for decision-making

Government is implementing the National ICT Strategic Plan 2011 - 2014 in order to make the ICT/ BPO Sector as one of the main pillars of the economy and develop Mauritius into a Knowledge Hub. In this context, an ICT Skills Development Programme and the ICT Academy are being implemented. Furthermore, coordinated efforts towards Cyber Security threats and incidents are being undertaken and these include: strengthening Mauritian Computer Emergency Response team (CERT); cross border collaboration of issues pertaining to Cyber Security; strengthening and harmonization of Cyber Security Legislations and establishing Regional CERTS.

12) Culture

Mauritius being a multi cultural society, legislations have been enacted to give equal treatment for the preservation and promotion of all cultures and languages of the Mauritian Society. Financial assistance is also provided for the development of the Creative Industries by way of Grants to artists, creators and performers. International exposure is given to them through their participation in events of worldwide repute. Assistance is also provided for the local production of cultural goods. In order to protect author's rights and intellectual property, the Mauritius Society of Authors was set up in 1986.

13) Energy Resources

A long term energy strategy for the period 2009-2025 and an Energy Strategy (Action Plan) 2011 - 2025 have been adopted by Government. The strategy involves a series of action that pertains to increasing the share of renewable in the energy mix (35% by 2025), energy conservation and energy efficiency. Recently, an Integrated Electricity Plan 2013-2022 has been prepared to address the energy challenges of Mauritius and aiming to create a sufficiently broad energy portfolio that will safeguard the country against energy security concerns and price instability while being sensitive to environmental imperatives.

To allow for the implementation of the Long Term Energy Strategy, an Energy Efficiency Act was promulgated in 2011. This Act paved the way for the setting up a dedicated institution, the Energy Efficiency Management Office (EEMO), for promoting energy efficiency in all economic sectors of the country. Government is also encouraging innovation by households as well as businesses to produce electricity using renewable energy technologies. Small Independent Power Producers (SIPPs) can now produce and use electricity from photovoltaic, micro-hydro and wind turbines through systems not exceeding 50 kW and export the extra electricity to the grid.

14) Tourism resources

Mauritius is predominantly a beach holiday destination and it relies to a large extent on its coastal resources. Both the Tourism Development Plan (2002) and the Tourism Sector Strategy Plan (2009-2015) recommended the introduction of Blue Flag Programme in Mauritius. The Government of Mauritius has embarked on a Blue Flag Programme with the objectives to promote inter-alia the sustainable use of the coastal resources and sound national policies on lagoon water quality, reefs, protection of the beaches and safety. Spatial planning of the lagoons has also become of prime importance, which has prompted the need for the preparation of a master plan for the zoning and sustainable management of the lagoon. To move towards the "greening" of the tourism industry, the Government of Mauritius is in the process of introducing an eco label scheme for the environmental and sustainability of the sector.

The following is a list of some of the Projects / Programmes implemented. This non-exhaustive list is from the feedback received from the 18 thematic groups:

- National Biodiversity Strategy & Action Plan 2006-2015
- Invasive alien species strategic Action Plan 2010 - 2019
- National Forest Policy was formulated and approved by Government in 2006;
- Forest Land Information System was set up in 2010;
- Formulation and implantation of a National Forestry Action Programme is in progress;
- Sustainable Land Management is already integrated in the National Forest Policy;
- A national water policy is being finalised at Ministry of Energy and Public Utilities;
- Interim Hazardous Waste Storage Facility at La Chaumière, which is expected to come into operation by 2015;

- From the 420,000 tons of wastes being generated annually, about 63,000 tons p.a. is effectively diverted (taking into account rejects from composting) from land-filling and sent to the composting plant at La Chaumière;
- The National Development Strategy (NDS) provides the basis for land use planning. It was approved in 2003 and subsequently given legal force through proclamation of section (12) of the Planning and Development Act in 2005;
- Mauritius has made significant progress over the past years to implement its renewable energy and energy efficiency policy and strategy as enshrined in the Long Term Energy Strategy (2009-2025) as hereunder:
  - The Energy Efficiency Act has been enacted in 2011;
  - The Utility Regulatory Authority (URA) Act 2004 has been proclaimed.
  - The Energy Efficiency Management Office is operational since December 2011;
  - The "Observatoire de l'Energie" has been set up in 2011 and provides a national database on energy usage.
  - A certification system for energy auditors and energy managers is being developed;
  - Design Guide for Energy Efficient Buildings less than 500 m^2 have been developed;
  - Energy Efficiency Building Code has been developed for buildings with a surface area of more than 500 m^2;
  - A report on Energy Audit Management Scheme for non-residential Buildings has been prepared;
  - A project for the setting up of a "Framework for Energy Efficiency and Energy Conservation in Industries" has been implemented;
  - Mandatory energy audits to be carried out by large consumers of electricity;
  - Small scale distributed generation has been allowed into CEB's grid since 2011. Capacity of SSDGs under the FIT has been increased to 3 MW (incl. 100 kW for Rodrigues);
  - A Renewable Energy Development Plan is being finalized;
  - Grid-connected photovoltaic plants of a total capacity of 25 MW is being set up;
  - 50,000 street lights are being replaced by low energy bulbs in urban and rural areas;
  - Traffic lights have been replaced by LED;
  - A wind farm of 29.4 MW at Plaines Sophie is expected to be operational in 2014;
  - A Landfill Gas to Energy Plant started operation in 2011 and electricity (2 – 3 MW) is generated;
  - A policy and guidelines on sustainable buildings and a building rating system have been developed;
  - Rs 150 M are provided in 2012 and 2013 as subsidy for the purchase of solar water heaters;
  - A comprehensive national energy savings programme will be implemented by the EEMO to raise public awareness on energy efficiency and to solicit their collaboration in the national endeavour to make the country energy efficient;

Section III:
GAPS AND CONSTRAINTS ENCOUNTERED IN BPOA/MSI IMPLEMENTATION

Despite the tremendous efforts showcased above, national consultations have revealed the following constraints/challenges in implementation:

1) Local level

- ***Coordination and monitoring***

There is a need for enhanced coordination at local level to assess and monitor national progress on the implementation of the BPoA and MSI issues and also the need to streamline these issues in the Programme Based Budgeting of the concerned Ministry. There is also a need for the implementation process to be coherent with the Economic and Social Transformation Plan (ESTP) process.

- ***Motivation for Sustainable Development Initiatives(SDI)***

Efforts to implement SDI have had mixed results. There is need for better understanding of the SDI at all levels and to sustain SDI initiatives including a better mechanism to implement same.

- ***Accessing financial resources***

The limited access to financial and technical resources has limited Mauritius in its ability to mobilise the necessary funding and technical expertise to fully implement the BPoA and MSI. External support is required but the difficult global economic situation has impacted on the capacity of SIDS like Mauritius to access financing. Most middle-income SIDS do not have access to appropriate preferential treatment, concessionary financing, sufficient Official Development Assistance flows and other special programmes owing to the lack of formal recognition of SIDS and criteria that do not recognise their unique vulnerabilities. Mauritius therefore remains dependent on expensive financing from the international financial institutions, and thus further increasing its vulnerability.

- ***Research and Development technologies***

Further research and development both at the national and regional levels is required to promote sustainable development. Transfer of green technology to alleviate dependence on non-renewable energy is limited and there is much need for up scaling investment in R&D.

2) Regional level

- ***regional coordinating mechanism/organisation***

The AIMS region to which Mauritius belongs is too dispersed, has no assigned coordinating mechanism. AIMS region has no mechanism to mobilise resources and monitor the implementation of BPoA and MSI.

3) International level

Both the BPoA and the MSI include a wide range of international support measures to support national level action to address the vulnerability and development needs of SIDS. Beyond these, there are several instruments, conventions, agreements and strategies that also tackle challenges directly related to SIDS vulnerabilities SIDS, including the Convention on Biological Diversity, the Hyogo Framework for Action on disaster risk reduction and the United Nations Framework Convention on Climate Change. But there still remains an urgent need for scaled-up international measures, in some instances, substantially.

- Climate change remains the greatest challenge, as adverse impacts continue to undermine progress towards development. International actions, particularly by developed countries to stabilise greenhouse gas concentrations in the atmosphere at a level that would ensure the survival of SIDS, remain insufficient.

- International support for adaptation strategies has not been adequately forthcoming to enable SIDS increase their resilience to the negative impacts from climate change. In this respect, international support is needed to ensure sustainable financing initiatives such as green-growth policies and climate change adaptation programmes.

- The economies of SIDS remain highly volatile notably due to their openness and smallness and high dependency on imports with high vulnerability to energy and food price shocks. These combined vulnerabilities have been further exacerbated by the global energy, financial and economic crises.

- No SIDS dedicated and effective response measures, such as financing and technology transfer mechanisms, have been established. In this respect, provision and access to affordable and SIDS-adapted technology and financing would catalyse the greening of SIDS economies.

- The international trading system needs to be crafted to address the special and particular needs of SIDS in a more pragmatic manner.

- Access to multilateral financing is difficult owing to eligibility criteria that do not take into account small populations and small size of projects coupled with burdensome application and monitoring requirements.

- Resources from the international community often do not reflect national priorities and needs and are frequently not directed to the implementation of concrete projects at the national level.

Section IV:
NEW AND EMERGING CHALLENGES

In addition to the existing challenges facing SIDS as identified in the BPoA, the MSI and in previous national reports, the following challenges also bear heavily on the socio-economic and sustainable development of SIDS, especially in the AIMS region.

1) Water Resources Management

Water plays a critical role in supporting economic development, public health and environmental protection. The sector is closely tied to others such as tourism, waste (wastewater pollution), energy (distribution, hydropower and supplies for cooling) and fisheries (reflected by the health of inland and coastal fisheries, a direct result of water quality).

For SIDS, being able to meet the growing demands for access to clean potable water is one of the greatest challenges faced by this sector. Climate change poses a significant challenge to the management of water resources in SIDS. The islands' dependency on rainfall leaves them vulnerable to both long-term and short-term changes in rainfall patterns.

Furthermore, significant pressure is placed on existing freshwater systems in SIDS by urbanisation, unsustainable agricultural practices, the demands of tourism and deforestation. These pressures exacerbate environmental conditions and ultimately affect the fragile economies of these islands. As water intrinsically links several sectors, without sufficient water quantity and quality, the development of other sectors will be restricted. For this reason, water resources management should be considered in all stages of planning and development and that it is prioritised at national, region and international levels.

2) Food Security

SIDS have felt the impact of increases in global food prices due to decreased levels of production, droughts or disasters, which have resulted in increased protectionism by food exporting countries. The issue of food security is increasingly on the agenda for SIDS.

Mauritius imports about 75% of its food, amounting to 19% of the country's total imports bill. As a Net-Food Importing Developing Country, Mauritius is particularly vulnerable to the rapidly changing global food system resulting from volatile prices of food commodities, climate change and diversion of food crops to bio-fuels.

It is therefore imperative to increase the country's ability to produce its own food. However, competing demands on the limited land resources, decreasing soil fertility, water scarcity as well as insufficient interest of the young generation in agricultural activities, make this a particularly challenging issue. Policies and actions need to be devised as national, regional and international level to tackle this challenge.

3) Global Economic crises

The global financial and economic crisis has had a significant impact on SIDS, which have experienced increasingly limited access to affordable credit. The existing frameworks for evaluating loan eligibility and assessing interest rates for lending are largely based on Gross Domestic Product (GDP) and do not take into account the specific vulnerabilities of SIDS, depriving SIDS of concessionary financing and much needed assistance.

In this context, the international community is urged to consider the special needs of SIDS especially regarding climate change and disaster risks reduction issues and also SIDS stewardship in sustaining global goods, such as the oceans and marine resources.

4) Migration and Development

Migration is an issue that is of concern to many, if most of the SIDS, both with their nationals abroad and non-SIDS nationals on their soil. In most, if not all cases, the reason for that movement is economic, with those individuals trying to find abroad a lifestyle better than the one they would have in their own country. This is a concern that holds true for all migratory movements worldwide and was taken up during the Global Forum on Migration and Development held in Mauritius in October 2012.

SIDS are therefore under pressure to address high unemployment and underemployment, particularly among the urban youth. There is thus a need to develop a proper framework addressing the interface between migration and development.

Section V:
WAY FORWARD & RECOMMENDATIONS

Mauritius re-affirms its commitment to meet the sustainable development goals and priorities in the BPoA and the MSI. The successful implementation of the BPoA and MSI, however, depends both on the commitment of individual governments and on the commitment of development partners to support these goals and assist in the implementation of actions to achieve them, particularly through the provision of financial and technical support. This joint commitment should be accompanied by a more coherent, coordinated and collaborative approach to the sustainable development of SIDS more generally.

New, pragmatic way forward

The last 20 years has shown that progress in the implementation of the BPOA/MSI has not been entirely successful. The High-Level Review of MSI+5 once again recalled the unique and particular vulnerabilities of SIDS and clarified that urgent action was required to address those vulnerabilities. The challenges faced by SIDS and the constraints they face in responding to these challenges cannot be addressed without the support of the UN system and the international community

This situation can be explained by the fact that there is an absence of the definition of the SIDS category. The absence of criteria defining "small and islandness" is the fundamental reasons for which countries falling in that category were not able to gain special treatment with the development organisations or donor countries. Considering the exceptional economic disadvantages faced by most SIDS as a result of their permanent handicaps, the notion of special treatment by virtue of SIDS status is important to genuine SIDS in the multilateral trading system and in the area of development financing. Thus, there is a need to do things differently, to explore new more practical, pragmatic and innovative avenues for SIDS to get special and differential treatment.

Recommendations to be taken forward to the 3rd international conference on SIDS:

A. Coordination at Regional level – SIDS as one voice:

AIMS should be endowed with a regional organisation that can truly support and lead the implementation of the AIMS-SIDS programmes in areas such as the Climate Change adaptation, by coordinating the development of adapted technologies, and skills to cope with the fast changing scenarios and models of development in SIDS.

Furthermore, new models of partnerships between private and public sectors, between SIDS and SIDS, between the AIMS/CARIBBEAN/PACIFIC should be enhanced and formalised to enable exchange of proven experiences for the sustainable development of SIDS.

B. Climate Change, Disaster Risk Reduction & Management and Financing for Sustainable Development:

Priorities for implementation are the following:

1) Enhance resilience of the Republic of Mauritius in areas related to climate risk management as well as to improve climate prediction ability through the development of national capacities of SIDS;

2) Ensure the protection of coastal areas from inundation due to sea level rise;

3) Address holistically the relocation of populations from low lying vulnerable areas;

4) Develop the SIDS Strategy for Disaster Reduction to contribute to the attainment of sustainable development and poverty eradication by facilitating the integration of disaster risk reduction into development. The Strategy should have the following objectives:
    a) Increase political commitment to disaster risk reduction
    b) Improve identification and assessment of disaster risk
    c) Enhance knowledge management for disaster risk reduction
    d) Increase public awareness of disaster risk reduction
    e) Improve governance of disaster risk reduction institutions
    f) Integrate disaster risk reduction into emergency response management.

Once agreed and adopted, this strategy should be promoted at the forthcoming World Conference on Disaster Reduction to be held in 2015 in Japan.

C. Energy:

To achieve the Mauritian vision of 35% of renewable energy by 2025, the international support to SIDS including through North-South, South-South, SIDS-SIDS and triangular cooperation, aimed at reducing fossil fuel dependency and increasing availability of electric power services, by using more efficient technologies and renewable energy sources needs to be highlighted. Support should be provided to enhance regional and SIDS-SIDS cooperation for research and technological development on SIDS appropriate renewable energy and energy efficiency technologies.

1. A hybrid financing mechanism comprising concessionary loans/grants should be made available to SIDS for the implementation of Renewable Energy (RE) projects; SIDS can promote the creation of a pool of certified energy auditors who would be allowed to work in any SIDS;
2. A certification body and an accreditation body for all SIDS Energy Auditors can be set up in one of the SIDS' countries, probably on a regional basis;
3. SIDS should publish the best practices in RE and Energy Efficiency (EE) in each country on a bi-annual basis;
4. Access to efficient technologies such as LED/Solar for lighting can be improved if the cost of these technologies can be made affordable for SIDS;
5. SIDS can harmonize the standards of the labels for household appliances, so as to promote efficient appliances only;
6. One of the SIDS Universities can provide advanced training for graduates in the field on RE & EE;
7. An international carbon financing mechanism should be set up to allow SIDS to de-carbonize their energy sectors as much as possible;

8. Smart grid technology development to be accelerated to allow adoption in SIDS for greater penetration of RE; development partners can help to allow the development of a pilot smart grid in one of the SIDS;
9. To develop an internationally agreed regulatory framework for renewable energy such as a WTO Sustainable Energy Trade Agreement.[ii]

D. Development of an Ocean Economy / Coastal and Marine resources:

The ocean economy will open up untold opportunities such as on the economic front, the Ocean State could be a driver for a foray of new sectors such as Ocean for Energy; Ocean for Food; Ocean for Water; Ocean for Minerals; Ocean for Leisure; Ocean for Health as well as efficient fisheries and for innovation-driven maritime research and exploration.

1. Setting up of a dedicated Regional Oceanographic Centre;
2. Development of Land Based Ocean Industry including for the generation of renewable energy to replace fossil fuel;
3. Increase means and resources at the regional level for research and implementation of plans and strategies on coastal zone management including erosion processes. In this respect it is also important to strengthen the Regional Fisheries Management Organisations.
4. Provide assistance to ensure domestic fishing and related industries of SIDS accounts for a greater share of the benefit than is currently realised of the total catch and value, in particular for highly migratory stocks harvested within the EEZs of SIDS and within proximate geographical areas including high seas, as appropriate.
5. Eliminate subsidies that contribute to illegal, unreported and unregulated fishing and to over capacity while completing the efforts undertaken at the World Trade Organisation to clarify and improve its disciplines on fisheries subsidies. There is also need for a carve out for subsidies for SIDS to develop its fishing capacity and fish processing plants.

E. Management of Waste:

Waste management in SIDS, is a growing problem because of population growth, urbanisation, changing consumption patterns and the large numbers of tourists. In this context the following needs to be addressed with the support of the International Community:

1. Support effective planning and implementation of waste management practices
2. Establish technical cooperation programmes to enable the creation and the strengthening of regional mechanisms to protect the oceans and coastal areas from ship-generated waste and oil spills, among others.
3. Setting up of a regional infrastructure for the treatment and disposal of hazardous waste.

F. Trade:

Given the vulnerability of SIDS and their disadvantage with regard to traditional markets, trade policy is instrumental in the developing and strengthening of SIDS resilience. It is therefore recommended to:

1. Establish a mechanism to promote intra SIDS movement of goods, capital and professional services with flexible rules of origin.
2. Non Tariff Measures (NTMs) present a challenge to small economies in their efforts to compete in foreign markets. Though many NTMs are concerned with justifiable health and related requirements, and others, can be explained as important for standard setting, the increasing number and rising stringency of these standards can be barriers to trade. It is

also recommended that the impact of Non Tariff Measures on Small economies be effectively addressed.[iii]

G. Migration and Development:

Climate Change is already impacting and will impact further on migration, both within a country and between countries. Proactive planning and financing are crucial and in this context, financing and support from international financing agencies would be required to fast-track the regional integration programme with its SIDS counterparts, particularly in the following:

1. The **Accelerated Program for Economic Integration (APEI)** seeks to enhance regional capacity building, by facilitating the export of services and talents. The main objectives of the APEI are to address the poor allocation and mismatch of skills across national borders, to provide a boost to the flow of foreign investment and the export of services and to foster faster economic integration through enhanced growth and employment opportunities.
2. The **Regional Multi-disciplinary Centre of Excellence (RMCE)** aims to improve the capacity for policy making in the Eastern and Southern African region, as well as the small states network, with an emphasis on regional integration. The strategy is based on improving macroeconomic management, trade and transit, cross-border finance and business development and investment. The emphasis is on peer learning and peer support and benchmarking of good performers and adoption of best practices.

Due to its specificities, the RMCE and the APEI complement the initiatives of AFS and ATI. As at date through the PBB 2013-2015, Mauritius has contributed Rs 22 M to RMCE initiatives, with Rs 10 M earmarked for 2014 and Rs 7 M for 2015. To conduct a full-fledge programme under RMCE, we would require at least USD 1 million annually from the international community. For APEI, as at date, Mauritius has secured financial assistance to the tune of USD 3.6 M over three years from World Bank for movement of professionals. However, additional funds are needed to address other pillars under APEI.

H. Setting up of regional /global monitoring system:

The establishment of a robust global monitoring system can help to strengthen accountability at all levels and to ensure adequate and timely analysis of the implementation of the BPoA, MSI and Samoa objectives/outcomes. The monitoring framework should be based on existing regional and national monitoring frameworks. At the same time, the monitoring framework should also fully utilise readily available international data on vulnerabilities, development needs and policy responses relevant for SIDS, including the relevant indicators used in the economic vulnerability index developed by the UN Committee for Development Policy. Adequate resources would be required.

Section VI:
POST-2015 UN DEVELOPMENT AGENDA

The outcome of the Samoa meeting needs to be seen as converging with the Post-2015 UN Development Agenda, the Rio +20 process and the proposed Sustainable Development Goals (SDGs). Accordingly, the process initiated for the preparation of the SIDS conference should:

- Continue to strengthen national partnerships between governments, private sector, civil society organisations, women, trade unionists, non-governmental organizations, the elderly and the youth in order for the holistic implementation of the goals to be adopted at the Samoa meeting to be fully integrated into the development policies at national and regional levels;

- Encourage the mainstreaming of the concept of Education and culture for Sustainable Development across the globe;

- Indicate in its national post 2015 Development Agenda report, the current MDGs health goals need to be clustered into one goal entitled 'Universal Health Coverage' which would provide a multi-sectoral approach with a view to reducing health inequities. The rapid spread of Non-Communicable Diseases compels urgent global action for the prevention and treatment of these diseases. Universal Health Coverage would imply that people have access to all health services such as Maternal and Child Health, Family Planning, Sexual and Reproductive Health Education, Prevention of and Treatment for Substance Abuse, Occupational and other health hazards, Mental Health, HIV/AIDS, malaria and other emerging/ re-emerging diseases;

- Support and recommend the building of resilience and addressing the issue of population dynamics in a future post 2015 international development goals;

- Coordinate through the Delivery As One umbrella a system-wide coherence which will lead to a more coordinated and structured approach at national, regional and international levels;

- Adopt a pragmatic approach with regard to the question of special treatment for financial and technical assistance for SIDS. The much stretched diplomatic and financial resources of SIDS and the generally limited interest shown toward SIDS and their concerns by the international community have added to the inevitable inertia in the international bureaucracy and are likely to make the realisation of the above recommendations a long process. In this context, there is a need for SIDS to gain special recognition within the UN system

Section VII:
PARTNERSHIPS FOR SIDS

- The vision of the Government is to promote Mauritius as a Knowledge Hub, the Tertiary Education Sector is being internationalized and more and more international students are now choosing Mauritius for their higher education.

- Mauritius is presently offering 50 scholarships to students from African countries of the African Union, for undergraduate programs and 50 scholarships for post-graduate programs offered on a Distance Learning Mode by the Open University of Mauritius to Commonwealth Countries.

- The GEF - Western Indian Ocean Marine Highway Development and Coastal and Marine Contamination Prevention Project is an excellent example of a regional project with 8 countries [6] to bring-up to the same standard and level of preparedness for oil spill, sharing of resources and putting in place a regional collective, pro-active and reactive plan. This project is being replicated in other regions. Similar programs should be undertaken to establish technical cooperation programmes to support SIDS' development of appropriate systems for recycling, waste minimization and treatment, reuse and management; establish and strengthen systems and networks for the dissemination of information on appropriate environmentally sound technologies.

[6] Comoros, France (Reunion Island), Kenya, Madagascar, Mauritius, Mozambique, Seychelles, South Africa and Tanzania.

Section VIII:
CONCLUSION

There are many challenges and obstacles facing Small Island Developing States in reconciling economic and social development and building their resilience in a more sustainable development manner. The various obstacles should be identified and recognized; international cooperation measures should be taken to enable and support the sustainable development efforts. Care should be taken to ensure that the sustainable development concept is well understood to address not only the negative effects of climate change, but to also include the social, equity and development dimensions, including the international provision of finance and technology.

The Government of the Republic of Mauritius is convinced that solidarity amongst SIDS is of paramount importance to successfully address SIDS issues, with international support.

International collaboration has never meant so much in this era of globalization and trans-boundary challenges.

[i] The guiding questions are the following

i. Building on progress reports already prepared for the MSI+5 and Rio+20, what is the progress made to date and gaps limiting implementation of the BPoA and MSI, that the country wishes to highlight through the SIDS conference preparatory process?

ii. What progress has been made since 1992 to strengthen the national institutional framework in terms of coordination between sectors and the integration of the 3 pillar of sustainable development? How well are sustainable development principles integrated and mainstreamed in national development planning?

iii. What new and emerging challenges are likely to affect the prospects for sustainable development in the coming decade? Do the new and emerging challenges pose a fundamental risk to the prospects of economic growth and development in your country? What new and emerging challenges should the SIDS Conference in 2014 enact upon?

iv. What kind of new and/or additional practical and pragmatic actions are needed to address identified gaps in implementation?

v. What is the level of awareness at the country level of MDGs, Sustainable Development Goals (SDGs) and the post-2015 development agenda? What would be your country priorities in elaboration of the post-2015 development agenda?

vi. How could such identified challenges and opportunities be addressed through collaborative partnerships with the international community? What kind of partnerships have worked or not worked and why? What changes are needed, if any, in how partnerships are forged in the future, in order to strengthen in the way that help address SIDS address the identified challenges and opportunities?

vii. What is the accountability mechanisms used to monitor performance? What can be done to strengthen national data and information systems, national account systems, national indicators for development, and frameworks for monitoring and evaluation?

viii. With an eye toward the "concise, focused, forward-looking and action-oriented political document" called for in paragraph 10 of the modalities resolution (A/RES/67/207), what are the key priorities areas (up to five) that your country would like to see addressed, in the national preparations and beyond? The responses here could be most constructive if conceived in terms of key words or short phrases rather than long descriptive paragraphs.

[ii] *The UN has declared 2012 as the International Year of Sustainable Energy for all and its Advisory Group on Energy and Climate Change has recommended universal access and a 40 per cent increase in energy efficiency in the next 20 years. Cutting energy related emissions in half by 2050 would require de-carbonisation of the power sector. To maintain the same level of output, fossil fuel would need to be offset by sustainable energy, the largest increase, according to the World Bank's World Development Report (2010)t, would have to come from renewable energy sources. The World Bank report illustrates the enormous magnitude of the effort to increase the share of low carbon energy to 30-40 per cent by 2050 from present levels of 13 percent. This would imply over the next 40 years deploying annually an additional 17000 wind turbines, 215 million square metres of solar photovoltaic panels, 80 concentrated*

solar power plants. Domestic Sustainable Energy policies as well as trade policies can both create barriers for supply chain optimisation in the sustainable energy sector. Hence policies that prevent or constrain supply chain optimisation increase costs and consequently process for sustainable energy goods and services. Non tariff trade related barriers to SEGS are diverse. They can range from domestic support measures to export restrictions on critical raw materials as well as restrictions on the modes by which services are supplied across borders. The use of certain types of barriers can be addressed through existing WTO rules or potentially as part of the Doha round of negotiations. However, while WTO rules and disciplines could be evoked in certain cases, they are often ambiguous as far as the energy sector is concerned. It is thus worthwhile to consider a fresh approach that takes a holistic and integrated view of the sustainable energy sector while simultaneously tackling a variety of market and trade related barriers. A Sustainable Energy Trade Agreement could be a way of bringing together countries that are committed to addressing climate change and longer term energy security while maintaining open markets.

[iii] *The WTO's World Trade Report of 2012 dealt quite extensively with the issue, but it did not identify small economies as a group. However, several of its conclusions point to the fact or to the implication that small economies are more adversely affected by NTMs than several other groupings. The requested study helps to supplement the important work already conducted by the WTO, and to focus on the issue from a small economy perspective. Studies by the World Bank in collaboration with ITC (Non Tariff measures- A Fresh look at Trade Policy ed. O Cadot and M. Malouche. World Bank. CEPR , 2012) also show that many NTMs adversely affect the costs of contesting foreign markets by many developing countries. They introduce procedural requirements which add to costs at borders, and sometimes add numerous regulations which sometimes act as barriers to entry. While many product standards and technical regulations are quite reasonable, they can act as trade inhibitors. They can make compliance costs generally higher and can keep small and medium sized enterprises out of international trade. Indeed developing country markets are increasingly constrained by stringent sanitary requirements that are costly to implement. The level of stringency is constantly being raised.*

Studies conducted by the World Bank include among NTMs, not only SPS measures but note that NTMs can include several other measures such as quotas, voluntary export restraint, non automatic authorizations, price and quality constraints, anti-dumping safeguards, administrative pricing, duties and trade defensive policies, and pre-shipment inspection. In some cases implementation of these measures require retooling, increased or enhanced product design and testing and confirmation systems, so that productive processes become more expensive and sometimes need to be outsourced. Prima facie indications are that some measures impact more adversely on small economies, but a study on the topic would be required in order to substantiate this position.

The 2012 Report of the WTO, for example, speaks of evidence that TBT/SPS measures have a stronger effect on small rather than large firms (p 10 & p 147). Since small economies are more likely to have mostly small firms, it is useful to explore the extent to which this observation applies to SVEs.

Also, it notes that TBT/SPS measures have prevalently positive effects for more technologically advanced sectors, but negative effects on trade in fresh and processed foods. (p 10). Small economies tend to have sectors which produce fresh and processed foods and less so, technologically advanced sectors.

The Report also suggests that specific provisions in l trading arrangements appear to follow a hub and spoke structure, with the larger partner representing the hub to whose standards the spokes will confirm. Small economies would be considered the spokes in these arrangements. This concept is also worth exploring as it applies to small economies.

The Report notes that when retailers have buying power, private sector food safety standards can become "de facto" barriers to market entry for certain producers. This is particularly the case for developing countries which act as "standard takers" rather than standard makers (p 86). It would seem that small economies, because of their lack of market power, are more easily pushed into being standard takers than most other countries. It would be useful to further examine this observation.

The ITC business surveys also find greater use of TBT/SPS measures by developed countries, than developing countries. Also, it is not mentioned where small economies stand relative to other developing economies in terms of the use of NTMs. (p 115). It is assumed that SVEs as a group also use TBTs and SPSs less than developed countries. This could be usefully confirmed.

The report notes that agricultural products are disproportionately affected by NTMs, and notes further that the evidence that agricultural products are disproportionately affected by non-tariff measures relative to manufacturing is echoed in the ITC business surveys. It is noted that NTMs in agriculture appear to be more restrictive than NTMs in manufacturing (p136). Small economies may well be in the category of exporting more agricultural than manufacturing goods and therefore would fall into the category of having to face more restrictive NTMs. (p117). It would be instructive to examine whether this is in fact the case.

The report also found that TBT/ SPS measures had a negative effect on export market diversification of the countries (i.e. in the product variety of exports to that market). Developed countries tended to have a greater range of TBTs. It suggests that developing countries export diversification becomes more restricted as a result of the TBTs of developed countries, but the study does not mention small economies. The Report also notes that where TBTs/SPS measures have a negative effect, the impact tends to be greater for developing country exports (p153). It would be useful to determine whether it is even more onerous for small economies.

Annex 167

U.K. Foreign and Commonwealth Office, Written Ministerial Statement, *"Update on the British Indian Ocean Territory Policy Review"* (8 July 2013)

Foreign &
Commonwealth
Office

Written Ministerial Statement

8 July 2013

Update on the British Indian Ocean Territory Policy Review

The Parliamentary Under-Secretary of State for Foreign and Commonwealth Affairs (Mark Simmonds): On 20 December last year my Right Hon. Friend the Foreign Secretary announced that we would take stock of our policy on the resettlement of the British Indian Ocean Territory (BIOT). I wish to update the House on this process.

This Government has expressed its regret about the way resettlement of BIOT was carried out in the late 1960s and early 1970s. We do not seek to justify those actions or excuse the conduct of an earlier generation. What happened was clearly wrong, which is why substantial compensation was rightly paid. Both the British courts and the European Court of Human Rights have confirmed that compensation has been paid in full and final settlement.

Decisions about the future of the British Indian Ocean Territory are more difficult. Successive British Governments have consistently opposed resettlement of the islands - on the grounds of both defence and feasibility.

The Government must be honest about these challenges and concerns. Long-term settlement risks being both precarious and costly. The outer islands, which have been uninhabited for 40 years, are low-lying and lack all basic facilities and infrastructure. The cost and practicalities of providing the levels of infrastructure and public services appropriate for a twenty-first century British society are likely to be significant and present a heavy ongoing contingent liability for the UK tax-payer.

However, the Government recognises the strength of feeling on this issue, and the fact that others believe that the resettlement of BIOT can be done more easily than we have previously assessed. We believe that our policy should be determined by the possibilities of what is practicable.

I am therefore announcing to the House the Government's intention to commission a new feasibility study into the resettlement of BIOT.

Whilst we believe that there remain fundamental challenges to resettlement, we are resolved to explore these in partnership with all those with an interest in the future of BIOT. We are

determined that this review will be as fair, transparent and inclusive as possible, so that all the facts and factors affecting the issue of resettlement can be shared and assessed clearly.

As part of the process, officials are meeting with a wide range of interested parties, including Chagossian communities in Mauritius, the UK and in the Seychelles. We know that there are strong views and expertise within the House and we welcome contributions from all.

The results of these consultations will inform directly the detailed shape of the new study. Though this will be a study commissioned by the Government, we will ensure that independent views from all interested parties will be used when considering how we take the study forward. Our intention is to make the remit of the study of resettlement as broad as possible, so that all the relevant issues - practical, financial, legal, environmental, and defence matters - are given full and proper consideration.

It is important that we take this forward carefully. The last feasibility study 10 years ago took eighteen months. The new study is unlikely to be concluded any more quickly. I will update the House once the initial consultation has been concluded.

Annex 168

Note Verbale from the Ministry of Foreign Affairs of the Republic of Mauritius to the Embassy of the United States of America in Mauritius, No. 26/2014 (1197/28) (28 Mar. 2014)

REPUBLIC OF MAURITIUS

MINISTRY OF FOREIGN AFFAIRS, REGIONAL INTEGRATION AND INTERNATIONAL TRADE

No. 26/2014 (1197/28) **28 March 2014**

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius presents its compliments to the Embassy of the United States of America and has the honour to state as follows:

As the Government of the United States of America is aware, the Republic of Mauritius is currently involved in proceedings against the United Kingdom in an arbitration under Annex VII to the United Nations Convention on the Law of the Sea, in connection with the United Kingdom's decision in 2010 to declare a 'marine protected area' around the Chagos Archipelago. That case is due to be heard in April and May 2014.

In light of the imminent hearing of the Republic of Mauritius' claim, the Government of the Republic of Mauritius would like to take this opportunity to assure the Government of the United States of America that, as the Republic of Mauritius has previously made clear, it has no objection to the United States of America retaining the military base on Diego Garcia to meet prevailing security needs.

In the event that the Republic of Mauritius prevails in its claim against the United Kingdom, it does not foresee any impact on its relations with the United States of America, or on the ability of the United States of America to retain the military base on Diego Garcia.

The Government of the Republic of Mauritius wishes to confirm that it will be keen to work with the Government of the United States of America to ensure the continued use of the Diego Garcia military base, and that this situation will not be affected by the award of the Arbitral Tribunal.

The Ministry of Foreign Affairs, Regional Integration and International Trade of the Republic of Mauritius avails itself of this opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

MINISTRY OF FOREIGN AFFAIRS, REG. INTEGRATION & INT. TRADE
MAURITIUS

Embassy of the United States of America
4th Floor, Rogers House
President John Kennedy Street
P.O. Box 544
Port Louis

Annex 169

Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 1) (22 Apr. 2014)

PERMANENT COURT OF ARBITRATION

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

x

In the Matter of Arbitration Between:

THE REPUBLIC OF MAURITIUS,

and

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

x

PCA Reference MU-UK

Volume 1

HEARING ON JURISDICTION AND THE MERITS

Tuesday, April 22, 2014

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

The hearing in the above-entitled matter convened at 2:30 p.m. before:

PROFESSOR IVAN SHEARER, Presiding Arbitrator

SIR CHRISTOPHER GREENWOOD, CMG, QC, Arbitrator

JUDGE ALBERT J. HOFFMANN, Arbitrator

JUDGE JAMES KATEKA, Arbitrator

JUDGE RÜDIGER WOLFRUM, Arbitrator

Permanent Court of Arbitration:

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

Court Reporter:

MR. DAVID A. KASDAN, RDR-CRR
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real undertakings to Mauritius in relation to fishing, mineral or other rights – but that if it did they had no legal consequences;

- that actually the "MPA" wasn't really established to protect "the environment, flora and fauna of the islands", as the UK said at Paragraph 3.3 of its Counter-Memorial, and it isn't really the "major step forward" proclaimed by Mr. Miliband, but merely a repackaging;
- that the "MPA" is somehow nevertheless a genuine attempt to protect the biodiversity of the marine environment, even though there are no regulations, no budget, and (a single vessel to patrol an area the size of France);
- that in November 2009 there was no commitment from Gordon Brown to Prime Minister Ramgoolam to put the MPA "on hold";
- that the various provisions of UNCLOS – one thinks of Article 2(3) – don't actually create any obligations, all they are intended to do is describe the situation;
- that the creation of the "MPA" doesn't engage a single provision of UNCLOS, although it covers half a million square kilometres of ocean;
- that even if it does, there is not a single provision of UNCLOS over which the Tribunal has jurisdiction; and, in fact, to cut to the chase;
- that Mauritius is not entitled to anything under UNCLOS in relation to this area or its own territory.

34. Mr. President, members of the Tribunal, you could, I suppose, suspend disbelief, in relation to all of these matters, you could ignore the historical record, you could put aside all of the evidence, you could interpret the 1982 Convention and its Part XV into a completely meaningless text. That would, of course, have the great merit for the United Kingdom of allowing you to preserve the colonial status quo, an outcome which the United Kingdom tells you, was the intentions of the drafters of this Convention. We say you cannot do any of those things, and that the reading of the United Kingdom pleading leaves the impression of living in a

Mr. Whomersley first, or Mr. Grieve?

MR. WHOMERSLEY: Mr. Grieve.

PRESIDENT SHEARER: Thank you very much.

SPEECH BY THE ATTORNEY GENERAL: 22 APRIL 2014

MAURITIUS v. THE UNITED KINGDOM ARBITRATION

Mr. President, Members of the Tribunal, the Delegation of Mauritius,

I would like first of all to say how honoured I am to be speaking in front of this distinguished Tribunal and in such pleasant surroundings. It is a pleasure to be here in Istanbul, but particularly here in the Pera Palace Hotel.

I would also like to thank the Permanent Court of Arbitration and its staff for all their hard work in arranging the hearing to date, and I have no doubt that, based on their excellent performance so far, we can expect that the next two and a half weeks should run very smoothly.

Mr. President, as Attorney General of England and Wales, I am here to speak to you this afternoon on behalf of the United Kingdom. From tomorrow, I will hand over to my colleagues to take forward the presentation of the United Kingdom's case. But the Government of the United Kingdom felt that it was right, as a way of demonstrating the importance which we attach to the case, that I should make the opening statement on behalf of my country.

Mr. President, Members of the Tribunal, I wish to make five key points on behalf of the United Kingdom in this opening speech. First, I would like to talk about the United Kingdom's approach towards its relations with Mauritius both generally and on the question of the British Indian Ocean Territory. My next point will concern the history of Mauritian interest in British Indian Ocean Territory. Thirdly, I shall explain the position of the Government of the United Kingdom on a matter which, while not part of this case, is clearly part of the background, namely the possible resettlement of the Territory. Fourthly, I want to address the crucial matter of your jurisdiction to deal with the case, particularly insofar as it concerns the issue of sovereignty,

which has been clearly raised both in the pleadings but also in the opening speeches, which you've heard before you. I will then say a few words about the Marine Protected Area around the Territory.

Finally, I will try to summarise my key legal submissions to be made to you by my learned colleagues on behalf of the United Kingdom during the course of the hearing as it unfolds.

So, Mr. President, let me begin by saying that the United Kingdom greatly values its relationship with Mauritius, and I think I can venture to say that, apart from the issue of the British Indian Ocean Territory, relations between the two Governments are excellent and indeed cordial. Moreover, the British Government have always expressed a willingness to cooperate closely with Mauritius over the issue of the British Indian Ocean Territory. We have no doubts about our sovereignty over the Territory, but we have always been clear that the differences between us should not present any obstacle to practical cooperation on matters of common interest between the UK and Mauritius. In particular, we are very willing to talk further to Mauritius about the practical implementation of the Marine Protected Area. This includes a willingness on our part to listen to any points that Mauritius might wish to make about the implementation of the MPA. Indeed my colleague, Mr. Mark Simmonds, one of the Ministers in the Foreign and Commonwealth Office, wrote to Mr. Boolell, the Foreign Minister of Mauritius, only last month asking for input from Mauritius on our consideration of improvements to the current framework for managing the Marine Protected Area. I regret to say that Mr. Boolell has declined this invitation. Nevertheless, I am happy to repeat today the assurances about the United Kingdom's willingness to cooperate, which have been made on a number of occasions to our Mauritian colleagues.

And I have obviously noted – and I will come back to this in a moment – the way in which opening its case, it highlighted that in another area of sovereignty dispute with the French

over the island of Tromelin, that the Mauritian Government appears to have been very content with an engagement with another Government against which it has a sovereignty claim in relation to how to manage fisheries and, I think a, if at all possible, Marine Protected Area, although I think in reality if one looks at such documents no such area has yet come into being.

Let me also add that the British Government have always tried to engage with Mauritius in as cooperative manner as possible, without standing on the legal niceties. In many respects we have gone far beyond what any legal obligations would require. I do hope and submit to this Tribunal that we will not be penalised for doing this by suggesting that the result of such action is that we have come under further legal obligations. I say that because in listening very carefully to what Mr. Sands had to say in his opening, it seemed to me that that was at least one of the main thrusts of his argument - that because the United Kingdom had been willing to engage and involve Mauritius in the way in which the Chagos Archipelago and the BIOT was run, that therefore in some way it had shed some essential part of its sovereignty in the process. If the Tribunal did so hold, it would, we submit, discourage States from seeking practical ways to cooperate while leaving aside their legal differences.

Secondly, Mr. President, I think it is important to note that, although Mauritius became independent in 1968, it was not until twelve years later that they first made a claim to the sovereignty of the Territory. It was not until a change of Government in Mauritius in 1982 that Mauritian law was amended to lay a formal claim to British Indian Ocean Territory. Although they sought to explain away this delay, their reasons are frankly unconvincing. The fact is that British Indian Ocean Territory has never been part of the colony of Mauritius – it had been a dependency and ruled by the Governor of Mauritius as a matter of administrative convenience. Perhaps, Mr. President, worth bearing in mind, that we are talking here of a large group of islands which were ceded by the French to the United Kingdom in 1814. Much play was made about maintaining integrity in terms of decolonization, but it is perhaps worth pointing out that

those Territories currently constitute two sovereign States: Seychelles and Mauritius; the BIOT, to which Mauritius lays claim and, as we've also heard, the island of Tromelin, which currently is under French sovereignty but to which Mauritius also makes a claim. And although what was said about British Ocean Territory in the mid-1960s, in the lead-up to Mauritius independence has loomed large in this arbitration, it is also right, I would submit, to point out that it is only with the benefit of hindsight that this has appeared to be a key issue. In fact at the time, there were far more important issues to be considered, most noticeably in how minority rights would be protected in the Constitution, and arrangements about dealing with internal and external threats to Mauritius were met, and that's quite apparent when one looks at the documents that were generated at the time and which appear in your bundles. And finally, I would also say this on this point, it's right to point out that the United Kingdom made clear to the United Nations in 1965 that the islands were attached to Mauritius purely as a matter of administrative convenience; so the suggestion that was made in the opening on behalf of the Government of Mauritius by Mr. Sands that in some way this is a recent concoction by the United Kingdom Government to justify something which they had not previously said is manifestly wrong.

Thirdly, Mr. President and Members of the Tribunal, you will have read in the submissions by Mauritius, and quite possibly in the newspapers, about those who lived in the British Indian Ocean Territory prior to 1973. Now, I have to say I was a little startled to hear what Mr. Sands had to say on this point because I can only repeat what the British Government has said on a number of occasions in the past. That is, that we regret very much the circumstances in which they were removed from the islands and recognise that what was done then should not have happened. A substantial sum in compensation was paid to the former inhabitants in the 1980s – a point that was recognised by the European Court of Human Rights in their recent decision. When in Opposition, the political party of which I'm a member said that

we would look again at our current policy for BIOT. When we first came into Government, we were constrained by the proceedings in the European Court of Human Rights. But immediately after those proceedings were concluded, my colleague, the Foreign Secretary, announced that we would be looking again at the question of the United Kingdom's policy towards BIOT. As part of that review we are looking again at the question of resettlement. And we hope to be able to reach conclusions in the early part of next year in respect of that. I say all this so that, Mr. President, you and the Members of the Tribunal can be fully informed on the position. It is clear that these issues are not, in fact, relevant to the questions that you will have to address in this claim that has been brought before you. But I think it is important that I put the position of the British Government on these questions on the record. And also I hope to dispel a suggestion that British Government has never expressed any regret in the matter, because it has done so repeatedly.

My fourth point concerns the prospect which Mauritian colleagues have alluringly presented to you, namely that you should be able to decide upon the sovereignty of the British Indian Ocean Territory. As I have said, we are confident of our own sovereignty. But the dispute settlement procedures set out in the United Nations Convention on the Law of the Sea, which are the ones you have to apply in these proceedings, cannot be used to test the issue through a judicial procedure. On the contrary, I am clear and would submit that it would be dangerous – and I use the word 'dangerous' advisedly – if you were to seek to go down that route. It is clear that the States Parties to the Convention did not intend, when they became a party to it, to confer upon the courts and tribunals referred to in the Convention a general and very wide power to adjudicate upon any dispute about the sovereignty over land territory that happened to have a coast. Mauritius is in effect asking this Tribunal to reach a decision on jurisdiction that would be seen to be perverse. We have no doubt at all that for the Tribunal to seek to apply such a wide ranging jurisdiction would be quite wrong and would call into question

the whole system of dispute settlement under the Convention, and with it, the Convention itself. I speak to you bluntly about this because we perceive these to be very serious issues, and it is only right that I should draw your attention to them.

Next, Mr. President, I want to explain to you the Government's attitude towards the establishment of marine protected areas. As the Members of the Tribunal will know, the internationally agreed target is that ten per cent of the world's oceans should be declared as marine protected areas by 2020. In fact, and frankly regrettably, it looks as if this target is not going to be met. But the United Kingdom Government has made it clear that it is keen to do what it can to pursue that objective. Indeed, the Marine Protected Areas around the British Indian Ocean Territory, together with that around another UK territory, South Georgia and the South Sandwich Islands, are two of the largest marine protected areas in the world. We are proud of the fact that two British territories have marine protected areas around them, and of the contribution they are making to the global public good. I need hardly say therefore that we would greet with considerable alarm any decision by this Tribunal which casts doubt upon the validity of the declarations of marine protected areas, either in general, or around territories where third states may claim sovereignty. We are committed to furthering biodiversity of the oceans, and we believe that one significant way of doing this is through the establishment of marine protected areas.

Mr. President, Members of the Tribunal, it is not understating the case to say that the world's oceans are in peril; indeed, that is the term used by various United Nations agencies.[29] The UN Secretary-General, Ban Ki-Moon, in his Oceans Compact initiative launched in August 2012 to address ocean health and governance, observed that: "[h]umans … have put the oceans under risk of irreversible damage by over-fishing, climate change and ocean acidification (from

[29] The interagency Report prepared by UNESCO, the IMO, the FAO and UN Development Programme for the 2012 Rio+20 UN Conference on Sustainable Development, "A Blueprint for Ocean and Coastal Sustainability", 2011 ("A Blueprint for Ocean and Coastal Sustainability"), p. 4, http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SC/pdf/interagency_blue_paper_ocean_rioPlus20.pdf

absorbed carbon emissions), increasing pollution, unsustainable coastal area development, and unwanted impacts from resource extraction, resulting in loss of biodiversity, decreased abundance of species, damage to habitats and loss of ecological functions".[30]

The United Nations Food and Agriculture Organisation said in its 2012 Report on the State of the World's Fisheries that the "state of world marine fisheries is worsening". According to its figures, 87.3 percent of the world's fish stocks are either over-exploited, requiring strict management plans to restore their full and sustainable productivity, or are very close to their maximum sustainable production, requiring effective management to avoid decline.[31]

According to UNESCO and others, 60% of the world's major marine ecosystems that underpin livelihoods have been degraded or are being used unsustainably[32].

And that has a direct impact on the livelihoods and food security of millions, including in particular Low Income Food Deficit Countries, many of which lie in and around the Indian Ocean.

According to 2012 UN figures, around 40 per cent of the world's coral reefs have been lost due to human impacts or are degraded[33]. The 2008 Status of the World's Coral Reefs Report gives a figure of around 34%, with another 20% under threat in 20-40 years[34]. And

[30] "The Oceans Compact: Healthy Oceans for Prosperity – An Initiative of the United Nations Secretary-General", July 2012, p. 2, http://www.un.org/depts/los/ocean_compact/SGs%20OCEAN%20COMPACT%202012-EN-low%20res.pdf

[31] *The State of World Fisheries and Aquaculture 2012*, p. 11, http://www.fao.org/docrep/016/i2727e/i2727e00.htm

[32] UNESCO website, "Facts and figures on marine biodiversity", http://www.unesco.org/new/en/natural-sciences/ioc-oceans/priority-areas/rio-20-ocean/blueprint-for-the-future-we-want/marine-biodiversity/facts-and-figures-on-marine-biodiversity/

[33] A Blueprint for Ocean and Coastal Sustainability, above n. 1, p. 14.

[34] Koldeway et al, "Potential benefits to fisheries and biodiversity of the Chagos Archipelago/British Indian Ocean Territory as a no-take marine reserve", *Marine Pollution Bulletin* (2010), vol. 60, p. 1906, UKR, Annex 63, at p. 7 (internal page numbering of version in Annex 63), citing Global Coral Reef Monitoring Network, Wilkinson ed., "Status of Coral Reefs of the World 2008".

other estimates are more pessimistic, suggesting the global coral reef ecosystem is on a trajectory to collapse within a human generation[35].

Now, Mr. President, I focus on coral reefs because these are the nurseries of tropical coastal fish stocks and a storehouse of biodiversity. Without them, as one expert has put it, "What we will be left with is an algal-dominated hard ocean bottom… with lots of microbial life soaking up the sun's energy by photosynthesis, few fish but lots of jellyfish grazing on the microbes. It will be slimy and look a lot like the ecosystems of the Precambrian era, which ended more than 500 million years ago".[36]

And all of that is particularly true of the Indian Ocean, which has experienced massive fisheries exploitation since 1950. As a result, Indian Ocean reef fisheries are grossly overexploited[37], as is the yellowfin tuna fishery[38]. 90% of the sharks are gone[39]. And they are regarded as being great indices of the overall health of the ecosystem. Many representative Indian Ocean ecosystems have been badly damaged[40] in the "decades of destruction" since the 1970s caused by huge increases in population and pollution, increasing overfishing, and, more recently, the impact of climate change[41]. The seas around three-quarters of Indian Ocean islands and the Ocean rim have deteriorated markedly[42]. And 17% of the coral reefs of the Indian Ocean are estimated to have been lost; 22% are in a critical condition; and 32% are threatened[43].

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[35] See the entry on the Chagos Conservation Trust ("CCT") website: http://chagos-trust.org/news/world-without-coral-reefs. The CCT's members and trustees include scientists working on coral reefs: see http://chagos-trust.org/about/who-we-are.
[36] Dr Roger Bradbury, 'A World Without Coral Reefs', *The New York Times*, 13 July 2012: http://www.nytimes.com/2012/07/14/opinion/a-world-without-coral-reefs.html?_r=0
[37] "Marine conservation in the British Indian Ocean Territory: science issues and opportunities", Final Report of Workshop held 5-6 August 2009 at the National Oceanography Centre, Southampton ("NOC Report"), UKCM, Annex 102, p. 7.
[38] Koldeway et al, above n. 6, p. 3, citing Indian Ocean Tuna Commission figures.
[39] NOC Report, above n. 9, p. 6.
[40] NOC Report, above n. 9, p. 2.
[41] DVD, Chagos Science in Action I, around 1 min 25 sec.
[42] DVD, Chagos Science in Action I, around 1 min 50 sec.
[43] NOC Report, above n. 9, p. 4.

If you have not already had the opportunity to do so, I do invite the Tribunal to look at the three ten minute films which we submitted with our Rejoinder. I don't know whether you have yet had an opportunity of doing that. I hope you have seen the footage in the first BIOT Science in Action film which shows the stark contrast between the healthy BIOT reefs and those in Madagascar which have significantly deteriorated as a result of human activities. They are few signs of life and fish in comparison to those in the MPA.

In that context, I was a little startled to see Mr. Sands suggest that the creation of the MPA was in some way a sham and that that could be illustrated by the lack of action that was being taken. He took you to the report of Mr. Sheppard, an environmental expert, that the United Kingdom Government had sent out, in fact, principally to look at the conditions in the lagoon at Diego Garcia, which is outside of the MPA area, but also to make some more general comments. I would strongly submit that if you come and go back to look at that document, far from suggesting that the United Kingdom is doing nothing about the careful management of the MPA, that it actually illustrates really detailed and careful management been carried out, not just within the MPA but within the lagoon as well, to ensure that the near-pristine conditions are maintained, even when there are probably quite minor threats to it from within the operation of Diego Garcia base itself.

Marine protected areas are recognised by scientists and the international community as essential[44] to promote the conservation and management of oceans and fisheries[45], as reflected in the internationally agreed target of 10 per cent coverage by 2020[46]. The 2002 World Summit on Sustainable Development demanded that all over exploited fish stocks be restored to the level that can produce maximum sustainable yield by 2015. These goals will almost certainly be missed. Certainly, the 2015 target for restoration of overexploited fish stocks is unlikely to be

[44] Koldeway et al, above n. 6, p. 5.
[45] Johannesburg Plan of Implementation, 2002 World Summit on Sustainable Development (UKCM, para. 3.23); FAO report on *The State of World Fisheries and Aquaculture 2012*, above n. 3, pp. 164-5.
[46] UKCM, para. 3.25.

met, according to the FAO.[47] In 2010, the global MPA coverage was only just over 1% and, as I have already noted, is unlikely to be achieved.

The BIOT MPA is a regionally and internationally critical step in beginning to address the risk of irreversible damage to the oceans. It has substantially increased the global coverage of MPAs. The scientific case for the BIOT MPA is robust actually hasn't been challenged in this case at all. The waters around British Indian Ocean Territory are some of the most pristine in the Indian Ocean, indeed on the planet, and have a genuinely world-wide importance: scientists agree it is an exceptional place and merits protection.

The three short films I have mentioned provide an illustration of this. But perhaps I might interject that, as a diver myself, the films show what for me is a truly remarkable environment and rather different, if may say so, from the very pleasant environment, but nevertheless markedly different, where I was diving only four to five days ago in the Maldives, a mere few hundred miles north of BIOT.

The MPA, because of its size, location, biodiversity, and the near-pristine nature and health of the Chagos coral reefs, is likely to make a significant contribution to the wider biological productivity of the Indian Ocean more generally[48]. Size is important because many conservation-related benefits increase non-linearly with size. Smaller areas are much less effective in maintaining viable habitats or populations of threatened species.[49]

Indeed, large scale MPAs, like the BIOT MPA, are important for protecting migratory and highly mobile pelagic species, as well as those species that remain within the MPA[50]. The bycatch of sharks and rays and other species in the BIOT tuna longline and purse fisheries was

[47] FAO report on *The State of World Fisheries and Aquaculture 2012*, above n. 3, p. 11.
[48] NOC Report, above n. 9, p. 1.
[49] Ibid., p. 4.
[50] Ceccarelli, "The value of oceanic marine reserves for protecting highly mobile pelagic species: Coral Sea case study", UKR, Annex 68.

previously significant, especially for sharks, and that happens wherever such fishing takes place[51].

The assessment of the potential benefits to fisheries and biodiversity in the Indian Ocean of the BIOT MPA are there in Doctor Koldeway and her colleagues, in the report published in the peer reviewed *Marine Pollution Bulletin*, which is amongst your documents, and that concluded that "the closure of Chagos/BIOT to all commercial fishing will eliminate bycatch in the Western Indian Ocean as a whole by providing a temporal and spatial haven"[52] and will maintain both fish populations and the near-pristine habitat that exists in the area.

The BIOT MPA safeguards around half the high quality reefs in the Indian Ocean[53], and Doctor Koldeway's publication notes the BIOT MPA is particularly important because of the status of the world's reefs.

It also contains an exceptional diversity of deepwater habitat types, 97% of which are unexplored.[54]

And a further scientific study published earlier this year has confirmed that the efficacy of MPAs is highly influenced by being no-take, large and isolated.[55]

The MPA also provides a crucial scientific reference site for Earth system science studies and regional conservation. It is one of the world's few remaining examples of what a pristine marine environment ought to be like and the world's biggest coral reef atoll system. Scientists all agree that it is an exceptional place. As such it provides a baseline, an unpolluted reference site for studies elsewhere in the world measuring the effects of pollution, the processes that collectively create climate change and managing the threats climate change poses. It is one of

[51] Koldeway et al, above n. 6, p. 5.
[52] Koldeway et al, above n. 6, p. 5.
[53] NOC Report, above n. 9, p. 1.
[54] NOC Report, above n. 9, p. 4.
[55] Edgar et al, "Global conservation outcomes depend on marine protected areas with five key features", *Nature*, vol. 506, 13 February 2014, p. 216, UKR, Annex 80.

the few tropical locations where global climate change effects can be separated from those of pollution and exploitation[56].

Now, Mr. President, as I said, I have only very recently seen some of the great riches of the marine environment in the Indian Ocean, including a rather large shark at probably closer call than I might have necessarily have wished in the last few days, but the thing that strikes one when diving in the Maldives which in location and structure resembles the natural environment of the Chagos Archipelago is that, as good as it is, and despite the very great efforts to preserve it, the effects of human interference in the Maldives are very visible when one dives and also on the surface. The lack of serious adverse human interference in BIOT makes it quite exceptional not just in terms of conservation but also in terms of maintaining and restoring the fish stocks that may then be taken commercially elsewhere.

The BIOT MPA plays a key role as a regional stepping stone and re-seeding source for species in the Indian Ocean, and that stepping stone is critical to the viability of heavily-harvested fish populations elsewhere[57]. It is also the only place in 1000 miles of ocean for seabirds to roost and breed[58].

Results from the recent scientific research expeditions show it has the cleanest seas in the world.[59]

So, I don't apologize, Mr. President, for belabouring this a little bit because, in sum, the United Kingdom Government is extremely proud of the MPA. The BIOT is one of the very few remaining places on earth and the only remaining place in the Indian Ocean where it is practically possible to protect a large-scale, pristine marine environment for future generations, vital research into climate change, coral reefs and fisheries, and for fisheries conservation

[56] Koldeway et al, above n. 6, p. 7; NOC Report, above n. 9, p. 1.
[57] NOC Report, UKCM, Annex 102, p. 5.
[58] DVD, Chagos Science in Action, II, around 7 mins 10 secs.
[59] DVD, Chagos Science in Action II, around 7 mins 48 secs.

necessary to the food security of the people who live around the Indian Ocean, and that includes those who live on Mauritius.

Let me nevertheless emphasise this. The United Kingdom acknowledges the special interests of Mauritius and the Chagossian communities in the BIOT. It took them into account as part of its assessment and development of MPA policy. In particular, the MPA does no harm to Mauritius, to the contrary, it is an important regional and international asset from which it benefits. We have also said quite clearly in the Terms of Reference for the Chagossian resettlement Feasibility Study that the MPA is not a barrier to resettlement.

It is a matter of regret that Mauritius doesn't appear to recognise the importance of maintaining the pristine environment of the archipelago and has currently given no commitment to protecting the vulnerable eco-system around the British Indian Ocean Territory when the territory is ceded to Mauritius when it's no longer needed for defence purposes.

Mr. President, I will now set out the most important legal points which will be made by those representing the UK during the hearing:

The first – and we say determinative points – concern your jurisdiction. I have already touched on the absence of jurisdiction to determine the issues of sovereignty that have been raised by Mauritius. I have highlighted this already because of the radical and untenable nature of the jurisdiction that is asserted. But the United Kingdom's objection here also belongs up front because it is the Mauritian claim to sovereignty that is the real issue in and behind the current proceedings. The claim to sovereignty has been put forward here in the guise of a case under UNCLOS. But it is the same underlying claim as has been presented or mooted before other fora and in bilateral exchanges spanning three decades or more. And that dispute as to sovereignty, however it is cast or re-cast, is not a dispute concerning the interpretation or application of the Convention at all. Hence I've submitted this tribunal lacks jurisdiction to determine the issues, such as self-determination and territorial integrity, that are really

fundamental to Mauritius' claim. That is, we say, a very unsurprising outcome – and Mauritius – I listened carefully to what was being said – has been unable to point to any provision of the Convention, or any judicial or other decision, or any State practice to suggest that we are wrong on this point.

You will be taken by Mauritius to views – including views of some of the members of this distinguished tribunal – on so-called "mixed disputes" and to the intricacies of article 298(1)(a) of the Convention. But those views have been expressed, I submit, in the very particular context of an incidental jurisdiction to determine disputed territorial matters, where this is necessary for, and incidental to, the resolution of a maritime delimitation case. But that's not this case here: indeed, the BIOT and Mauritius are many hundreds of miles apart and there can be no maritime delimitation between them at all. The territorial sovereignty issues plainly underlie and are fundamental – and are certainly not incidental – to the claims made by Mauritius. And ultimately article 298(1)(a) of the Convention, however interpreted, supports the United Kingdom's position. If there truly were the broad jurisdiction over disputes concerning the sovereignty of the coastal state for which Mauritius contends, then there would surely be the same opt-out from compulsory jurisdiction as in article 298(1)(a). But there is no such opt-out; and that I would submit is because it's perfectly clear there is no such jurisdiction.

Second, even the most cursory analysis of Mauritius' claim to sovereignty over the BIOT confirms that this claim is not a matter falling for resolution under the Law of the Sea Convention. For example, you are asked to rule upon the precise contours of the principle of self-determination in 1965; when precisely the principle became part of customary international law; and when it became binding upon the United Kingdom. In this regard you are taken by Mauritius to resolutions of the UN Security Council and General Assembly, and to political declarations of various international groupings. You are asked to consider questions of duress. You are asked – or at least you were asked – to consider and apply the *uti possidetis juris*

principle to the facts of this case, although it appears that Mauritius lost faith with this line of argument in its Reply. What you are not being asked to do, by contrast, is to really consider the actual provisions of the Convention – save by the sleight of hand of saying that somehow all these principles fit within any given reference in the Convention to the "coastal State".

And that, Mr. President, takes me to the next jurisdictional objection. Consistent with the real dispute being over sovereignty, the first time that the UK learned of the existence of the claim in respect of the MPA was when Mauritius lodged the Notice of Arbitration. Now, I do want to emphasise that the requirements of Article 283, in terms of the existence of a dispute and the obligation to exchange views, go to your jurisdiction. These are not mere formalities, waiting to be bypassed when issue is joined through an exchange of pleadings once an Annex VII proceeding is underway. The pre-conditions in Article 283 are an essential part of States' consent to jurisdiction when becoming parties to UNCLOS.

The recent jurisprudence of the International Tribunal for the Law of the Sea and the International Court of Justice strongly confirms, we say, our position in this respect, and the particular claims of this case provide a very good illustration of why international tribunals must be right to insist on the fulfilment of all the pre-conditions to compulsory jurisdiction. For example, many of the claims before you go to alleged failures to consult. As such, the allegations could readily have been considered, and addressed as appropriate, if they had been brought to the United Kingdom's attention before the commencement of proceedings, as Article 283 requires. But that in fact never happened, and so we now litigate, at great public expense for both the Mauritian taxpayers and the United Kingdom's, alleged failures to consult that have now taken on a life of their own as claims in international arbitration.

The fourth and final jurisdictional objection concerns the non-sovereignty claims alone. Simply put, the MPA has been implemented through a ban on commercial fishing. This involves the exercise by the United Kingdom of its sovereign rights over conservation and management of

living resources under article 56 of the 1982 Convention. Now, the exercise of those rights does not fall within your jurisdiction over environmental disputes under article 297(1) of the Convention. And it is expressly excluded from your jurisdiction over disputes relating to fisheries under article 297(3). Now, Mauritius seeks to get around these two provisions by some more re-packaging – this time, saying that its claim is that a coastal State has acted in contravention of specified international rules and standards for the protection and preservation of the marine environment, and thus falls within article 297(1)(c). But I submit it can point to no such, or has not been able to point to any such specified international rules and standards that are relevant to its claim. That merely demonstrates the artificial nature of the attempt to fit the exercise of sovereign rights with respect to marine living resources, over which an Annex VII tribunal has no jurisdiction, within the strictly delimited confines of article 297(1)(c).

Mr. President, I do not want to say too much on the merits since we strongly believe that you should never reach that point, which you will appreciate from my submissions, but I will limit myself to three observations on the merits of this case.

Firstly, aside from the sovereignty issue, the claim comes down to a number of after-the-event complaints of a failure to consult and claims to exclusion from alleged fishing rights.

The complaints on consultation also, I think, should not detain the Tribunal very long. There were bilateral consultations in 2009, on that everybody is agreed. We say the United Kingdom wanted further consultations. Again there can be little debate about that, nor about the fact that Mauritius refused to participate in further bilaterals save on terms that the United Kingdom could not accept. It then comes down to a finger-pointing exercise before this tribunal as to who was responsible for the breakdown – we say we are firmly in the right, but this is scarcely a matter which an international tribunal should be troubled with. There is an assertion that a commitment was made by former British Prime Minister Gordon Brown that the MPA

would be put on hold. That may be a misunderstanding, but we are quite clear that no such government to government commitment was given.

As to fishing rights, a great deal has now been written by Mauritius in the pleadings in this case, but some perspective I think is called for. Mauritian fishing in the maritime area now within the MPA has, over the past almost 50 years, been on the spectrum from very low to non-existent. When a licence regime was first introduced by BIOT, there was no complaint by Mauritius that this breached alleged fishing rights. Likewise, when the number of available licences was cut from six to four in 1999, there was no complaint that this breached fishing rights. In many of the years, Mauritian-flagged vessels did not apply for any licences at all, or just one. And I should interject here that, in fact, no application by a Mauritian-flagged vessel has ever been turned down when licences were being granted. You have before you a table – and I hope it's in your Arbitrators' folder – a table from the UK Counter-Memorial which demonstrates the very limited Mauritian fishing activity in BIOT waters. And it might, Mr. President, just be worth looking at it very briefly, if you have it. I think it's now on screen as well.

The top table shows fishing licenses issued by BIOT from 1991 to 30th of March 2010, and the red and pink alongside it shows those taken up by vessels from Mauritius. So, the Tribunal will see how it all times it has been a tiny percentage share of the total fishing that has taken place in BIOT, and that, indeed, in 2002, 2005, 2006, 2007, and 2008 there was, in fact, no-takeup at all. And if one looks at the bottom, and it shows simply the Mauritian vessels and shows the same picture. So, the reality is probably due to the vast distance that actually exists between Mauritius and its other islands and the British Indian Ocean Territory, hundreds, if not actually over a thousand miles away certainly between the main island and over I think it's 1200 nautical miles, one of the reasons why, in fact, this offer that was being made in 1965 of free licensing has been only rarely taken up.

Against this unpromising backdrop, an elaborate case has been built in these proceedings by reference to an understanding on "fishing rights" reached in 1965, which I would have to say reached its greatest stridency in the Mauritian Reply, where the United Kingdom was accused of suppressing evidence by certain documents being redacted where the redactions are said to have been unhelpful to the United Kingdom. I can assure you that as the Minister responsible for the Government's Legal Service and indeed for propriety, to an extent, in the way government conducts litigation, I would not countenance such a thing. I'm grateful to the Tribunal for the way that the Tribunal has dealt with that aspect of the matter.

Now the nature, correct interpretation and scope of the 1965 understandings are all matters that, if our jurisdictional objections are surmounted, are indeed for the Tribunal to determine. Mauritius has picked from the disclosure in the domestic judicial review claim those documents that it considers as showing UK personnel taking the view that the 1965 understandings gave rise to binding obligations in respect of fishing rights. When the documentation is looked at in its entirety – and we have a detailed appendix to our Rejoinder devoted to that – what one in fact sees is a broad range of views, none of which are backed up by considered or detailed legal advice, and none of which are relevant and material to the issue which you must now determine. The internal views of officials cannot, we submit, be material to the consideration by an international tribunal of the meaning and effect of a particular document. Were it otherwise, disclosure in state-to-state cases would have taken a markedly different course in arbitration proceedings, and indeed, I do note that Mauritius has disclosed only five internal documents.

Finally, there is the asserted claim by Mr. Sands, of bad faith on the substance – the claims that the MPA is an abuse of rights held under the Convention, ultimately as I said at the start apparently an elaborate charade to prevent the resettlement of BIOT by its former inhabitants. I have already touched on the United Kingdom's policy on resettlement. Issues of

potential resettlement played no role whatsoever in the declaration of the MPA. Mauritius now suggests otherwise, and alleges breach of article 300 of the Convention. Yet it does so without any evidence to challenge the scientific basis for the MPA, which I touched on earlier. And I might add, without finding a single document in the UK's extensive disclosure in the domestic judicial review proceedings that suggests that the declaration of the MPA was motivated by anything other than scientific and conservational intent. The United Kingdom as I said is proud of the MPA. Mauritius was initially in favour, and quite rightly so. Its current litigation strategy cannot cut across that. And, in the longer term, it will be Mauritius in particular, as well as the broader global community more generally, that will benefit from this MPA and the preservation of a unique maritime area.

As the tribunal will be aware, the allegation of improper motive was also made in the domestic proceedings. The decision of the High Court is the subject of an appeal to the Court of Appeal, and although the hearing has taken place, the judgment has yet to be handed down. Nevertheless, I would like to quote briefly from the High Court's judgment. It said this: "For the claimant's case on improper purpose to be right a truly remarkable set of circumstances would have to have existed. Somewhere deep in Government a long-term decision would have to have been taken to frustrate Chagossian ambitions by promoting the MPA. Both the administrator of the Territory in which it was to be declared, Ms. Yeadon, and the person who made the decision, the Foreign Secretary, would have to have been kept in ignorance of the true purpose. Someone – Mr. Roberts" – [we have seen referred to in an American memo]? – "would have been the only relevant official to have known the truth. He, and whoever was privy to the secret, must then have decided to promote a measure which could not achieve their purpose, for the reasons explained above, while explaining to all concerned that the MPA would have to be reconsidered in the light of an adverse judgment of the Strasbourg Court. Those circumstances

would provide an unconvincing plot for a novel. They cannot found a finding for the claimant on this issue."

So, Mr. President, to conclude: the United Kingdom takes the strong view that the claims made by Mauritius are not within your jurisdiction and we urge you to dismiss them in their entirety.

Mr. President, Members of the Tribunal. You now will have several weeks of detailed legal argument before you, and I am afraid that I am not able to stay, as interesting as it would be for me to do so, but other government business claims me back. But I am very grateful to you to have given me the opportunity to make an opening speech and make these few points.

Thank you very much for your attention.

PRESIDENT SHEARER: Thank you very much, Mr. Grieve.

Now, is there a continuation?

ATTORNEY GENERAL GRIEVE: Just me.

PRESIDENT SHEARER: Very good. Thank you.

Well, in that case, we can adjourn until 9:30 tomorrow morning, and I hope in the meantime we would be able to do something about the temperature in this room and the extraneous noises, but I hope you bear with us. Thank you very much, and we adjourn until tomorrow morning. Thank you.

(Whereupon, at 4:58 p.m., the hearing was adjourned until 9:30 a.m. the following day.)

Annex 170

Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 3) (24 Apr. 2014)

PERMANENT COURT OF ARBITRATION

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

In the Matter of Arbitration Between: THE REPUBLIC OF MAURITIUS, and THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	PCA Reference MU-UK Volume 3

HEARING ON JURISDICTION AND THE MERITS

Thursday, April 24, 2014

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

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

PROFESSOR IVAN SHEARER, Presiding Arbitrator

SIR CHRISTOPHER GREENWOOD, CMG, QC, Arbitrator

JUDGE ALBERT J. HOFFMANN, Arbitrator

JUDGE JAMES KATEKA, Arbitrator

JUDGE RÜDIGER WOLFRUM, Arbitrator

hasn't produced a scrap of legislation to implement.

72. Mr. President, Members of the Tribunal, that concludes Mauritius' presentation on the facts.

Before I ask you to call on Professor Crawford, may I ask whether any Members of the Tribunal have any questions for me.

PRESIDENT SHEARER: It appears not, Ms. Macdonald. Thank you very much.

So, I give the floor now to Professor Crawford.

PROFESSOR CRAWFORD: Mr. President, Members of the Tribunal.

PRESIDENT SHEARER: Professor Crawford, can I ask how long you will be? At the moment the schedule provides for a 15-minute break at 10:30. I leave it to you to decide when we should take that break at a convenient point in your argument.

PROFESSOR CRAWFORD: Yes, there are various convenient points in the argument, so I will pick one of them.

PRESIDENT SHEARER: Very good. Thank you.

Mauritius v United Kingdom

Speech 7: The United Kingdom is not a coastal State entitled to declare the "MPA" – The Principle of Self-Determination

Professor James Crawford AC SC

Mr. President, Members of the Tribunal:

1. A. Introduction

1. We now move to the law. In this presentation, I will discuss the impact of the principle of self-determination on the crucial issue of status – whether the United Kingdom was a coastal State entitled freely to declare an MPA irrespective of the wishes of the government and people of Mauritius. My colleague Mr. Reichler who will follow me will discuss breaches of specific

undertakings given to Mauritius: in particular he will argue that Mauritius was and is entitled to the rights of a coastal State based on these undertakings, specifically the undertaking of reversion. But first let me deal with the *lex generalis* of self-determination. I do so on the footing or on the assumption that there is no relevant jurisdictional limitation in Article 297 of UNCLOS or elsewhere – whether that is a *sound* footing is of course a question and it will be explored tomorrow.

Mr. President, Members of the Tribunal:

2. The exercise of certain rights under UNCLOS is premised upon the possession of a particular status. Only a 'coastal State' may exercise sovereign and jurisdictional rights over the territorial sea, the continental shelf and the exclusive economic zone. This is clearly set out in various provisions in the Convention, for example Article 56, which contains a list of the rights that a coastal State enjoys in the exclusive economic zone adjacent to its territory.

3. Now, what is a 'coastal State' is not defined by UNCLOS. It is a matter of general international law. Article 56 is not limited to States Parties to UNCLOS, but it *is* framed in terms of States and their coastlines. Thus, to determine whether a State is the coastal State entitled to exercise rights under the Convention this Tribunal is required to construe the term 'coastal State' in accordance with the 'relevant rules of international law applicable in the relations between the parties', as prescribed in Article 33(3)(c) of the Vienna Convention. Similarly, the applicable law provision in Article 293(1) of the 1982 Convention requires the application of 'other rules of international law' that may be relevant, as other Annex VII Tribunals and ITLOS Tribunals have recognised.

4. It is true that this raises jurisdictional difficulties certainly with respect to States which have made declarations under Article 298. The United Kingdom has made no such declaration, and we will come to that issue, as I have said, tomorrow.

5. When the United Kingdom declared an MPA on the 1st of April 2010, it purported to exercise sovereign and jurisdictional rights under Parts V and VI of the 1982 Convention. But the UK may not exercise rights that it does not possess, or is not entitled to assert unilaterally. Our task today is to demonstrate that the UK is not the coastal state having jurisdiction or, at any rate, exclusive jurisdiction, with respect to the protection and preservation of the marine environment of the Chagos Archipelago and adjacent waters under Article 56 UNCLOS. There are two reasons for this. First, by excising the Archipelago from Mauritius in 1965, the UK violated the right to self-determination to which the Mauritian people were then and still are entitled under international law. Second, by having undertaken to 'return' the Archipelago to Mauritius once it is no longer needed for defence purposes and by giving a number of other undertakings relating to natural resources, the UK has recognised, as a minimum, that it does not have unfettered sovereignty over the Archipelago.

6. In my presentation today I will deal with the first of these arguments, leaving the second to my colleague, Mr. Reichler. I will begin by establishing that at the time of Mauritius' independence – and, for that matter, at the time of the excision of the Archipelago three years earlier – the UK was bound to respect the rights of the people of Mauritius to decide on their own political future, this being the future of the entire territory of Mauritius as a self-determination unit. More than this, as an administering power, the UK was under an obligation to enable Mauritius to exercise its right to self-determination. I will then demonstrate that by excising the Archipelago from Mauritius – with no sufficient regard or no personal regard at all to the opinion of the population or of their representatives – the United Kingdom violated Mauritius' right to self-determination. Because it acquired control over the Archipelago unlawfully in this way, the UK has no valid claim to exercise sovereignty over the Archipelago.

7. I must once again draw your attention to the special context, the *sui generis* context – I accept, of course, that the words *sui generis* do not add anything to the word 'special' but it comforts us to use it – the *sui generis* context in which the present dispute arose. Professor Sands explained to you on Tuesday that this is not an 'ordinary sovereignty dispute'. There is simply no other case like it, and the United Kingdom has not been able to point to one. As we will demonstrate today, the dispute between Mauritius and the UK concerns a former colony's entitlement to the maritime zones around its rightful territory, in circumstances in which the UK has recognised that Mauritius has the attributes, or at least some of the attributes, of a coastal State.

2. B. The right to self-determination was clearly established at the relevant period and applicable to the UK

Mr. President, Members of the Tribunal:

(i) The emergence of the right to self-determination

8. The right to self-determination is a fundamental principle of international law. It has been described by the International Court as an *erga omnes* right[1] and as, and I quote, 'one of the major developments of international law during the second half of the twentieth century'[2](of course in the Kosovo opinion). I do not need to remind you that self-determination provided the legal underpinning for the process of decolonisation carried out under the auspices of the United Nations, which led to the creation of more than half the present number of States. Ever since the United Nations General Assembly adopted Resolution 1514(XV), the *Declaration on the Granting of Independence to Colonial Countries and Peoples* in 1960 – I will refer to in short as the 'Colonial Declaration' – it has been established that all peoples have the right to 'freely determine their political status and freely pursue their economic, social and cultural

[1] *East Timor* (Portugal v. Australia) Judgment, ICJ Reports 1995, para. 29.
[2] *Accordance with International Law of the Unilateral Declaration of Independence In Respect of Kosovo*, 22 July 2010, para. 82.

development'. The applicability of this right to colonial peoples finds ample support in the practice and *opinio juris* of States, and in the jurisprudence of the International Court.

9. Now, the standing of the principle of self-determination in current international law is not open to contest, and the UK does not contest it. But our opponents seek to persuade you that the UK was not bound to respect Mauritius' right to self-determination in 1965 – or even in 1968 – at the date of independence.

10. To the UK, the critical date for this purpose is 1965. But it was in 1968 that Mauritius exercised its right to self-determination, opting to become independent. Until 12 March 1968, the UK was directly responsible, under international law, for enabling the people of Mauritius to exercise that right with respect to its entire territory. Up to that date, the United Kingdom had the means to revoke, as a matter of domestic law, the Order in Council that detached the Archipelago from Mauritius. It was in 1968 that the composite act constituting the breach by the United Kingdom as a colonial power was accomplished – and that breach has a continuing character.

11. But even if this Tribunal was to decide that 1965 is the critical date rather than 1968 – I don't think anything turns on it – the applicable law would remain exactly the same. Self-determination started to emerge as a legal right already in the early 1950s. At Tab 7.1 of your folders you will find General Assembly Resolution 545(VI)[3] [Mauritius Legal Authority 89]. It is at page 317. In this Resolution, adopted on the 5th of February 1952, the General Assembly decided to include in the International Covenants on Human Rights, which were then under development, an article 'on the right of all peoples and nations to self-determination in reaffirmation of the principles enunciated in the Charter of the United Nations'. This same resolution makes the connection between the right of self-determination and the obligations of administering powers in relation to Non-Self-Governing Territories. I stress this was in 1952.

[3] GA res. 545 (VI) (1952).

It is not new. That is Tab 7.1 There are not very many tabs in this speech, I am relieved to say but there are some. This time I draw the purple color.

12. Now, in the Rejoinder the United Kingdom points to the fact that Resolution 545 and other early resolutions relied upon by Mauritius were adopted with a number of States voting against or abstaining. In fact, Resolution 545 was adopted by 42 votes in favour, 7 against and 5 abstentions. Diverging opinions on the character of self-determination were voiced, and the solution that the great majority of States favoured, was clear from the outset. Resolution 545 demonstrates that even in 1952 State practice was pointing the direction in which the right to self-determination would go.

13. The position of principle expressed in these resolutions was further strengthened by the subsequent practice of the General Assembly and the Security Council. And if there are any doubts that self-determination had become a legal right, they were dispelled by the powerful and unequivocal statement contained in the Colonial Declaration, which was adopted by 89 votes in favour, no votes against and 9 abstentions. It affirms that, and I quote, 'all peoples have the right to self-determination'— not a principle of self-determination; all peoples don't have a principle of self-determination — they have a right to self-determination.[4] And the practice that followed from that moment until the excision of the Chagos Archipelago and the independence of Mauritius serves only to corroborate the view that the right to self-determination was already well established in customary international law by the early 1960s.

14. The right to self-determination was described in those terms by authoritative contemporaneous sources. For example, Rosalyn Higgins — not a tear-away radical I think it would be fair to say — writing in 1963, affirmed that the *Colonial Declaration*, and I quote, 'taken together with seventeen years of evolving practice by United Nations organs, provides

[4] GA res. 1514 (XV) (1960).

ample evidence that there now exists a right of self-determination'.[5] That is in her book, *Development of International Law Through the Political Organs of the United Nations* at page 103 — early '60s. Remarkably, because the controversy about peremptory norms was just cranking up, other authoritative contemporaneous sources described self-determination not just as an ordinary rule of international custom, but also as a peremptory norm. In 1963, the International Law Commission referred to the principle as a contender for peremptory status. Peremptory status was itself a contender for peremptory status at the time. But self-determination was there at the beginning of that process. The first edition of Brownlie's *Principles of Public International Law*, published in 1966, stated, and I quote, 'certain portions of *jus cogens* are the subject of general agreement, including… self-determination'.[6] That's in 1966. As indicated in Mauritius' pleadings, there are other distinguished writers to the same effect. The United Kingdom stresses that these, however distinguished they may be or have become, these writers do not make international law.[7] Well, no doubt they do not, unaided. But the views of so substantial a body of distinguished scholars and practitioners, read in the light of practice and authoritative articulations such as Resolutions 1514 and 1541 of the same year, should be regarded as authoritative in stating what the law is.

15. The problem with the UK's position is that it takes an excessively formalistic and static view of how international law – and customary international law in particular – emerges and operates. International law is a dynamic system, and its dynamic in relation to self-determination was evident well before 1965. In 1960 alone, 17 African colonies achieved independence, increasing the membership of the United Nations by over 20 per cent, from 83 to 99 members. Over a dozen new States were created by decolonisation in the five years that

[5] Rosalyn Higgins, *Development of International Law through the Political Organs of the United Nations* (1963), p. 103.
[6] Clarendon Press 1966, p. 418.
[7] UKR, p. 96, fn 445.

followed the adoption of the Colonial Declaration and prior to the excision of the Archipelago. The process of Mauritius' decolonisation must be viewed in this context.

16. In 1971, the International Court confidently affirmed, in the *Namibia* opinion, and I quote: 'the subsequent development of international law in regard to non-self-governing territories – Mauritius was a non-self-governing territory – as enshrined in the Charter of the United Nations, made the principle of self-determination applicable to all of them'.[8] It did not hesitate to take into consideration the changes which had 'occurred in the supervening half-century' – that's a half-century prior to 1971 – changes that it considered to be well-established – even in interpreting a mandate agreement that had been concluded in 1919.

17. So we don't need the benefit of hindsight. It's impossible to look back to the 1960s and view what was happening as anything but the achievement of independence on the basis of the exercise of the legal right categorically affirmed by the General Assembly in 1960. It makes no sense to postpone to the 1970s the date when the right to self-determination can be said to have emerged. So it is far-fetched to argue, as the United Kingdom does, that it was <u>not</u> under an obligation to respect the right of the Mauritian people to freely determine their political status in the period 1965 to 1968.

(ii) The UK cannot claim to have been a persistent objector

18. Then we have another claim by the United Kingdom which is that the right of self-determination that may have emerged by the early '60s was not opposable to it. The United Kingdom attempted in its written pleadings to acquire the status – one might describe it as a retrospective status – of a persistent objector. It persists in seeking to be persistent half a century too late. But it cannot have been – and in fact did not even seek to qualify – as a persistent objector at the time when the right to self-determination emerged. This is for three reasons.

[8] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution(1970)*, Advisory Opinion, ICJ Reports 1971, para. 52.

19. First, as the United Kingdom itself argued before the International Court in the *Anglo-Norwegian Fisheries* case, a State cannot be a persistent objector to a 'fundamental principle' of international law.[9] In that case, the UK was referring to the drawing of baselines and the delimitation of the territorial sea. Now, one might doubt – as the Court in *North Sea Continental Shelf* doubted – that the rules on delimitation ever had such a fundamental character. But if ever there was a fundamental principle of international law, then and now, self-determination is one.

20. Secondly, the record shows that the UK was not an objector, let alone a persistent one, by the 1960s. If it was trying to be a persistent objector, it made an incredibly poor job of doing so. In fact, the main piece of evidence the UK produced in support of its claim to be a persistent objector is an internal document, 'Report of a Working Group of Officials on the Question of Ratification of the International Covenants on Human Rights' – which is Counter-Memorial, Annex 27.[10]

21. Well, internal documents do not establish persistent objection. They may establish the queries of officials, but that's a different matter. The position the UK adopted in international debates was thoroughly ambivalent, and fell far short of meeting the strict requirements of the persistent objector rule, assuming for the sake of argument that such a rule exists. For example, in the plenary debates that preceded the adoption of the *Colonial Declaration*, the United Kingdom conceded that there was, and I quote, 'no argument about the right of the people [of colonial territories] to independence' and 'no argument whether the people will be independent or not'.[11] But the crucial factor to consider is the position the UK adopted when the *Colonial Declaration* was put to the vote at the General Assembly. It abstained. If it really were a

[9] *Fisheries (United Kingdom v Norway)*, Reply of the United Kingdom (28 November 1950), Pleadings, vol. II, p. 429.

[10] Report of the Working Group of Officials on the Question of the Ratification of the International Covenants on Human Rights, 1 August 1974 (UKCM, Annex 27).

[11] Official Records of United Nations General Assembly, Fifteenth Session, 925th Plenary Meeting, 28 November 1960, 10.30 a.m., UN Doc. A/PV.925, para. 50.

persistent objector seeking to avoid the binding application of the right to itself, it should have voted *against*. I would refer you to Tab 7.2 of your folders which contains the record of the 947th Plenary Meeting of the General Assembly on the 14th of December 1960, and I apologize that this was not put in to the legal authorities; it should have been. It is a public document of course. It contains part of the procedure by which the *Colonial Declaration* was adopted. It is at page 319. You will find there the British Delegation's explanation of vote in relation to the *Colonial Declaration*. Most of the objections of the UK concerned what it considered to be implied criticism of its policies as a colonial power. The key paragraph is paragraph 53, which is at page 323 of the folder, and I will read it:

"The United Kingdom, *of course*, subscribes wholeheartedly to the principle of self-determination set out in the Charter itself, and we feel that we have done as much to implement this principle during the past fifteen years as any delegation in this Assembly. Nevertheless, members of the Assembly will be familiar with the difficulties which have arisen in connexion with the discussion of the draft International Covenants on Human Rights and in defining the right to self-determination in a universally acceptable form. These difficulties have not yet been finally resolved by the Assembly, and we feel that it *might have been better* not to make the attempt now in a rather different context."[12]

Well, that is not the Superman of persistent objection. It is the mild-mannered reporter. No sign of a phone box.

22. As a colonial power watching its Empire dissolve, it was not surprising that the UK would be careful in debates leading to the articulation of self-determination as a legal right. It was affected by those debates. But the UK did not deny the existence of the right. It only expressed doubts of an indefinite kind in relation to its content. That does not come even close to meeting the onerous burden of persistent objection in international law.

[12] United Nations General Assembly, 947th Plenary Meeting, 14 December 1960, GAOR, p. 1275, para. 53 (emphases added).

23. Third reason, by 1967 it was possible to discern a shift in the position of the United Kingdom in international forums—from ambivalence, in the passage I just read, to stronger support for the notion that self-determination constituted a right. And as we know, the position of the United Kingdom on key disputes at present is founded on self-determination. This is evident in the records of the preparatory work for the 1970 *Friendly Relations Declaration*. The UK made a proposal to the Special Committee which was working on the Declaration, in which it affirmed the 'duty to respect the principle of equal rights and self-determination' and made it clear that the principle was applicable 'in the case of a colony or other non-self-governing territory'.[13] Discussing this proposal at a meeting of the Special Committee – this was in 1967 – the UK representative stated that the position that the UK had held 'in the past' – one of opposition to defining self-determination as a right – was being 'held in abeyance'.[14] One year later, in 1968, the United Kingdom signed the two human rights Covenants, both of which recognise in Article 1, pursuant to that decision of 1952, the right of peoples to self-determination by which 'they freely determine their political status and freely pursue their economic, social and cultural development'. It's true that the United Kingdom made a declaration to common Article 1, a declaration that maintained on ratification in 1976, that in the event of conflict between 'Article 1 of the Covenant and the United Kingdom's obligations under the Charter (in particular, under Articles 1, 2 and 73 thereof) [its] obligations under the Charter shall prevail'. But this would have been true in any event by virtue of Article 103 of the Charter, and it hardly amounted to an objection, persistent or otherwise, relevant to the present case. It affirmed Article 73.

[13] United Nations General Assembly, Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (1969), UN Doc. A/7619, 71.

[14] United Nations General Assembly, Report of the Special Committee on Principles of International Law concerning Friendly Relations and Co-operation among States (1969), Summary Record of the Sixty-Ninth Meeting, 4 August 1967, 10.30 a.m., UN Doc. A/AC.125/SR.69, p. 18.

24. In short, the UK was not a persistent objector to the right to self-determination, which was well established as a matter of international law in the early 1960s. The record indicates that, although the United Kingdom may have shown some hesitation in characterising self-determination as a right, this hesitation was far too vague and inconsistent to have had the effect of precluding the binding application of this fundamental principle to the United Kingdom in 1965.

25. In the Rejoinder, the UK responds to Mauritius' attack on the persistent objector argument by suggesting that it had not shown that the UK had 'agreed' that the right of self-determination reflected international law.[15] This is neither true nor to the point: by 1965 self-determination as a principle was well-established: even if its earlier arrival had been accompanied by a grumble of dissenters. By the 1960s this grumble of dissenters did not include any consistent voice from Her Majesty's Government.

3. C. By Excising the Chagos Archipelago from Mauritius the UK breached Mauritius' right to self-determination

Mr. President, Members of the Tribunal:

26. I turn from these remarks on the standing of the right of self-determination to the specific question of how the United Kingdom breached it when it partitioned the territory of Mauritius in 1965 by excising the Chagos Archipelago.

27. If what I've said is right, then at the time of the excision, Mauritius had the right to exercise self-determination and to freely determine its political status in respect of the entirety of its territory, which included the Archipelago. Yesterday, Ms. Macdonald established that the Archipelago was and remains an integral part of Mauritius. As such, it was and remains protected by the principle of territorial integrity, stated in paragraph 6 of the *Colonial*

[15] UKR, para. 5.21.

Declaration, reproduced at Tab 7.3 of your folders, page 333. [MM Annex 1] Paragraph 6 of course prescribes, and I quote:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations."[16]

28. I should clarify two points here. First, the territorial integrity of non-self-governing territories is an essential aspect of the right to self-determination, which can only be waived by the freely expressed wishes of the people concerned. The colonial power did not have the right or the authority arbitrarily to dismember a non-self-governing territory before the people had had any chance to exercise the right to decide on its own political future. Affirming otherwise would deprive the right to self-determination of its meaning; it would also negate the obligations that a colonial power has to enable the exercise of the right.

29. This interpretation is confirmed by numerous resolutions adopted by the General Assembly. For example, Resolution 2232(XXI), which I discussed yesterday and which is reproduced at Tab 4.13 of your folders [MM Annex 45]. You do not need to turn it up again. Referring to the situation of various non-self-governing territories including Mauritius, the Assembly confirmed the applicability of paragraph 6 of the *Colonial Declaration* to colonies and reiterated that, and I quote:

"Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of colonial Territories… is incompatible with the purposes and principles of the Charter of the United Nations and of General Assembly resolution 1514(XV).[17]"

30. In its written pleadings the United Kingdom has sought to downplay the relevance of General Assembly resolutions, noting that they are not binding or dispositive. Well, that's true; they're not binding as such, as a general matter. The position that the Assembly has taken on

[16] GA res. 1514 (XV) (1960).
[17] GA res. 2232 (XXI) (1966).

questions of self-determination is authoritative, as the Court recognised in *Western Sahara*. The Court there referred to the 'measure of discretion' that the Assembly enjoys in determining 'the forms and procedures' for the fulfilment of the right. It noted that the right to self-determination of the people of Western Sahara—constituted 'a basic assumption of the questions put to the Court'.[18] The General Assembly had a special role in developing and implementing the right, and some of its resolutions have been universally regarded as law-making particularly in this field, like the *Colonial Declaration*; others are regarded as determinative in the implementation of self-determination, as the Court noted in *Western Sahara.*

31. Resolutions of the General Assembly not only confirm that the territorial integrity of non-self-governing territories is an essential element of self-determination—the Assembly specifically concluded that the excision of the Chagos Archipelago constituted a breach of the right of self-determination. That was in Resolution 2066(XX), tab 4.12 of your folders. I read the relevant paragraph yesterday, and I won't read it again. The Assembly further reaffirmed the 'inalienable right of the people of the Territory of Mauritius to freedom and independence'.

32. Finally I should refer to the United Kingdom's argument that Mauritius has failed to address the allegation that the UK has not relinquished sovereignty since the islands were ceded from France in 1814.[19] I hope I have stated that argument accurately because I find it incomprehensible; this may be a weakness of mine. As we have shown, the Chagos Archipelago was part of the colony of Mauritius in 1945. The principle of self-determination was applied to its territory as such, far flung though it was. No distinction has ever been made in international practice based on different modalities of the acquisition of colonial territory, whether by cession or otherwise. It is true that there is a disputed body of practice dealing with colonial territories claimed by third States, but the Archipelago was not so claimed at any time after 1945, or for that matter after 1814. Paragraph 6 of the *Colonial Declaration* applies to all

[18] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, para. 70.
[19] UKR, para. 5.7.

colonial territories identified as such pursuant to Resolution 1541(XV), irrespective of how those territories might initially have been acquired by the colonizer – and that point was confirmed by the Court in *Western Sahara*.

Mr. President, this would probably be the first of the convenient moment to break

PRESIDENT SHEARER: Very good, Professor Crawford.

The Tribunal will break for 15 minutes. We will return at 10:45.

Thank you.

(Brief recess.)

PRESIDENT SHEARER: Yes, thank you, Professor Crawford.

PROFESSOR CRAWFORD: Thank you, sir.

33. The conclusion – that the excision of the Archipelago was a breach of international law and specifically of paragraph 6 of the Colonial Declaration – is not affected by the International Court's recent pronouncement on the principle of territorial integrity in the *Kosovo* opinion, as the UK suggests in its pleadings. In the *Kosovo* opinion in 2010 the Court clarified, and I quote, 'the scope of the principle of territorial integrity is 'confined to the sphere of relations between States'.[20] But the Court was not making this point in connection with any claim of self-determination, the application of which to Kosovo was of course controversial. Serbia was not administrator of a non-self-governing territory and there was no claim that a colonial power had attempted to breach the territorial integrity of Serbia by excising Kosovo from it. Serbia sought to invoke the principle of territorial integrity as a defence against an attempt by one of its constituent units to separate and become an independent State. The Court's *dictum* stands for the proposition that States may not invoke territorial integrity as a legal barrier to declarations of independence coming from internal territorial units.

[20] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Reports 2010, para. 80.

34. The situation that stands before you in the present case is quite different. From the perspective of international law, the relations between a colonial power and one of its non-self-governing territories are not purely 'domestic constitutional relations'. They're not within the reserved domain of domestic jurisdiction. They were and are in key respects analogous to the 'relations between States' to which the Court referred in the *Kosovo* opinion. This is so because while international law does not, generally speaking, govern the relations between constituent units within a State, the law of self-determination by the early 1960s directly governed the relations between metropolitan States and their colonies and included a guarantee of territorial integrity for the colonial territory. If metropolitan States could lawfully dismember the territory of the colonies for the administration of which they are responsible, the right of self-determination would be an empty shell. Metropolitan States could keep the bits they wanted and discard the rest. Territorial integrity may not protect States against internal attempts at separation, but it surely protects a colony against decisions of the colonial power that affect the territory with respect to which the right of self-determination is to be exercised.

35. Likewise, the right of the people of Mauritius to exercise self-determination with respect to its entire territory is not prejudiced by the principle *uti possidetis juris*. In our Memorial, we made a passing reference to the principle of stability of boundaries to highlight that territorial integrity shares a common rationale with *uti possidetis* – that of safeguarding the right to self-determination. Territorial integrity preserves the exercise of self-determination before independence is achieved, protecting the non-self-governing territory from prejudicial territorial changes that the metropolitan State may seek to enforce. *Uti possidetis* protects self-determination after independence, as the International Court noted in *Burkina Faso/Mali*.[21]

36. In its written pleadings, the UK attempts to turn Mauritius' argument upside down. It claims that *uti possidetis* 'fully supports' its own position by protecting the administrative

[21] *Burkina Faso/Mali*, ICJ Reports 1986, para. 25.

boundaries existing at the time of Mauritius' independence in 1968.[22]But this is disingenuous. First, the creation of the "BIOT" did not involve the emergence of a newly independent State, but the retention of part of the territory of a colony by the colonial power. As the International Court made clear, *uti possidetis* is 'logically connected' with the emergence of States through decolonization.[23]Again, that's *Burkina Faso/Mali.* Secondly, *uti possidetis* cannot be construed as protecting international boundaries unlawfully established through a serious breach of the right of self-determination. This would be diametrically opposed to the rationale and purpose of *uti possidetis*, which is to promote the stability of the boundaries of lawfully created States whose peoples have expressed the wish to become independent as a unit.

4. D. The people of Mauritius did not waive their right to territorial integrity by a free expression of their wishes

I turn to the third part of this presentation, which concerns the question whether the people of Mauritius waived their right to territorial integrity through a free expression of their wishes.

Mr. President, Members of the Tribunal:

37. The right that the people of a non-self-governing territory enjoys to 'freely determine [its] political status' corresponds to the obligation, on the part of the colonial power, to ensure that the people in question is in a position to freely express its wishes. This is what the law as reflected in the *Colonial Declaration* requires, no more and no less. The Court stated this obligation in even clearer terms in the *Western Sahara* opinion, when it said, and I quote, 'the application of the right of self-determination requires a free and genuine expression of the will of the peoples concerned'.[24]

[22] UKR, para. 5.8.
[23] *Burkina Faso/Mali*, ICJ Reports 1986, para. 23.
[24] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, para. 55.

38. Now, our opponents of course argue that the representatives of Mauritius 'agreed' to the detachment of the Chagos Archipelago, at the fourth Constitutional Conference in 1965 and subsequently. What they cannot demonstrate is that this 'agreement' constituted a free and genuine expression of the will of the people of Mauritius.

39. I explained yesterday in detail how it was that the United Kingdom obtained the 'agreement' of the Mauritian ministers to excision. The decision to excise was made by the UK unilaterally in advance, with no consultation with the people. It was not beneficial to Mauritius or in its interest. It fulfilled Anglo-American security interests in the Indian Ocean, involving the construction of a military base in Diego Garcia as well as the removal of the Archipelago's population. The UK took advantage of this Constitutional Conference, in which the political future of Mauritius was on the agenda, to induce the Mauritian delegates not to oppose the partition of the colony.

40. We looked carefully at the record yesterday. The evidence shows two things. First, at the Constitutional Conference, United Kingdom made it clear that the excision of the Chagos Archipelago was non-negotiable. Prime Minister Wilson and Colonial Secretary Greenwood were caught on record informing Mauritius that it was a legal right to detach the islands, and that the United Kingdom would do so by an Order-in-Council whether or not Mauritius gave its consent.

41. Secondly, the United Kingdom made it known to the Mauritians that they must consent to the excision if they wanted to see any progress in the negotiations leading to independence. I won't go back to the documents which established that yesterday. While the UK made an effort in its pleadings to portray the questions of independence and partition as separate, it is quite clear that they were not.

42. What it comes down to is this. The agreement to dismemberment of the territory of Mauritius was obtained in a situation amounting to duress, or at least analogous to duress. It

completely contradicted the position that the Mauritian representatives had always defended. The outcome was pre-determined, independence was at stake, and preserving the territorial integrity of the colony was not an option available to the Mauritian ministers.

43. The UK responds to the allegation of duress by referring to the criteria laid down in Articles 51 and 52 of the Vienna Convention on the Law of Treaties, on coercion of a representative of a State and coercion of a State itself by the threat or use of force.[25] It says, and I quote: '[i]f a deployment in negotiations between political leaders of their respective understandings of the domestic political position and ambitions were to amount to duress or coercion for the purposes of international or domestic law, all politics and all negotiations between governments would infringe these principles'.[26] Once again, the UK views the relations between the British and Mauritian authorities with no regard to the context in which it took place, or to the applicable legal framework.

44. This calls for two comments. First, your Tribunal should be careful – I say this with all respect – not to approach these exchanges as negotiations between equal parties. At the one end of the table was a powerful colonial power with far more leverage than the representatives of the colony sitting at the other end of the table.

45. Second, at the moment in which the UK came to the table it committed a serious breach of its obligations to give effect to the right of self-determination of the people of Mauritius by insisting that excision was a certain outcome. There was no choice whether or not to allow the detachment. The reason that the UK wanted the assent of the Mauritian authorities was not concern that the detachment was in accordance with the wishes of the people of Mauritius. It needed the agreement because it feared criticism.

46. The questions that stand before you are thus the following: does an agreement given to a measure that was not proposed but imposed, and required in return for independence to which

[25] UKCM, para. 7.38, fn 570.
[26] UKR, para. 5.25.

Mauritius was already entitled, constitute a genuine expression of the will of the people? Did the UK comply with its obligations under the law of self-determination when it obtained the agreement in such a way? In its Counter-Memorial, the United Kingdom concedes, as if it was not at all problematic, that 'the Council of Ministers [of Mauritius] secured benefits – a "deal" – in return for their consent, in full knowledge of the fact that the excision would have been effected without their consent, and without any benefits to Mauritius'.[27] That's at paragraph 2.61 of the Counter-Memorial. Is this the type of 'deal' that a colonial power can procure in accordance with the law of self-determination? The question answers itself.

47. The UK gave priority to its security interests in preference to the right of the people of Mauritius to self-determination. It cornered the representatives of Mauritius, and made sure that they acquiesced to a deal which neither they nor the people of Mauritius wanted.

48. That this is an accurate version of the facts is demonstrated by the international community's condemnation of the excision, notably in resolution 2066 (XX), to which I took you yesterday. The United Nations was not rightly convinced that the deal had been reached in accordance with the requirements of self-determination.

49. The same position was taken by the vast majority of States in a variety of forums, including the Non-Aligned Movement, the Group of 77, the African Union and so on.

50. The view held by so many States as to the illegality of the partition of the territory of Mauritius discredits the United Kingdom's version of the facts. So does Mauritius' repeated attempts to resume exercising *de facto* the sovereignty to which it is entitled *de jure*. And you have in the record the various accounts of Mauritius' protest, which again I dealt with yesterday.

51. I need only add that in addressing the issue of the occasional failure of protest after independence, the Tribunal should, with respect, apply the standard articulated by the International Court in the *Certain Phosphate Lands* case. There the Court had to deal with a

[27] UKCM, 2.61.

somewhat analogous argument of acquiescence based on delay. It said – this is at paragraph 36 of the judgment:

"The Court... takes note of the fact that Nauru was officially informed, at the latest by letter of 4 February 1969, of the position of Australia on the subject of rehabilitation of the phosphate lands worked out before 1 July 1967. Nauru took issue with that position in writing only on 6 October 1983."

It's only 16 years later.

"In the meantime … the question had on two occasions been raised by the President of Nauru with the competent Australian authorities."

But not in writing.

"The Court considers that, *given the nature of relations between Australia and Nauru*, as well as the steps thus taken, Nauru's Application was not rendered inadmissible by passage of time. Nevertheless, it will be for the Court, in due time, to ensure that Nauru's delay in seising it will in no way cause prejudice to Australia with regard to both the establishment of the facts and the determination of the content of the applicable law."[28].

It's a very carefully considered paragraph.

It is true that that decision was made at the preliminary objections stage, and that acquiescence by Nauru could still formally have been pleaded by Australia as somehow relevant to the merits. But in light of the Court's approach, can there be any doubt as to what the result would have been? Yet Nauru's silence on the rehabilitation of the phosphate lands mined before independence lasted rather longer than there was the case here.

5. E. Conclusion

Mr. President, Members of the Tribunal:

[28] ICJ Reports 1992 p. 240 at p. 254-5 (para. 36) (emphasis added); see also ibid., p. 255 (para. 38).

52. For the reasons given, Mauritius is the only state entitled to exercise sovereign and jurisdictional rights over the Archipelago under UNCLOS. The basis on which the United Kingdom now purports to establish a Marine Protected Area reflects back to a serious breach of a fundamental principle of international law.

53. The sovereignty the United Kingdom had over Mauritius as a colonial power prior to independence was qualified – not displaced but qualified – by Mauritius' right to self-determination. When Mauritius became an independent state, the sovereignty that the UK continued to exercise over territory unlawfully detached became legally untenable. That breach has a continuing character. It will only cease when the Archipelago is returned to Mauritius or the dispute otherwise settled.

54. If your Tribunal decides that the United Kingdom is entitled to declare an MPA with respect to the Archipelago, it will, with great respect, contribute to consolidating an unlawful situation that denies the right of Mauritius to self-determination and to its territorial integrity. On that basis, Mauritius respectfully requests the Tribunal to declare that the United Kingdom was not entitled to declare an MPA.

Mr. President, this is a convenient moment to respond to two questions asked yesterday by Judge Greenwood and Judge Wolfrum. Judge Greenwood asked two questions, one about the legal status of the Lancaster House commitments in international law, and one about their content. Mr. Reichler will deal with the latter question. I'm going to deal with the former question.

Judge Greenwood asked, and I quote: "What is the legal basis on which Mauritius says these undertakings are binding because, of course, whatever form they took, they were given at a time when Mauritius was still a colony? So, is Mauritius' case that they're a treaty or the otherwise binding is some form of international law agreement, or are you looking to another

legal system, or are you saying that their nature changed over the years?" That was the question.

The answer emerges from what I just said about the role of the international law of self-determination. In 1965, as the process of the move to independence was underway, the relations between Mauritius and the United Kingdom were not matters of United Kingdom domestic jurisdiction insofar as they concerned the exercise of the right to self-determination, including the territorial integrity requirement. In principle, international law required free consent of the people concerned or their representatives to any dismemberment of a Chapter XI territory.

Now, that consent could be given on condition; and, in this case, as I've shown earlier, the consent was obtained in conditions of duress. Such consent as was given was given on condition, notably the reversion condition, and the other condition as Mr. Reichler discussed yesterday.

This was not a treaty, but it was a binding commitment by the United Kingdom intended to procure consent.

Now, the United Kingdom cannot be in a better position as to the binding character of the commitments it made in 1965 because the General Assembly judged – and maybe this Tribunal will also judge; we submit that it should – that the consent was obtained by duress or improper pressure. In either case, the commitment is binding.

Further, the commitment was confirmed by U.K. Ministers and senior officials following the independence of Mauritius. There was no discontinuity. One notable example is the assurance given by the United Kingdom Minister Mr. Rollins in 1975, which is at Annex 78 of the Reply. He wrote on 23 March 1975 to the High Commissioner of Mauritius: "To repeat my assurances Her Majesty's Government will stand by its undertakings reached with the Mauritian Government concerning the former Mauritian islands now formally part of the British

Indian Ocean Territory and in particular" – in particular, it wasn't the only assurance – "they would be returned to Mauritius when they're no longer needed for defence purposes."

Such statements by the United Kingdom Ministers made in the context of State-to-State relations, of course, confirm the binding commitments made before independence and represent the repetition of undertakings under international law which are binding on the Nuclear Tests principle.

We note that successive lawyers in the legal advisers' office, including Sir Arthur Watts, as he would become, characterize the situation as giving rise to rights for Mauritius and correspondingly its obligations to the United Kingdom. We have not been able to see the detailed legal reasoning behind that conclusion, but it was consistent over many decades. In the circumstances of the case, the United Kingdom is either precluded by operation of law in accordance with the good faith principle or estopped by its own conduct from treating the undertakings it then made as not giving rise to rights of Mauritius.

I should say that we referred to the international practice, which was contemporaneous with the excision, in particular Paragraph 526 of our Reply. I won't go through those details, but I refer you to it for more detail on the point.

In this context, I should also deal with Judge Wolfrum's question put to Mr. Reichler but ceded kindly to me. This is not a case of return or reversion. There has been a detachment of the question. Unlike Mauritius, I genuinely and without duress consented to that.

Judge Wolfrum asked, "could you give us a qualification of the consent" – this is the question from the Transcript – "given by the Ministers of Mauritius to separate the Chagos Archipelago, was that a legal commitment or how would you qualify it? I should very much like an assessment, a legal assessment of that, qualification of the consent given."

As I said yesterday, a form of consent was given, but it was given under circumstances amounting to duress. It was therefore not a valid consent for purpose of international rules embodied in the *Colonial Declaration* adopted by the General Assembly.

Mr. President, that's all I have to say on self-determination, unless there are any questions from the Tribunal. If not I would ask you to call on Mr. Reichler.

PRESIDENT SHEARER: Very good. Thank you, Professor Crawford.

So, I give the floor now to Mr. Reichler.

Thank you.

THE LEGAL IMPLICATIONS OF

THE UNITED KINGDOM'S UNDERTAKINGS TO MAURITIUS

Paul S. Reichler

24 April 2014

Mr. President, Members of the Tribunal, good morning.

Yesterday I presented the facts regarding the undertakings made by the United Kingdom to Mauritius in September 1965, the repeated renewal and reconfirmation of those undertakings by the U.K. in subsequent years, and the U.K.'s fulfillment of them over the 45-year period between September 1965 and April 2010. Today, as I indicated at the end of yesterday's remarks, I will address the legal implications of these undertakings.

There are two. First, the undertakings are legally binding on the United Kingdom. Second, they irrevocably endow Mauritius with the attributes of a coastal State under the 1982 Convention. I will address each of these conclusions in turn, and show how the second flows inevitably from the first.

Mauritius and the United Kingdom are agreed on the applicable rule of law that determines whether the undertakings are binding. As the United Kingdom stated in its Rejoinder: "What matters in this, as in any case, is whether there was the requisite intent to be bound so as

Annex 171

Chagos Marine Protected Area Arbitration (Mauritius v. United Kingdom), Hearing on Jurisdiction and the Merits, UNCLOS Annex VII Tribunal, Transcript (Day 8) (5 May 2014)

PERMANENT COURT OF ARBITRATION

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

In the Matter of Arbitration Between:

THE REPUBLIC OF MAURITIUS,

and

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

PCA Reference MU-UK

Volume 8

HEARING ON JURISDICTION AND THE MERITS

Monday, May 5, 2014

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

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

PROFESSOR IVAN SHEARER, Presiding Arbitrator

SIR CHRISTOPHER GREENWOOD, CMG, QC, Arbitrator

JUDGE ALBERT J. HOFFMANN, Arbitrator

JUDGE JAMES KATEKA, Arbitrator

JUDGE RÜDIGER WOLFRUM, Arbitrator

Mauritius v United Kingdom

Second Round

The Creation of the "MPA", and Article 283

Alison Macdonald

Introduction

1. Mr. President, Members of the Tribunal, as Professor Sands explained, my part of Mauritius' submissions in reply will deal firstly with the creation of the "MPA", and secondly with the requirements of Article 283 of the Convention.

The Creation of the "MPA"

Nature of the "MPA"

2. On the "MPA", my submissions are in two parts. Firstly, I will look again at the question of what the "MPA" actually is, and what happens or does not happen there. And, secondly, I will return to the key aspects of the chronology and to the manner in which the decision was taken.

3. On the first issue, the nature of the "MPA", we now have the UK's answers to the written questions posed by Judge Wolfrum. We note that the UK has not disclosed any documentation in support of those answers, despite our request that it do so. As Professor Sands mentioned, in a late attempt to bolster its position on the scientific justification for the "MPA", you will recall that on Friday, the UK provided you with a written submission which it had put together during the course of these proceedings, it seemed, dated the 1st of May, headed "Biological effects of the marine reserve in BIOT (Chagos)".[15] I don't ask you to go to that now. It's in the UK folder at Tab 74. You will probably have noticed, if you have had a chance to study this document, that it claims on the first page that, I quote, "A clear scientific case for [the MPA] has been made in the peer reviewed scientific literature". If you follow

[15] UK Folder Tab 74

that up to the end of the document, if you follow the footnotes, you will see that this refers to a piece by Professor Sheppard, himself, the scientific adviser engaged by the administration of the so-called "BIOT", as do a large proportion of the other footnotes. The UK, we would suggest, seemed less than clear about the underpinnings of its scientific case, with Mr. Boyle offering, you will remember, late on Friday, to try to find additional scientific material to support the UK position.[16]

4. On the question of the enforcement of the "MPA", Ms. Nevill said that: "Although Mauritius seeks to make mileage out of the fact that there is only one BIOT patrol vessel, it provides no evidence that enforcement of the MPA is in fact deficient."[17] Well, on that point, Mauritius simply notes the fact that the "MPA" covers an area of 640,000 square kilometres, and asks the UK to produce evidence of any assessment which it has carried out to establish the patrol needs of such a vast area. As with so much about the "MPA", we simply do not know what assessments, if any, have been undertaken in this regard. And, in relation to funding for enforcement, much of which we are told is private, as you pointed out, Mr. President, we still do not know what conditions attach to the private portion of funding, since the UK has not answered Judge Greenwood's question on that point.[18]So we await the answer.

5. As for the absence of regulations, Judge Wolfrum asked for the reason for this in his eighth written question. The terse answer given[19] was that, I quote, "No additional legislation was found to be necessary to enforce the prohibition on commercial fishing. The existing BIOT legislation is sufficient for this purpose." And we know that already – the UK has been able to decide, within the existing framework of the EPPZ, simply not to issue any new licences. We understand that. But we understood Judge Wolfrum to be asking why no additional legislation has been enacted, although it is said to be forthcoming. And the UK gave no

[16] Transcript, p. 906/19-22.
[17] Transcript, p. 589/12-14.
[18] Transcript, p. 592/21-23.
[19] UK Folder Tab 1.

answer to this, saying simply that "recent legislation in BIOT has streamlined the fisheries enforcement powers [this is a reference to the recent Ordinance at Tab 2 of the UK folder, which provides for fixed penalties for carrying out commercial fishing without a licence in the Marine Protected Area…] and work is continuing on a consolidation of the relevant BIOT legislation." So the answer boils down to "we're working on it". No indication of why that task has not been completed in the last four years, or when it might be.

The process by which the "MPA" decision was taken

6. After those observations on the nature of the "MPA" and its enforcement, I turn to the second part of my submissions on this issue – the process by which the "MPA" decision was taken. My submissions on this point are, of course, also relevant to the Article 283 question, which is why we have decided, in the interests of economy, to address both issues together in this second round.

7. The United Kingdom through Ms. Nevill made much of the fact that the group of 'interested stakeholders' who were consulted at an early stage were all, in her words, "UK bodies whose support would be essential if the idea was to make any progress."[20] We consider that this underlines Mauritius' point about its exclusion from the early stages of the process. Was Mauritius' support not considered to be essential if the idea was to make any progress? Apparently the UK thought that the project could not survive its formative stages without the support of, among others, the British Geological Survey, but it could survive without the support of Mauritius.

8. Now, in fact, the UK did make some attempts to find out what Mauritius might think about the idea, but surreptitiously, and we see this from the email at page 278 of Mauritius' folder for the first round[21] – I don't ask you to pull it out now – this is the email sent by Mr. Allen to Ms. Yeadon about the agenda for the January 2009 talks. Mr. Allen describes the agenda

[20] Transcript, p. 551/20-21.
[21] Mauritius Folder Tab 6.1

item 'fishing rights / protection of the environment' as, in his words, "Means of discussing current / possible Mauritian rights in BIOT waters and introducing discussion of Pew ideas, if not name." So it seems from that that the UK was trying in January to get an idea of Mauritius' likely reaction to the project, while not telling them what it was up to. It can hardly count as consultation, we say, if the State concerned does not know what it is being consulted about.

9. Ms. Nevill emphasised that NGOs, and not the Government, were the source of the February 2009 article in the Independent, through which Mauritius learned for the first time of the MPA proposal.[22] But does this make the situation any better, we ask? What the UK is saying here is that, if it had been left up to it, Mauritius would have found out nothing for another three months, when the Foreign Secretary took his 'formal decision' to pursue the project.

10. The Foreign Secretary's decision to, in Ms. Nevill's words, "move forward" with the proposal followed, you will recall, Mr. Roberts' briefing paper of the 5th of May 2009[23], in which he observed that the MPA could "create a context for a raft of measures designed to weaken the movement" which supported Chagossian resettlement.

11. Professor Crawford will come back to Mr. Roberts' remarks later in the context of Article 300. For now I will simply note that, when you come to look again at the remarks recorded in the Wikileaks cable[24], but denied by Mr. Roberts, you will see that he is saying essentially the same thing as in the 5th of May document. In each case the import of his remarks is that the MPA will help the UK in its continued efforts to prevent the Chagossians from achieving resettlement in the Archipelago.

12. You heard the UK say, through Ms. Nevill, that it was not required to consult Mauritius until a formal Ministerial decision had been taken to pursue the proposal on the 6th of May 2009.

[22] Transcript, p. 553/3-7.
[23] Mauritius Folder Tab 6.2, p. 284.
[24] Mauritius Folder Tab 2.13

She told you that "Officials simply would not have engaged in formal discussions on the proposal with third States until the policy to move forward with it had been adopted by Ministers."[25]

13. But by that time, as we see from the email of the 7th of May 2009 – I pause to say that all the references to the transcripts and materials that I refer to in my speech will be in the transcripts for you – we see that the Foreign Secretary was "fired up" and his Private Secretary is telling Mr. Roberts to "keep the timelines taut, keep him involved, and […] ensure that the creation / announcement of the reserve is scheduled within a reasonable timescale."[26]

14. The UK took issue with my interpretation of that email as showing a certain determination to ensure that the MPA proposal came to pass. We simply invite you to read the documents again during your deliberations, and we suggest that what the correspondence, viewed as a whole, and very much including this email, shows is that if the "MPA" was not a *fait accompli* at that point, it was well on its way to becoming one. This shows the very real danger, we suggest, of leaving Mauritius out of the discussion until the process had gained a critical momentum.

15. We now come to the July 2009 talks. You have the record of those talks,[27] you have been taken through them by the parties, and I do not propose to go through them again. Professor Boyle made the surprising submission on Friday afternoon that if, which he denied, the UK had any legal obligation to consult Mauritius at all about the MPA proposal, then the July 2009 talks were, in themselves, sufficient to fulfill this obligation. He said:

"In our view, the July meeting was timely. It ensured that Mauritius was fully informed about the MPA proposal, including the proposed ban on commercial fishing, and it was at an early enough

[25] Transcript, p. 554/3-5.
[26] Mauritius Folder Tab 6.3.
[27] UKCM Annex 101; MR Annex 144

stage to allow Mauritius to ask for further information – as it did – and to make meaningful representations. And what was the outcome of that July bilateral meeting? It was a Joint Communiqué in which the Government of Mauritius welcomed in principle the MPA proposal. [UK Tab 56 / M Tab 6.5]"[28]

16. Now going to the Communiqué itself, Professor Boyle stated that "If you read that, you will see there were no complaints about inadequate consultation. There were no complaints that Mauritius could not get its views across or had been ignored."[29] And he went on to say that "the subsequent contacts between the two governments are not relevant to the question whether there was consultation", and that "in our view the necessary consultations took place in July, and what occurred after that is not material to Mauritius' case."[30]

17. Now, Mr. Loewenstein will look at the legal merits of these assertions later on when he replies on that aspect of the case. But Professor Boyle's analysis does also merit examination as part of the "MPA" chronology. The UK appears to be saying, in all seriousness, that it was required to do nothing more by way of involvement of Mauritius in the process after July 2009; in other words, that it stepped out of those talks having heard all it needed to hear from Mauritius. Well, we would suggest that you only have to look at the Joint Communiqué of that meeting, to which you have been taken many times, to see why we were surprised by Professor Boyle's argument. Quite clearly that document records the start of a process, not the end of it. Mauritius' position, as recorded there in black and white, was that it "welcomed, in principle, the proposal for environmental protection and agreed that a team of officials and marine scientists from both sides meet to examine the implications of the concept with a view to informing the next round of talks."[31]

[28] Transcript, p. 880/6-13.
[29] Transcript, p. 880/13-15.
[30] Transcript, p. 881/14-16.
[31] Mauritius Folder Tab 6.5.

18. This might be an appropriate moment to examine the words used by the UK in the record of the July meeting, that 'no decision had yet been taken'.[32] Ms. Nevill said that the inclusion of these words "runs completely counter to Mauritius' argument that the decision to go ahead with the MPA was made earlier by the Foreign Secretary on the 7th of May."[33]

19. You already have my submissions on the 7th of May email about the Foreign Secretary being "fired up". The point I want to make at this stage is that the fact that the UK repeatedly told Mauritius that no decision on the "MPA" had been taken does not of course prove that this was the case. As I indicated before, the evidence shows that, if no final decision had been taken, the project certainly had a very great deal of momentum by that point. The reason I focus on the words "no decision has yet been taken" particularly is that, as you have seen and I'll touch on briefly later, the UK kept repeating those exact words to Mauritius right up until six days before the "MPA" decision was taken. And we would suggest that the credibility of those words diminished over time.

20. We now come to the period between July 2009 and the announcement –

ARBITRATOR GREENWOOD: Ms. Macdonald, I'm sorry to interrupt you.

MS. MACDONALD: Yes.

ARBITRATOR GREENWOOD: But isn't what you're saying difficult to reconcile with the fact that the exchanges of emails between Mr. Allen, Mr. Roberts, Ms. Yeadon, and the Foreign Secretary's private office during that critical period of 29 to 31 March show that the officials didn't think that the decision had been taken and indeed it looks to me as though they were a bit surprised by where the Foreign Secretary came out.

MS. MACDONALD: Yes. Well, I'm certainly not saying that – of course, the formal decision to defer the MPA was taken by the Foreign Secretary in that final 48-hour period, and clearly, and one thing that we made clear in the first round, was that that was very

[32] UKCM Annex 101
[33] Transcript, p. 560/9-10.

much – and in our written pleadings – was that what appears from the correspondence is that was very much over the objections or at least if not objections, serious concerns of the officials concerned. And when I'm talking about the decision being taken, I'm referring particularly to the 7th of May email as well, what we were referring to is Foreign Secretary-level momentum and a certain determination that that is the course that should be gone down, although of course it was not ratified until the final date. And of course, as you point out, over the serious concerns of the officials. So we're certainly not saying that a final decision was taken, but we are saying, and I'm drawing attention particularly to the words used in July, back in July 2009, that no decision had been yet taken; that's absolutely fine. But when you get to the 26th, the same words had been used in the letter of the 26th of March 2010, we say that the credibility of that – of course, the Final Decision had not been signed off at that point, but we say that telling Mauritius that no decision had yet been taken and that the process was not supposed to in any way cut cross the bilateral talks, et cetera, as we see in the 26th of March letter, by that point they were stretching it when the decision was about to be taken six days later.

ARBITRATOR GREENWOOD: Well, that decision was about to be taken six days later or at some point in the very near future, I quite understand.

MS. MACDONALD: Yes.

ARBITRATOR GREENWOOD: But one doesn't have to be aficionado of "Yes Minister" to realize that Ministers in the British Government system quite often get fired up and excited about ideas but are sometimes talked out of those ideas by their officials, and quite often talked out of those ideas by their officials. And the picture that seems to me to emerge from those emails is that the British Government collectively really hadn't made up its mind until the late afternoon on the 31st of March. That's actually quite surprising, the chronology to me, but they hadn't made a decision until that critical point. It wasn't simply that there was a formal decision still to come. There was no substantive decision, either.

MS. MACDONALD: Well, of course, the Tribunal's reading of emails would be definitive, and I'm not sure that there is anything necessarily between us on that. But certainly I wasn't seeking to suggest that, and I think I said specifically a few minutes ago, that there was no set fait accompli as of 7th of May 2009, July 2009. But what I said was that we see from the Private Secretary's email of the 7th of May that certainly the Foreign Secretary was "fired up". The officials who were involved were advised to keep the timelines taut, ensure the announcement within a reasonable time, so there was a lot of enthusiasm and a very significant degree of momentum that the proposal had at that point. But, of course, you're correct that final decision was not taken, and politicians can be quixotic and, as we know nothing is set in stone until it's set in stone. So we fully accept the decision wasn't taken.

The question is when was Mauritius brought in, and was it brought in early enough to shape the thinking, or had the proposal really got quite strong legs by the time they were told anything about it. And thereafter, were they kept – were they really genuinely and properly consulted and kept informed.

ARBITRATOR GREENWOOD: Just to make clear for the record that "quixotic" is your term, not mine.

MS. MACDONALD: Absolutely. I was attempting to paraphrase your question.

So, looking a bit at the period that has just been canvassed in answer to Judge Greenwood's questions, and briefly, Judge Greenwood, that might be – I've touched on this a little, but he posed a question last week to the UK but really to both Parties about the relationship between the public consultation and the bilateral talks.[34]

21. There seems to be a fair degree of consensus between the Parties that the reason why the third round of talks did not take place was because Mauritius took the view that it was not

[34] Transcript, p. 592/5-14.

appropriate for that round to take place without the public consultation having been halted. And Ms. Nevill said, "If there was any lack of consultation with Mauritius, this was because it refused to proceed unless the UK halted the public consultation, which was a wholly unreasonable expectation in all of the circumstances. The public consultation did not cut across consultations with Mauritius."[35] And Professor Boyle put it more graphically, saying that "you might say that Mauritius was putting a gun to the Foreign Secretary's head."[36]

22. So the dispute between the Parties on this point is not primarily, it seems to us, about the factual position. The United Kingdom thought that it was acceptable to be talking to Mauritius about the proposal while consulting with the rest of the world at the same time. And Mauritius, for the reasons expressed in the many communications which you have seen, did not. Whether its position on this issue amounted to putting a gun to the Foreign Secretary's head will for you to decide.

23. According to Ms. Nevill,[37] the exchanges show that Mauritius was "offered involvement" in the public consultation. She did not make clear what she meant by this. And indeed there is some tension between this submission and Ms. Nevill's subsequent point that Mauritius "was kept fully apprised of the fact that the public consultation would go ahead before the talks and could not be delayed."[38] And the first dates offered by the UK for the next round of talks were the 4th and 5th of November 2009. The public consultation opened on the 10th of November. How, exactly, were the talks supposed to feed into the consultation in the intervening five days? As you have seen, the first that Mauritius saw of the Consultation Document was with the rest of the world on the 10th of November 2009.

[35] Transcript, p. 590/8-11.
[36] Transcript, p. 884/4-5.
[37] Transcript, p. 564/7.
[38] Transcript, p. 564/10-11.

24. On that date, the UK Foreign Secretary called the Mauritian Prime Minister to brief him.[39] You have the UK submission on this, namely that "quite simply, the Prime Minister did not ask for the public consultation to be withdrawn.

25. We were not quite sure that we understood that point. When Prime Minister Ramgoolam said that he "did not want the MPA consultation to take place outside of the bilateral talks between the UK and Mauritius on Chagos", on our reading, he was quite clearly saying that the bilateral talks and the consultation process were mutually incompatible.

26. Separately to that, as you have seen, Mauritius wrote to the UK on the same day to point out that the Consultation Document inaccurately presented Mauritius' position on the MPA.

27. I don't propose to take you through the next few rounds of correspondence in any detail, because you have seen them a number of times by now.

28. Ms. Nevill took you to the Mauritius' Note Verbale of the 23rd of November 2009[40] in which it stated that "since there is an on-going bilateral Mauritius-UK mechanism for talks and consultations on issues relating to the Chagos Archipelago and a third round of talks is envisaged early next year, the Government of the Republic of Mauritius believes that it is inappropriate for the consultation on the proposed Marine Protected Area, as far as Mauritius is concerned, to take place outside this bilateral framework." Repeating the words used by the UK in the Rejoinder[41], Ms. Nevill said that "These were somewhat belated objections, given that the public consultation had by then been underway for nearly two weeks."[42] As I said in the first round, however, the "two week' point is not entirely understood. Although Mauritius, through its Prime Minister, made clear its opposition to the consultation on the very day that it was published, clearly it still spent some time trying to persuade the UK that the bilateral talks were the appropriate way of consulting on the issue, but in vain.

[39] UKCM Annex 106
[40] MM Annex 155
[41] UKR 3.13
[42] Transcript, p. 575/10-11.

29. Then, of course, there was the meeting of the 27th of November between the two Prime Ministers. The United Kingdom Agent described this as a "private" meeting.[43] This implies, perhaps, some form of casual encounter. But this is not an accurate description – as Prime Minister Ramgoolam makes clear in his statement,[44] the meeting was a formal one, pre-arranged by both Governments, and attended in the background by Dr. Boolell, the Minister of Foreign Affairs, and Mr. Kundasamy, the Mauritian High Commissioner in London.

30. Now, at the end of round one, what has the UK said about this meeting? Ms. Nevill told you that "The UK has never suggested that UK officials were not aware that a misunderstanding had arisen. It is clear that it had, and it is not uncommon in any conversation between two individuals. The UK does not seek to suggest that Prime Minister Ramgoolam's stated understanding and recollection as to what was said was not genuine, nor to make light of it, but it does not accept that that was what was said by Prime Minister Brown. The Attorney General last week assured the Tribunal that he was satisfied that no commitment to put the MPA 'on hold' had been given by the Prime Minister."[45]

31. So, the UK uses words like "does not accept". But as I asked previously, what evidence are those assertions based on? It is simply not enough, we say, for a party to assert that it "does not accept" evidence which is unhelpful to it.

32. The UK presents the letter of the 15th of December 2009[46] as an attempt to clear up what it describes, rather condescendingly perhaps, as the "confusion". But you will note that the letter does not refer to the meeting between the two Prime Ministers.

33. You will recall that Ms. Nevill went on to claim that none of Mauritius' subsequent communications referred to Mr. Brown's undertaking of the 27th November.[47] But of

[43] Transcript, p. 502/8.
[44] Mauritius Folder Tab 2.8, para. 8
[45] Transcript, p. 576/14-21.
[46] MM Annex 156

course, as we have now seen, the Mauritian Foreign Minister raised it in clear terms in the letter of the 30th of December 2009.[48] And successive counsel for the UK were pressed to tell the Tribunal whether the UK ever answered that letter. Ms. Nevill and Mr. Wordsworth were reluctant to commit to an answer, so the task finally fell, late on Friday, to Professor Boyle. The straightforward answer, we say, is "no". But relying on what he described as a British culture of understatement,[49] Professor Boyle tried ingeniously to present the UK's Note Verbale of the 15th of February[50] and its letter of the 19th of March[51] as answers to the point, but we suggest that this attempt failed.

34. Mauritius observes that, regardless of whether or not the UK hoped that the matter would be discussed in some further round of talks, it is very surprising that it did not see fit to place something on the written record in response to this very serious claim.

35. Then on Saturday, the United Kingdom produced a series of emails which touch on the conversation between the two Prime Ministers. Mauritius was greatly troubled that new evidence should be introduced at this very late stage, particularly when it must have been available to the United Kingdom throughout these proceedings. But Mauritius did not object to the admission of this evidence, as we did not wish the Tribunal to be denied the benefit of further information on the point, however belatedly supplied. Since this could and should have been addressed during the first round, however, we are grateful to the Tribunal for giving us the opportunity to hear first what the United Kingdom says about these before we respond ourselves. Because that procedure has been adopted, I will not address the emails in any detail at this stage, although we do have points to make about them. I simply note that they underline the fact that Prime Minister Ramgoolam was extremely clear with UK

[47] Transcript, p. 578/8-12.
[48] MM/157
[49] Transcript, p. 887/24-25.
[50] MM Annex 161
[51] MM Annex 163

officials at the time about the content of Mr. Brown's undertaking at the meeting of the 27th of November, just as he has described it in his Witness Statement. And Mauritius regrets that the UK has sought to address this serious matter through the belated submission of fragmentary emails and not by way of signed witness evidence.

36. Moving towards the final "MPA" decision, we have seen that the consultation closed on the 5th of March. And we have also seen that, as late as the letter of the 26th of March, the UK was claiming that "no decision on the creation of an MPA has been taken yet", and that "the United Kingdom is keen to continue dialogue about environmental protection within the bilateral framework or separately. The public consultation does not preclude, overtake or bypass these talks."[52]

37. But the letters are partly discussed in answer to Judge Greenwood's questions. This letter really fails to give any idea of how imminent a decision on this subject was, and you've seen from Prime Minister Ramgoolam's statement how surprised was when he received Mr. Miliband's telephone call on the 1st of April. If, as the UK now seems to argue, it was serious about obtaining Mauritius' views on the "MPA" at a third round of talks, then, judged on the 26th of March, when exactly were those talks supposed to take place? In the five days between that and the 1st of April?

38. Now, the United Kingdom told you that the consultation response was the biggest one ever for a UK government consultation, involving some 250,000 people. We understand that that doesn't mean 250,000 individual responses, because some responses came by way of petitions or, for example, submissions that were signed by a number of individuals, but is was still a very substantial number of individual responses. And one would think, therefore, and there is this outstanding question from the Tribunal, about the report, the assessment report, that was done on those consultation responses. One would think it would have taken

[52] MM Annex 164

some time to assess their answers and to think the matter through. We await the answer to the question of when the analysis of the consultation responses was completed. But as you have seen, in fact, the UK moved with extraordinary speed, announcing the "MPA" only 26 days after the response closed. And this prompted Judge Greenwood to ask Ms. Nevill, "What was the hurry?"[53]

39. Mr. President, that was a question which was also asked in the UK Parliament. The 1st of April 2010 fell during the Easter Parliamentary recess. On the very first day sitting day after Easter, the 6th of April, members of both Houses insisted on having the matter debated as a matter of urgency. We referred to this debate at paragraph 4.81 of the Memorial, and we have included its text at Tab 2.1 of your new folder for today. The debates make interesting reading, and we invite you to look through them fully in due course, but for now I'll draw your attention to some key passages.

40. I should just explain this is cut and pasted from the Hansard web site on Parliament's own web page but that doesn't produce a very legible readout, so we've reformatted it so that you can actually see the text more clearly. So we see that Jeremy Corbyn, who is a Labour Member of Parliament and the chair of the All-Party Parliamentary Group on Chagos, has tabled the urgent question to ask the Foreign Secretary if he will make a statement on the declaration of a Marine Protected Area around the Chagos islands, and what consultation took place before the announcement was made. There is an initial statement by the Minister, but the passage I would then take you to is just below the second hole punch. Mr. Corbyn says, "The Minister must be aware that on 10 March I was given an undertaking in a Westminster Hall debate that consultation with interested parties, Members of Parliament and the Chagossian community would take place before an announcement was made. No such consultation has taken place, and there has been no communication with me as chair of the

[53] Transcript, p. 593/2.

All-Party Group on the Chagos islands or with the Chagossian communities living in Mauritius, the Seychelles or this country."

41. If we go over the page, and I apologize for just skipping along but just in the interest of time, I will take you to what we consider as some of the most helpful passages – if we go over the page, Mr. Bryant, we see has an answer, and there is a passage which we take you to. It's the third paragraph down, beginning "I apologise to my hon. Friend and to the House…". He says, "I apologise to my hon. Friend and to the House because it became clear to us that, notwithstanding the commitment made to him in the debate" – that's the debate of the 10th of March – "no further information could have come in that would have made any difference to the decision on the protection of the marine environment in the British Indian Ocean Territory."

42. And Mr. Corbyn pressed Mr. Bryant on whether the Foreign Affairs Committee had been consulted about the decision, to which Mr. Bryant answered, if we skip over to page 4, and again I apologize, this is all interesting reading but in the interest of time, I'm just taking it quite quickly. If we go across to page 4, following the red number in the bottom, this again is Mr. Bryant, 8 lines down, after the word "interruption", and it seems from the transcript that this was a fairly heated debate at some points: "The hon. Gentleman asks from a sedentary position whether the Foreign Affairs Committee was consulted. The whole House was consulted, the country was consulted, and we extended the consultation process by weeks so that others could take part."

43. This appears to be a statement that, in the view of the Foreign Office, everybody in the world had been consulted in the sense that they were free to file their own response to the Consultation Document. It appears from this perhaps slightly evasive answer that the Foreign Affairs Committee was not specifically consulted on the decision and, indeed, we don't see a trace in the emails of the 30th of March to the 1st of April of any indication that that

committee, or any other Parliamentary committee, had been consulted before the decision was taken.

44. Now, at the same time as this was happening, the matter was being debated in the House of Lords. And if we go forward a few pages to page 9, we've included the transcript of the debate in the House of Lords. Lord Wallace, a Liberal Democrat peer, tables the question:

"To ask Her Majesty's Government why the Foreign Secretary announced the establishment of a marine protected area in the British Indian Ocean Territory during the Easter Parliamentary Recess."

45. The representative of the Government in that debate was Baroness Kinnock of Holyhead, who was the Minister of State at the Foreign and Commonwealth Office. And she responded to the question posed by the Lord Wallace of Saltaire which you see about halfway down. She elaborates on the question which he has tabled, and he says, "I thank the Minister for her reminder that this was a 1 April announcement. Does she recall that in the 10 March debate in the other place the Foreign Office Minister who replied promised to keep Parliament informed before a final decision was taken? Does she also recall that the head of the consultation exercise is on record as saying that it would take three months after the closure of the consultation to complete a report? Is she also aware that a European Court of Human Rights assessment is still pending on this and that the Government have not yet given any indication as to how they will manage to enforce this MPA? What then is the hurry, with these many uncompleted consultations and questions, for the Government to rush this out on Maundy Thursday?"

46. Well, before I go to Baroness Kinnock's answer, we have before that, if you go over the page to page 10, we have another peer, Lord Howell of Guildford saying: "One body feeling that they were not well consulted or worked with over the marine park project are the Government of Mauritius, in whose territory part of the marine park lies. Is the noble

Baroness aware of the considerable anger and dismay that has been expressed by Mauritian government authorities about how they were not consulted and not involved in the whole process that the Minister described, and will she comment on that?"

47. And the answer given by Baroness Kinnock is in the paragraph immediately following:

"My Lords, I am aware that that has caused considerable discussion in the lead-up to an election in Mauritius. They consider the impact on Mauritius to be extremely serious, but" – and then here we see the point that's been made by the UK on a number of occasions – "the establishment of an MPA would have no effect on our commitment to cede the territory to Mauritius when it is no longer needed for defence purposes." – the stock words that we've seen so many times before. – "I know that that is a sensitive issue, and, indeed, an election issue, but our commitment to Mauritius remains unaffected." Just for completeness at the next tab –

ARBITRATOR GREENWOOD: Ms. Macdonald, I'm sorry to interrupt you again.

MS. MACDONALD: Yes.

ARBITRATOR GREENWOOD: This is always one of the difficult things with British parliamentary figures because they go to the House of Lords and they change their names.

MS. MACDONALD: Yes.

ARBITRATOR GREENWOOD: But can I just be clear about two of the people who feature in this. The first is in the Lords' debate, Lord Howell of Guildford. Am I right in thinking that's the Lord Howell who became a Minister at the Foreign Office in the coalition a few weeks later?

MS. MACDONALD: Yes. I believe that to be the case.

ARBITRATOR GREENWOOD: Thank you.

And then in the House of Commons debate, there's a question asked by Meg Munn, who was a Labour MP.

MS. MACDONALD: She was.

ARBITRATOR GREENWOOD: The name is familiar. There is something in one the emails earlier on about I suggest you send this, these details to Meg Munn.

And from that I had assumed she was a PPS or something like that, but the question is asked as though she's just a back-bencher.

MS. MACDONALD: Yes, she does feature in the emails, and I haven't cross-checked that reference.

ARBITRATOR GREENWOOD: Well, I don't suggest you try to do it on your feet.

MS. MACDONALD: Yes.

ARBITRATOR GREENWOOD: I'm trying to avoid –

MS. MACDONALD: I did spend some time over the weekend Googling these various individuals in this debate, just to understand who they were, but we will check up and find on the point of Ms. Munn –

ARBITRATOR GREENWOOD: Thank you. The United Kingdom would be able to clarify the matter as well. It's just a matter of curiosity and to make sure I've properly understood who is who in this.

MS. MACDONALD: It did strike me when I was just – I mean, obviously sometimes – I apologize, it's in the UK's dramatis personae. I don't have a copy of that in front of me. Oh, sorry, it's in Mauritius' dramatis personae. So, hopefully that has been answered.

What we do see – I mean obviously sometimes Hansard particularly in the Commons is easier because it indicates party affiliations. But what we see when we investigate affiliations of those speaking in the House of Lords as well is that there was real cross-party

criticism being raised of the measure. It doesn't appear to divide at all along party political lines, but politicians of all three main political parties were joining in expressing their serious concern about what had taken place.

48. So we have included the 10 March debate just at Tab 2, and that's longer debate, and we certainly do not ask you to look at it all now. We just put it in there for completeness because there's reference obviously that you're seen on the 6th of April.

Is there an empty tab in Judge Hoffman's folder?

(Pause.)

So are you missing the previous documents as well?

I apologize for that, and we'll ensure that you are provided – I'm sorry that I hadn't picked up when I had been speaking that you didn't have those in front of you. I apologize.

We put this in for completeness simply because you see on the 6th of April politicians referring back to this debate on the 10th of March and the commitment which they considered to have been broken. And where we see the commitment being recorded is on page 29, if we follow the red letters. As I say, it's a lengthy debate. But we see a Mr. Lewis, that's Ivan Lewis, a Foreign Office Minister, saying, and this is the second-to-last paragraph, which starts with "I'm not being coy": "I am not being coy when I say that the consultation genuinely closed last Friday," – that was the 5th – "and we are not in a position at this stage to announce its outcome or how we intend to proceed. However, I would like to place on record that it is important that hon. Members are briefed – I suspect that this may be the responsibility of someone else, who will, I hope, come from the Labour party – when the Government decide what to do next about the marine protected area. I am cognisant of the fact that hon. Members feel that there was not sufficient consultation with parliamentarians on the Chagossians in the past before apparently unilateral decisions were made. I therefore put on record a commitment to

make sure, wherever possible, that interested hon. Members are briefed before we make final decisions on the marine protected area."

49. Of course, as it turned out the Government broke that promise, and Parliament was never briefed before the decision was taken, which is what led to the anger and dismay expressed in the debates of the 6th of April. And the promise given by the Government on the 10th of March was broken because, as Mr. Bryant explained and as you've seen, on the 6th of April, in his view, after 10th of March "it became clear to us that, notwithstanding the commitment made to him – that is to the hon. Member – in the debate, no further information could have come in that would have made any difference to the decision on the protection of the marine environment in the British Indian Ocean Territory."

50. "No further information could have come in that would have made any difference" – perhaps those words mark a convenient point to turn to Article 283.

Article 283

51. The UK devoted a whole speech to the legal requirements of that Article, and although Mr. Wood accused Mauritius of a "cavalier" attitude to its requirements,[54] on careful analysis we would submit that the United Kingdom has said nothing to persuade you that the hurdle should be any higher than Mauritius has described it. Mr. Wood explained that Article 283 was part of the "package deal" and was included in order to secure acceptance by reluctant States of the Convention's compulsory dispute resolution procedures. So far so good – there is no dispute about any of that. But Mr. Wood engaged very little with the actual caselaw on Article 283, describing it as "not entirely satisfactory"[55] and saying that the direct Article 283 cases "turn on their own particular facts and do not assist [Mauritius'] case."[56] Now every case turns on its own facts, in one sense, but this tends to be the phrase that advocates

[54] Transcript, p. 748/8.
[55] Transcript, p. 737/9.
[56] Transcript, p. 738/8-9.

use to describe cases which are not helpful to their argument. Instead, Mr. Wood relied heavily on the Anderson article at Tab 55 of the UK folder. I don't ask you to turn that up just now, but I would, in due course, draw your attention to the very final paragraph of that article, which Mr. Wood didn't take you to, and that paragraph says: "Both the International Tribunal for the Law of the Sea and arbitral tribunals have shown a reluctance to find that article 283 has not been complied with. […] The requirement imposed by article 283 is not to enter into a lengthy discussion or to make genuine attempts to reach a compromise over the means of settlement. The obligation is simply to exchange views or to consult, and to do so expeditiously. So long as the applicant can produce some evidence of relevant exchanges, article 283 is unlikely to act as a bar to proceedings. However, it forms part of the Convention and should be applied…"

52. So the parties agree that Article 283 forms a threshold jurisdictional requirement, and Mauritius must satisfy it. Mauritius has not sought to ignore it or to circumvent it. But the UK showed you no authority, judicial or otherwise, to indicate that the hurdle is a high one, and even the article relied on so heavily by Mr. Wood indicates the hurdle's very modest height. It can be stepped over lightly, we would suggest – it does not need to be jumped. In my submission, there is nothing in this article or indeed in the caselaw to detract from the propositions which I put to you in the first round and which I do not repeat here.

53. Possibly the only area of implicit legal disagreement between the Parties relates to the need to refer to a specific treaty or its provisions. The UK's factual submissions on Article 283, advanced by Mr. Wordsworth, were replete with criticism of Mauritius for not referring to UNCLOS and its specific provisions. In arguing in this way, the UK appears to ignore the clear words of the International Court in *Georgia v Russia* that "it is not necessary that a State must expressly refer to a specific treaty in its exchanges with the other State to be able

later to invoke that instrument before the Court."[57] It follows from this, of course, that a State need not refer to specific treaty articles either. Rather, as the Court went on to say, "the exchanges must refer to the subject-matter of the treaty with sufficient clarity to enable the State against which a claim is made to identify that there is, or may be, a dispute with regard to that subject-matter."[58]

54. Now, I can deal with these legal issues briefly because this is not, in our submission, a complex or a difficult point of law. The real question is the application of the principles that Mauritius has identified to the facts. On that you were addressed by Mr. Wordsworth. He sketched out a highly formalistic legal framework[59] which, on the facts of this case, would mean that nothing said or done by Mauritius before the 1st of April 2010 can in any way contribute to fulfilling the requirements of Article 283. On this analysis, you can simply disregard the record before that date. We say that this approach is unrealistic and finds no support in the caselaw. And indeed, Mr. Wordsworth cited no authority for his analysis.

55. So, although the UK's position is therefore that everything before the 1st of April 2010 is entirely irrelevant to Article 283, Mr. Wordsworth went on to carry out a good deal of textual analysis of the record before that date. His position seems to be that Mauritius' communications in that period are simultaneously irrelevant and deficient.

56. Before addressing those criticisms, briefly, a word about the UK's selection of documents. They placed in Tab 56 of their folder, the documents to which I specifically referred in my Article 283 oral submissions, ostensibly to help you in assessing the strength of Mauritius' case on the point. This would be a sensible approach if the written pleadings did not exist, and if we had not made extensive speeches on the facts before I addressed you on Article 283. But as I emphasized to you in my submissions on Article 283, that they were not

[57] *Georgia v Russia*, para. 30. UKCM, Authority 37.
[58] *Georgia v Russia*, para. 30. UKCM, Authority 37.
[59] Transcript, p. 745/3 - 753/18.

intended to supplement or replace either the written pleadings or the factual speeches and nor could they have done, given the time available and our desire not to bore you with repetition.

57. The proper approach, in Mauritius' view, is to approach the record as a whole. The UK's approach does very little justice to this complex, long-running dispute. Mauritius' repeated references to its specific rights in the Archipelago, including its fishing rights, are dismissed by the UK as simply part of its overarching claim to sovereignty over the Chagos Archipelago. But even then on what it calls "the sovereignty claim" – in truth a claim concerning whether the UK is or is not "the coastal State" – the UK will not accept that the requirements of Article 283 have been met, even in the face of documents where Mauritius specifically said that the UK was not the coastal State for the purposes of declaring maritime zones.[60] And the UK still offers no explanation for the *volte face* on this point between its pleadings at bifurcation stage and its Counter-Memorial.

58. Mr. President, I do not propose to go back through the record at this stage. But what it shows, I would submit, is that by the time Mauritius initiated these proceedings, the "MPA" had been unilaterally imposed on it, in violation of a commitment given at Prime Ministerial level. Mauritius had made it clear for a long period of time that, in its view, the UK lacked any sovereign rights over the Chagos Archipelago, including the right to declare maritime zones. It had made it clear that such a measure would violate rights which Mauritius had asserted for many years, of which the UK was fully aware, and which in many cases were self-evidently incompatible with a no-take MPA.

59. The UK takes issue with Mauritius' assessment that, by the time it brought this claim, further exchanges were futile. But that is the judgment that Mauritius made, and I would suggest that it was entirely reasonable in the circumstances. The "MPA" had been rushed through. The

[60] Letter dated 1 December 2005 from the Prime Minister of Mauritius to the Prime Minister of the United Kingdom, MM, Annex 132; Letter dated 4 January 2006 from the Prime Minister of the United Kingdom to the Prime Minister of Mauritius, MM, Annex 133.

new Government was keeping it in place. And it had become clear, we say, that if this important, long-running dispute was to be resolved, it would have to be resolved in this forum, before you, and not in meeting rooms in Port Louis or London.

60. Mr. President, Members of the Tribunal, in my submission there is nothing to suggest that the framers of the Convention, or those who have subsequently shaped and developed its caselaw, would intend Article 283 to pose any barrier to an examination of the merits of this case.

60. Mr. President, that concludes my submissions, happily within time.

61. Can I ask whether members of the Tribunal have any questions?

PRESIDENT SHEARER: No, I think not, Ms. Macdonald.

MS. MACDONALD: In that case I thank you, Mr. President. We can take the break now –

PRESIDENT SHEARER: Take the break now.

MS. MACDONALD: And after that I would ask you to call Professor Crawford.

PRESIDENT SHEARER: Thank you very much.

Well, I think it will be a 20-minute break, rather than 15, and we'll resume at five past 11.

Thank you.

(Brief recess.)

PRESIDENT SHEARER: Mr. Crawford, before you begin, the Tribunal notes that there's been a change in your status, too, since our last meeting in Dubai, and it congratulates you on the Award of the Companion of the Order of Australia.

PROFESSOR CRAWFORD: Thank you.

Thank you, Sir, no longer Australia's highest civic honor. That's an in-joke.

Mr. President, Members of the Tribunal, just to respond to Judge Greenwood's question before the break, Ms. Munn was the Parliamentary Under Secretary of State, UK Foreign and Commonwealth Office, in our dramatis personae.

ARBITRATOR GREENWOOD: Thank you. I gather she left office in October 2008, which explains why she's asking a question as a back-bencher in the debate. That's what was puzzling me.

Crawford statement

Mauritius v United Kingdom

Reply of Mauritius

Speech 3: The United Kingdom is not the coastal State: Merits

Professor James Crawford AC SC

I. Introduction

Mr. President, Members of the Tribunal:

1. I will deal with three questions in this reply: first, the status of the Chagos Archipelago as part of Mauritius before 1965; secondly, the applicability of the law of self-determination at that time, and thirdly, the validity of Mauritius' purported consent to excision. Professor Sands, who follows me, will deal with your jurisdiction to decide these questions.

II. The status of the Chagos Archipelago as part of Mauritius before 1965

Mr. President, Members of the Tribunal:

2. The Chagos Archipelago formed part of the territory of Mauritius. You've only to read the documentary record to see that all parties proceeded on the basis that the Archipelago was being separated from the colony. To take only one example, the minutes of the meeting of the Defence and Overseas Policy Committee held on the 23rd of September 1965, at 4:00 p.m., produced by the United Kingdom last Friday, refer to the 'detachment of the islands' and to their being handed 'back' to Mauritius. You cannot detach something not previously attached whether

it's a retina or an archipelago. You cannot hand something back if it did not originate there – whether an island to a colony or a letter proposing marriage to a rejected suitor. No one at the time pretended that the excision was okay because it was not an excision.

3. The UK repeated last week its argument that the Archipelago was attached to Mauritius merely 'for reasons of administrative convenience, not because it was seen as part of a territorial unit.'[61] I pause, at Ms. Macdonald's request, to correct Sir Michael's allegation that she mistakenly asserted that this argument was concocted for the purpose of the case.[62] That's not what she said: she drew attention to the fact that the argument was, 'taken directly from the bygone world of 1960's British colonialism, and it is no more justified now than it was then.'[63]

4. The burden of Sir Michael's remarks was that because the UK termed the Archipelago a dependency before 1965, you should not consider it a part of Mauritius for the purposes of the law of self-determination. In response I would make two points. First, the internal law and practice of the UK was not consistent: the UK regarded Mauritius as including the Archipelago for many purposes. Secondly, whatever the position under what Sir Michael himself describes as the 'finer points of British colonial constitutional law,'[64] the reality was that the Archipelago was treated as a part of Mauritius by the UK so far as the outside world was concerned.

5. As to my first point, the status of the Archipelago under British colonial law and practice does not support the UK position. Even Sir Michael acknowledges that 'for certain purposes … the Chagos Archipelago seems to have been treated as part of the territory of Mauritius.'[65]

6. In fact, successive constitutions of the colony of Mauritius defined it as including its dependencies. For example, the Constitution of 1964 – the last before the excision – has a definition of Mauritius which reads: '"Mauritius" means the island of Mauritius and the

[61] Transcript, Day 5, p. 511, lines 10-11.
[62] Transcript, Day 5, p. 511, line 1.
[63] Transcript, Day 2, p. 84, lines 22-23.
[64] Transcript, Day 5, p. 511, line 6.
[65] Transcript, Day 6, p. 640, lines 23-25.

Dependencies of Mauritius.'[66] Persons born in the Archipelago were citizens of Mauritius. This contrasts with the usual relationship between the UK and its direct dependencies, where a separate citizenship is provided for the dependency. Further, the law of the Archipelago was essentially the law of Mauritius: the Governor of Mauritius extended laws of Mauritius to the Archipelago, and there was no separate law-making body. After it was excised it had to be made into a separate colony.

7. In fact, the UK seems to have been liberal with the term 'dependency' – even Rodrigues, itself a dependency, was given its own dependencies[67]- dependencies are dependencies, perhaps they should have been excised back to Mauritius- even though these were tiny uninhabited islands. Whether an island was determined a part of the main island or a dependency seems to have been fairly arbitrary. The convenience of administering the Archipelago together with Mauritius must have been real, since it was done for 150 years. But whether or not bureaucratic inertia contributed to that position, the close connection between Mauritius and the Archipelago for such a length of time would undoubtedly have resulted in the Archipelago becoming independent as part of Mauritius, but for the excision.

8. My second point is that in truth these subtleties of UK colonial constitutional law, even if they were real, which they're not, were not determinative. The UK treated the Archipelago as part of Mauritius in its dealings with the outside world. Sir Michael Wood conceded the distinction between what was done internally and what was done externally.[68] For example, when the UK extended the application of treaties to its overseas territories, a reference to Mauritius in the relevant list of territories would be taken as extending the treaty to the Archipelago and not simply the main island.[69] This is illustrated by the extension of the European Convention on Human

[66]Section 90(1).
[67] The Interpretation and General Clauses Ordinance 1957: section 3(1), '"Rodrigues" means the Island of Rodrigues with the Dependencies thereof'.
[68]Transcript, Day 5, p. 517, lines 8-9.
[69]Transcript, Day 6, p. 642, lines 9-11.

Rights to Mauritius. As the UK accepted in its pleading in the recent case in Strasbourg, the notification extending the Convention to Mauritius included the Archipelago though there was no express mention of it.[70]

9. Crucially, when the excision proposal was under consideration the UK continued to treat the Archipelago as a part of Mauritius. Indeed, otherwise, its actions were incomprehensible. While affirming the legal right to detach the Archipelago unilaterally and without the consent of the Council of Ministers, the UK went to great lengths to try and secure this consent. It gave Mauritius £3 million in compensation – compensation for loss of territory, not for resettlement of the residents, and certainly not for the purposes of 'securing a new source of income for their economy', as Sir Michael so unfortunately asserted; it gave undertakings with regard to fishing, mineral and oil rights. Most curious of all – if the UK did not regard the Archipelago as belonging to Mauritius – it promised that the Archipelago would 'revert' to Mauritius when it was no longer needed for defence purposes. It was in Mauritius that the majority of the inhabitants were resettled, and the UK made legal provision for them to become Mauritian citizens on independence. The reality was that the Archipelago was treated as part of the territory of Mauritius, and it is as an integral part of Mauritius that it must be regarded for the purpose of the law on self-determination. I turn to that law.

III. Status and effect of the law of self-determination at the time

10. In his presentation last week, Sir Michael repeated the UK's contention that the right to self-determination in respect of colonial territories was not part of customary international law at the time of the excision or even at the time of Mauritius' independence. His view of custom, I must say, is static to the point of catalepsy. Sir Michael is now trying to persuade you that it was only in 1970, with the adoption of the *Friendly Relations Declaration*, that the right was established in international law.[71] He might have been tempted to push that arbitrary line even

[70] Transcript, Day 6, from p. 641, line 25, to p. 642, lines 1-4.
[71] Transcript, Day 6, p. 710, lines 4-6.

further into the future if the International Court's clear affirmation of the legal character of self-determination in the *Namibia* advisory opinion a year later (with its reference to previous practice) did not debar him from doing so.

11. So Sir Michael adopted 24 October 1970 as the date on which self-determination emerged, like Athena, fully formed and fully-armed into the world. The implication is that it only became a legal right applicable in the colonial context once decolonization was more or less over and the international community had little need for it – like an exhausted marathon runner arriving at the stadium to find only the cleaners cleaning it up. The creation of dozens of newly independent States through decolonization in the 1960s apparently had nothing to do with the law of self-determination. Indeed, he might add, the colonial powers – which he cutely reclassifies as 'specially affected States'[72] – only recognised the right to independence of peoples under their domination applies *ex post facto*. According to Sir Michael, independence was granted *ex gratia* – there speaks the colonial voice – because the right that everyone recognises today did not form part of the actual process of granting of independence to the great majority of non-self-governing territories. It was as if the non-self-governing territories gate-crashed a diplomatic reception, to which, it was afterwards conceded, they *should* have been invited!

12. Mr. President, I have addressed the Tribunal on this question in the first round, and I do not need to repeat myself. I will simply focus on a particular point that was central to the UK's case as put last week: the attempt to undermine Resolution 1514. I'll make three responses.

13. First, Sir Michael refers to the jurisprudence of the Court, especially the *Wall* opinion, to suggest that it was the *Friendly Relations Declaration*, not the *Colonial Declaration*, that fully articulated the right to colonial self-determination in international law.[73] Now, the *Wall* opinion concerned a situation of foreign occupation, the occupation of Palestine territories by Israel. It should come as no surprise that in a case concerning foreign occupation the Court and the

[72] Transcript, Day 6, p. 707, line 22.
[73] Transcript, Day 6, p. 709, lines 1-18.

participants in the proceedings would find it more helpful to refer to the *Friendly Relations Declaration*, which is more general than the *Colonial Declaration* and had a quite different agenda.

14. In contrast, in the *Western Sahara* advisory opinion – a central case on decolonization – it was the *Colonial Declaration* that the Court applied as the main benchmark for its analysis. The Court begins by noting that '[t]he principle of self-determination as a right of peoples, and its application for the purpose of bringing all colonial situations to a speedy end, was enunciated in [the *Colonial Declaration*]'.[74] The *Colonial Declaration*, the Court added at paragraph 57, 'provides the basis for the process of decolonization which has resulted since 1960 in the creation of many States which are today Members of the United Nations'.[75] Sir Michael may try to persuade you that 'the basis' does not mean the 'legal basis': the judges in 1975 would have been perplexed by that suggestion. Later in the opinion, the Court also refers to the *Friendly Relations Declaration*, but this is only to reiterate the rules enunciated in the *Colonial Declaration* for colonial territories and to establish the continuity between the two instruments.[76]

15. Secondly, Sir Michael has pointed to 'substantive differences' between the *Colonial Declaration* and the *Friendly Relations Declaration*. These are said to demonstrate that, '[it] cannot be said that the customary law of self-determination became established in the course of the decade of the 1960s'.[77] He first claims that while the *Colonial Declaration* is absolute in its prescription of independence, the *Friendly Relations Declaration* is flexible, envisaging different modalities for implementation of the right. But this is to ignore General Assembly Resolution 1541(XV), the twin sister of the *Colonial Declaration*, adopted on 15 December 1960. Resolution 1541 lays down in Principles VI to IX the modalities of the exercise of self-determination to which the *Friendly Relations Declaration* later referred – independence, free

[74] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, para. 55.
[75] Ibid, para. 57.
[76] Ibid, para 58.
[77] Transcript, Day 6, p. 710, lines 10-11.

association, integration with an independent State. In 1970, the *Friendly Relations Declaration* added to this list the choice to adopt 'any other political status freely determined by a people'.[78] But there's full continuity between the two instruments, a point the Court in *Western Sahara* made when it noted that the 'any other political status' proviso merely 'reiterates the basic need to take account of the wishes of the people concerned'.[79]

16. A further 'substantive difference' that Sir Michael identified in the *Friendly Relations Declaration* is 'remedial self-determination'.[80] He was of course referring to the saving clause according to which self-determination is without prejudice to the territorial integrity of 'sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples'. The *Colonial Declaration* does not contain a similar reference, as Sir Michael pointed out.

17. But this only serves to demonstrate that the *Friendly Relations Declaration* was part of a very different agenda when compared to the *Colonial Declaration*. By the late 1960s, it was beyond question that self-determination applied in the colonial context so as to confer a right on peoples to decide on their political status including a right to independence. Hence the unequivocal reaffirmation in the *Friendly Relations Declaration* of the rules already proclaimed in the *Colonial Declaration*. By the late 1960s, the law of self-determination was facing a new question, whether the right to self-determination applied outside the colonial context. That saving clause hinting at remedial self-determination in the *Friendly Relations Declaration* does not cast any doubt on the rules laid down for non-self-governing territories in the *Colonial Declaration*.

18. Third, Sir Michael failed to remind you that the 1982 Convention itself makes no less than three references to the *Colonial Declaration*. The first of these is in Article 140, entitled 'Benefit of Mankind', which prescribes:

[78] UNGA Res 2625(XXV).
[79] *Western Sahara*, Advisory Opinion, ICJ Reports 1975, para 58.
[80] Transcript, Day 6, p. 710, lines 22-23.

'[a]ctivities in the Area shall … be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States… and taking into particular consideration the interests and needs of developing States and of peoples who have not attained full independence or other self-governing status recognized by the United Nations in accordance with General Assembly Resolution 1514 (XV) and other relevant General Assembly resolutions.'

The other two references are in Article 305, which refers to 'all self-governing associated States which have chosen that status in an act of self-determination supervised and approved by the United Nations in accordance with General Assembly Resolution 1514, and 'all territories which enjoy full internal self-government, but have not attained full independence in accordance with General Assembly Resolution 1514'.

19. Then there is Resolution III appended to the Final Act of the Conference, which states in paragraph 1(a) that: 'In the case of a territory whose people have not attained full independence or other self-governing status recognized by the United Nations, or a territory under colonial domination, *provisions concerning rights and interests under the Convention shall be implemented for the benefit of the people of the territory* with a view to promoting their well-being and development.' [emphasis added]

Churchill and Lowe characterise this as a '[s]pecial provision ... concerning the beneficial ownership of the resources of maritime zones of non-independent territories'.[81]

20. Now, it's not necessary to go into the controversial history of Resolution III, which – in its prior incarnation as Article 136 of the ISNT – was in Rosenne's words 'a highly divisive issue'.[82] Mauritius does not need to rely substantively on that proposal or on Resolution III; we rely on specific and binding commitments. We don't need general auditory phrases. But the totality of these provisions demonstrate that the drafters of the 1982 Convention did not share to any degree

[81] R.R. Churchill & A.V. Lowe, *The Law of the Sea* (3rd. ed.), 1999, p. 157.

[82] Center for Oceans Law and Policy, University of Virginia Law School, *United Nations Convention On The Law Of The Sea 1982: A Commentary*, Vol. V, p. 482.

Sir Michael's scepticism about the status and significance of the *Colonial Declaration*. They recognised that, as regards issues of decolonization and the self-determination of colonial peoples, the *Colonial Declaration* was and is the controlling text.

21. Before moving on, a quick word on territorial integrity, *uti possidetis* and persistent objection. In my presentation in the first round I established that the territorial integrity of colonial territories is a guarantee attached to the right of colonial self-determination. This is, of course, reflected in the *Colonial Declaration*, paragraph 6, and it was applied contemporaneously by the General Assembly in Resolution 2066(XX). Territorial integrity is a logical consequence of the right to self-determination – if the law were to authorise colonial powers to dispose of colonial territory in the lead-up to independence as they please, the right to self-determination would be frustrated or denied to that extent. Sir Michael has not confronted this argument. He replied by challenging the resolutions which we invoked.[83] He referred you to a table included in the Rejoinder, displaying the voting records in those resolutions.[84]

22. Here two points must be made. The first, the table shows that the United Kingdom voted against only three of the relevant resolutions. These three concerned disputes in which the UK was involved or had a direct interest. Resolution 2238 on the situation in Oman, condemned the UK not only for breaching the principle of self-determination, but also for concessions given to foreign monopolies and the maintenance of military bases. Resolution 2353 (XXII) (1967) concerned the dispute between the UK and Spain over Gibraltar. Resolution 1899 involved the condemnation of South Africa for not implementing the Charter in relation to South West Africa. The inconsistency the UK sees in these voting records in no way implicates the integrity of territorial colonies, or suggests that, as a matter of principle, it was being called into question.

23. My second point is that the *Friendly Relations Declaration*, which Sir Michael is happy to recognise as restating customary international law, provides: 'The territory of a colony or

[83] Transcript, Day 6, pp. 711-713, paras. 37-38.
[84] UKR, pg. 101.

other Non-Self-Governing Territory has, under the Charter, a status separate and distinct from the territory of the State administering it; and such separate and distinct status under the Charter shall exist until the people of the colony or Non-Self-Governing Territory have exercised their right to self-determination in accordance with the Charter, and particularly its purposes and principles.'[85]

24. The UK has given various examples of territories which were carved up by colonial administrators.[86] But our concern is not with administrative rearrangements during the long course of colonial rule; it's with the division of colonial territories for such purposes as the removal of the entirety of their population for the creation of military bases in the run-up to independence. As to these, the territorial integrity rule was applied, there was international scrutiny, and the UK was well aware of the constraints. They rushed to get the excision through in the days before the General Assembly could consider 'The Question of Mauritius,' and they were criticised precisely on the apprehended grounds in Resolution 2066.

25. With respect to *uti possidetis*, Sir Michael continues to insist that it 'fully supports the United Kingdom's position,'[87] referring again to *Burkina Faso/Mali*. But *uti possidetis*, the Chamber then said, 'is logically connected with the phenomenon of the obtaining of independence, whenever it occurs, wherever it occurs': its 'obvious purpose is to prevent the independence and stability of new States being endangered by fratricidal struggles provoked by the challenging of frontiers following the withdrawal of the administering power'.[88] *Uti possidetis* may well be invoked by a newly-independent State against a self-determination claim made by another newly-independent State. But it cannot be invoked by a colonial power against a self-determination claim made by a former colony. The implication of the United Kingdom's argument is that by granting independence a colonial power ceases to be responsible for any

[85] UNGA Res 2625 (XXV).
[86] Transcript, Day 6, pp. 643-645.
[87] Transcript, Day 6, p. 698, lines 19-20.
[88] *Burkina Faso/Mali*, ICJ Reports 1986, para. 23.

breaches of the law of self-determination that it may have committed before then. That is not the function of the *uti possidetis* doctrine.

26. As to persistent objection, Sir Michael has suggested that the UK 'did not then – that is in 1965 or 1968 – accept the right of self-determination as a rule of international law'.[89] But a State cannot avoid the application of a customary rule by simply saying that it doesn't 'accept' it. The burden of persistent objection – if it exists in international law, and that is controversial – is onerous. Sir Michael describes the points I made in the first round as 'pretty unconvincing',[90] but offered no response to them. The record speaks for itself, but I would just cite from a 1966 memorandum of an unnamed British official writing about the excision, and this is quoted in two of the *Bancoult* cases in the UK: 'We', that is the British Government, 'could not accept the principles governing our otherwise universal behaviour in our dependent territories; we could not accept that the interests of the inhabitants were paramount and that we should develop self-government there.' He's talking about Mauritius. 'We therefore consider that the best way in which we can satisfy these objectives [I interpolate that by objectives he meant the objectives of getting the Archipelago, removing its population and using it as a military base], when our action comes under scrutiny in the United Nations, would be to assert from the start, if the need arose, that this territory did not fall within the scope of Chapter XI of the United Nations Charter.'[91]

That's the language of evasion; it's not the language of persistent objection.

IV. The UK breached the law of self-determination by excising the Chagos Archipelago

Mr. President, Members of the Tribunal:

27. I turn now to the argument on the character of the 'consent' given to the excision –

ARBITRATOR GREENWOOD: Professor Crawford, before you do that, may I just ask a question. I understand that Mauritius' principal position is that, as of 1965, the principle

[89] Transcript, Day 6, p. 707, lines 22-23.
[90] Ibid, line 23.
[91] Cited in *R v. Secretary of State for Foreign and Commonwealth Affairs ex parte Bancoult* [2006] EWHC 1038 (Admin) para. 27, available at: http://www.bailii.org/ew/cases/EWHC/Admin/2006/1038.html.

stated in Paragraph 6 of Resolution 1514 already formed a part of customary international law and that the United Kingdom had not established itself as a persistent objector to that; that's right, is it not?

PROFESSOR CRAWFORD: That's right.

ARBITRATOR GREENWOOD: But let us suppose for the sake of this discussion that the critical date of which – perhaps "critical date" is not the right expression – the date at which 1514 Paragraph 6 comes to reflect customary international law is after 1965, but before independence in 1968. Did I understand you to be saying in the first round that even then it would apply to render the excision a breach of international law?

PROFESSOR CRAWFORD: Yes, I said that, sir, and I meant it. For example, the United Kingdom might have had second thoughts and returned the Archipelago to Mauritius or done other equivalent things. It did that with the three Seychelles islands which were taken away and then returned before independence. In that situation, there will be no breach of the principle because there was a *locus poenitentiae* in effect between 1965 and 1968. The crucial date is the date of independence because that's the date the excision has definitive effect.

ARBITRATOR GREENWOOD: Well, help me a little bit as to how that happens. I take your point about if the United Kingdom had had second thoughts, but, of course, the United Kingdom didn't have second thoughts. On the hypothesis I put to you, the excision of the Archipelago in 1965 would not have been a violation of international law. Therefore, at the time of independence, Mauritius would not have included the archipelago, so, how does – how is the excision retrospectively undone, as it were? Would you undo it so far back as the excision of the Seychelles from Mauritius in 1903? Obviously not. I'm just puzzled as to how that alternative line of argument works.

PROFESSOR CRAWFORD: Sir, customary international law doesn't develop by legislation. It develops by the instantiation of its principles in practice over time. The territorial

integrity rule was articulated as a rule of law as part of the law of self-determination in 1960, and it was applied consistently by the General Assembly in the sense that there was international scrutiny of every case to which it was applicable subsequent to that. The fact that on the first or second occasion when a situation arises and when a question of the application of a rule comes to be examined there might be doubts about it doesn't stop customary international law from working. Or in that case customary international law would be always there after the event, like the exhausted marathon runner. Customary international law is part of the practice of States which evolves through being done, the appetite comes through eating, if I could quote an Italian maxim, which is perhaps inapplicable. The situation is that the United Kingdom in 1965 apprehended very clearly, as you saw from the passage I just read, that the principle would be applied, and it was applied. There wasn't a date between 1965 and 1968 in which the law had changed. The law had been developing, in fact, ever since the enactment of the conclusion of the Charter being articulated through the fifties and coming to effective fruition in 1960.

So, my first response is to deny the hypothesis on which the question is put. My second response is to say it follows from the character of customary international law that you can't point to a precise day on which a particular rule is to be applied. The rule is part of the system, and it's applied through the way States respond to given situations, in the same way that you can't say that the Truman Proclamation was customary international law the day after, but you can't say it wasn't. The question is when the issue did arise.

ARBITRATOR GREENWOOD: Well, I understand that, Professor Crawford, and I grant you that you don't accept the hypothesis, but let's just stick with the hypothesis for a moment. It's also a well-established principle of international law that the legality of an action has to be judged by the law as it stood at the date that the action took place. So, surely the question has to be, was the excision a violation of international law at the time the excision took place, which is November 1965.

PROFESSOR CRAWFORD: Sir, the proposition that the law has to be applied at the date at which an event takes place assumes that you know for certain on the day that an event takes place what the law is. But with customary international law, because it evolves on a continuing basis, you can't know for certain what it is on the same day. You didn't know about the legality of the Truman Proclamation. If the Truman Proclamation was unlawful, then how could it produce legal effects? It was the first time the issue had been raised. What mattered in processing the legality of the Truman Proclamation was the reaction of States to that Declaration, and the reaction was generally favorable or not unfavorable, so we now say the Truman Proclamation was the beginning of a process. We don't have to say that for the territorial integrity rule because the territorial integrity rule had already been articulated in 1960, and when the issue arose in 1965 and then arose in some other cases in the 1960, the rule was applied.

So, in that situation, we can say in retrospect that the rule already existed in 1960, but you can say that because you know what States did at the time. Customary international law was applied as a process of doing things, and the things were done here, and they were apprehended. It was apprehended by the United Kingdom that it would be done. There is no question of reliance by the United Kingdom on the legality of conduct in 1965. There was no reliance at all. There was evasion.

ARBITRATOR GREENWOOD: Thank you. I'm grateful to you for clarifying what Mauritius' argument was. I wasn't clearly clear about it at the end of the first round.

PRESIDENT SHEARER: I'm sorry, Professor Crawford. Judge Wolfrum has a question, too.

ARBITRATOR WOLFRUM: Professor Crawford, I have a follow-up question, if you don't mind. You have so far spoken, if I understood you correctly, with the excision of the Chagos Islands and on the basis of territorial integrity referring to Resolution 1514, but you have not touched upon the taking away of the population from the island at that moment. How do you

see that? Shouldn't we separate between the territorial aspect and the aspect concerning the population?

Thank you.

PROFESSOR CRAWFORD: Sir, it was known at the time that the excision was being carried out for purposes of establishing a military base and for eliminating the population, and you see that in the passage I just took you to. It was an aspect of the illegality.

One might take another case where there was, say, a bona fide territorial dispute between two neighbouring colonies as you could have, and the metropolitan State corrected that situation prior to independence. It would be reacting bona fide in the interest of preventing a further future conflict. The situation was quite different, and the expulsion of the population, which was envisaged in 1965, was an aspect of the illegality. It wasn't a separate illegality. We have never pleaded it as a separate illegality because in that case it wouldn't, especially if it occurred at a later time, necessarily affect the sovereignty issue, and Mauritius' claim is to sovereignty over the Archipelago. Of course, there are associated questions of resettlement, and that was part of the agenda, and of the events, but the principal complaint was of the excision of the Archipelago and associated conduct.

ARBITRATOR WOLFRUM: Perhaps I didn't make myself fully understood. We are sitting here just by chance in an area where, after the First World War, actually in 1920, there was a huge repopulation/resettlement program took place – I don't want to go into that. Hasn't already since then a public international opinio iuris formed that such resettlements should not take place?

PROFESSOR CRAWFORD: There was a great deal of controversy about the exchange of Greek and Turkish populations. Of course, that was done pursuant to a Treaty at a time when that *opinio iuris* had not formed. The application of the rule in the post-1945 period is, of course, another question. We don't need to take a position for the purposes of this case on the

independent illegality of the expulsion of the population because that's not the question that's stated in this case. The question that's at stake in this case is the "MPA".

For the purposes of the Article 300 argument, it could be more relevant because the Article 300 argument implies that when you do something, you do it at least with some relationship to the stated purpose, and as I will say tomorrow, there exists some evidence that one of the stated purposes behind the "MPA" was to prevent the resettlement of the Archipelago under British rule, which would be an unlawful act because it affects Mauritius, independent of the sovereignty dispute. So, we would say that it's relevant, and I will make that point tomorrow in relation to Article 300.

But the Archipelago could be resettled, and the Attorney General said it might be resettled even under British rule, and Mauritius' primary case is that the excision was in itself unlawful, for reasons associated with self-determination in respect of the entire population of Mauritius, though the resettlement was an aspect of the conduct which made things worse, if I could put it in those terms.

ARBITRATOR WOLFRUM: Thank you.

PROFESSOR CRAWFORD: So, I return – perhaps I should say 'revert' – to Sir Michael's argument on the character of the 'consent' given to the excision. The strategy was to fixate on the single word 'duress' and to steer your attention away from the legal framework which applied to the events of 1965. He did not want you to think about the 'deal' that was reached in 1965 or the alleged 'consent' that was given from the perspective of the law of self-determination, because that makes it impossible to justify the 'deal' and the 'consent.' So he invited you to apply the strict standard of duress applicable in the law of treaties, notably under Articles 52 and 53 of the Vienna Convention.[92]

[92] Transcript, Day 6, pp. 714-715.

28. Replying to Judge Wolfrum's question, Sir Michael told you that Prime Minister Wilson's veiled threat of withholding independence on 23 September 1965 'doesn't begin to approach the kind of act ... that vitiates consent. Negotiations, after all, can be tough, things are said, threats are made.'[93] He said that if pressure during the negotiation of a treaty could be subsequently raised to vitiate consent, 'that would be an extremely serious state of affairs' for the stability of treaties.[94]

29. Here the Tribunal should be – if I may say so with respect – extremely cautious. The Vienna Convention does indeed place great weight upon the stability of treaties. The grounds of invalidity it sets out are *numerus clausus* according to Article 42(1). The foundations of the treaty system are the principle of sovereign equality and the corollary *pacta sunt servanda*. States are very different from each other in reality, and we all know that powerful States such as the UK are in a position to put great pressure on newly independent States, especially small ones such as Mauritius, and even on not so newly independent states. They can even tell tribunals under Part XV what is acceptable to them and what is not. But as a matter of law, because States share the attribute of sovereign equality, it's only in the most extreme circumstances that the law will repudiate agreements between States.

30. But the events of 1965 did not concern two independent States. The negotiations did not take place in the realm of sovereign equality. When we look at the events of 1965, we are looking at the relations between a colony and its metropolitan State, a point made by you, Judge Kateka, on Friday. As to these relations, it is not the legal regime of the Vienna Convention that applied. International law has developed a protective regime in relation to colonial peoples. Under this protective regime, metropolitan States are not at liberty to 'frighten' their colonies with hope of independence, nor are they at liberty to impose terms that compromise an ability to decide on the political future of the colony. Under the law of self-determination, the position of the colonial power is one of responsibility as well as authority. The UK emphasises its authority to the point

[93] Transcript, Day 6, p. 715, lines 19-21.
[94] Transcript, Day 6, from p. 715, line 25 to p. 716, line 1.

of denying entirely its responsibility, to the point indeed – you heard Mr. Wordsworth on Friday – of incoherence.

31. We must have clarity as to the applicable legal framework. The basis of our claim is not that consent was vitiated by duress as identified in Articles 52 and 53. Though we stand by the proposition that the term 'duress' provides an apt description of what happened, we have never suggested that the 'agreement' of 1965 was a treaty. You cannot make a treaty with yourself, which is why all of my promises to lose weight are completely ineffective. The Council of Ministers, which signed off on the excision (subject to conditions), was a body presided over by a British official, one which contained nominees as well as elected representatives. Our legal claim is that the 'consent' purportedly given by the Mauritian Ministers did not meet the requirements of the law of self-determination, and is therefore vitiated. Under the law of self-determination with its accompanying guarantee of territorial integrity, the people of Mauritius had the right to decide whether or not to relinquish the Archipelago by expressing its free and genuine will. Under the law of self-determination, the United Kingdom had the obligation to enable the people to make this decision freely and to respect it.

32. Now, our case rests on two factual premises. The first is that consent was given not in accordance with self-determination because the representatives were denied a choice whether or not to retain the Archipelago. Second, consent was not in accordance with self-determination because it was procured by threatening to withhold independence. These premises are interrelated, but they constitute independent grounds for our case. If either of them is true – and we submit they both are – you should conclude that the consent of the representatives was vitiated. Let me address each of them in turn.

33. A question of fact, which is not disputed by the parties – the UK has conceded it over and over again – is that the representatives of Mauritius were not given a choice whether to retain the Archipelago. Whether or not they agreed, the Archipelago would be detached unilaterally by

Order in Council. That was what Prime Minister Wilson told Premier Ramgoolam on 23 September 1965. That was what Colonial Secretary Greenwood reiterated that same afternoon at the meeting at Lancaster House. That's what the UK affirms in its Rejoinder. That's what Sir Michael told you last Thursday when he said in response to Judge Wolfrum's question, 'As a matter of pure law' –pure law means British law, the embodiment of everything that's excellent, I suppose –,'As a matter of pure law, it was always possible for the United Kingdom under its legislation to divide territories, to adjust boundaries, to do whatever it liked.'[95] That's pure law.

34. But reliance on pure law allowing the UK to do 'whatever it liked,' is incompatible with the international law of self-determination. From the perspective of international law, it's not pure law. It's incompatible law.

35. The question before you is whether the consent given by the representatives of a colonial territory to the metropolitan State in a negotiation the outcome of which was predetermined satisfies the requirements of the genuine consent of the people under the law of self-determination. Was it open to the UK to deny a choice to the representatives of Mauritius regarding the excision? I posed these questions in the clearest terms during the first round. Sir Michael spoke about the law of treaties very largely.

36. If Mauritius had been offered the opportunity to retain the Archipelago, then it would be open for the UK to persuade you that the 'consent' was given in accordance with the law of self-determination. As things stand, the negotiations were doomed from the very beginning.

37. Sir Michael has instead repackaged the records and retold the story of the struggle for independence as a story of struggle for money. '[T]he meeting was all about money, all about compensation, and very understandably so.'[96] Those were his words. He said: '[i]f sovereignty over the Chagos Archipelago was of concern to them' – the Mauritian representatives – 'they

[95]Transcript, Day 5, p. 537, lines 22-24.
[96]Transcript, Day 5, p. 529, line 11.

signally failed to mention it during the meeting'.[97] This ignores the passages through which I took you during the first round. I'll refer you to Tab 3.2 of your folder, which is behind the gray tab, but you've seen it before.[98] At page 34 of your folder, the red page number 34, last paragraph, Premier Ramgoolam says, 'we are not interested in the excision of the islands and would stand out for a 99-year lease.' That's at page 34. On the next page, he says the alternative was to give Mauritius independence and let it negotiate the arrangements with the US directly(page 35). At page 37, he 'repeated that the matter should be considered on the basis of Chagos being made available on a 99-year lease.' That's the position the representatives of Mauritius took from the very beginning as regards the Archipelago.

38. The account of the 20 September meeting given by Sir Michael is misleading. Mauritius came to the table suggesting a lease. It was not unsympathetic to the plans to establish a base on Diego Garcia. It is not unsympathetic even today. But it expected – quite properly – to receive continuing compensation for the use of its territory. That was what the 'money talks' to which Sir Michael refers were about – they were 'development talks.' You can see going through the record the concerns by the Mauritian Ministers about the future of the colony.

39. Sir Michael referred you to page [8] of the record, which is at page 40 of your folder, and told you that 'the Colonial Secretary concluded' the meeting by summarising the points that are at the bottom of the page, the first one alluding to Mauritius' willingness to detach the Archipelago. Two clarifications must be made. First, the Colonial Secretary's view on the 'attitude' of the Ministers is not justified by what they had said. Sir Seewoosagur had firmly opposed excision twice at that same meeting. Nothing the Ministers said indicates that they were open to excision. And secondly, that was not the conclusion of the meeting – there were three further pages of minutes in which the Mauritians try to improve the conditions for their agreement, and they were still talking about a lease. The only time that the possibility of excision is mentioned by the

[97] Ibid, lines 13-15.
[98] MM, Annex 16.

Mauritians is at pages [10-11] of the record, pages 42 and 43 of the folder. Sir Seewoosagur suggested a figure for yearly payments to be made by the US, and then he added, at page 43, that he was 'talking in this connection in terms of a lease but if the islands were detached then different figures could easily be calculated'. In other words, if the talks were about excision rather than a lease, the compensation would have to be at a completely different dimension. The Mauritian leaders were simply doing their best in difficult circumstances to secure the economic survival of the new State. They did not freely consent to something as to which they were, explicitly, given no choice.

40. Well, you know how the negotiations ended. They received £3 million in return for the excision of the Archipelago, plus the undertakings given in 1965 – undertakings which, according to Mr. Wordsworth, the UK did not intend and didn't give and which are not binding on them! The 3 million they have claimed is less than half of the annual £7 million that the representatives of Mauritius had asked for a lease of the Archipelago, and less than half of what the Seychelles received for the excision of the three islands that were later reverted to them. It was not much more than the £1 million the UK had initially offered, a sum which vexed Sir Seewoosagur so much that he would prefer to give the islands *ex gratia* rather than take it. Does this outcome reflect the UK's portrayal of the Mauritian ministers as greedy politicians looking for money? There was *one* price that the representatives of Mauritius were ready to pay, when all the cards were put on the table. That was independence.

41. The negotiations that took place have to be viewed in their proper context. The Mauritians had been informed that excision would be carried out with or without consent. The only option that remained was to try to secure the greatest number of benefits that the UK was willing to agree to. Failing to give formal consent would not have prevented excision and would have resulted in the Ministers returning to Mauritius with empty hands, without the islands, without the undertakings. This was the deal of 1965.

42. Sir Michael said, 'there was hard bargaining on both sides, leading to agreement.'[99] There was hard bargaining leading to certain conditions being accepted in relation to the outcome the UK had predetermined and which Mauritius had no possibility to oppose. Was any of this compatible with the obligation on colonial powers to respect the genuine will of the self-determination unit with regard to the dismemberment of colonial territory? The answer is emphatically 'no.'

43. I turn to deal with the threats to withhold independence.

44. Sir Michael said last week that it appeared 'unambiguous' from the records 'that there were no conditions of independence'.[100] That's a remarkable claim. In my first presentation, I showed you that until the end of the Constitutional Conference the position of the Ministers was contrary to excision: 'unambiguous' might well apply here! Mauritius was – and remains – sympathetic to the security interests of the UK and the US in the Indian Ocean, but it rejected the notion of detachment and it favoured instead a lease. This position did not change until the meeting at 10 Downing Street on the morning of 23 September. We reviewed the covering note prepared by the Private Secretary pointing out to Prime Minister Wilson that the object of the meeting was to frighten Premier Ramgoolam with hope of independence, and to make the point that the Archipelago could be excised unilaterally by Order-in-Council. We saw how Prime Minister Wilson not so subtly pointed to 'the number of possibilities' that the Premier faced, including the possibility of leaving the Conference with independence or without it. He did not fail to point out that the solution which would make everyone happiest would be for the Premier to leave London with the independence of his fractured homeland secured. And then Colonial Secretary Greenwood said: 'take it or leave it – before 4 p.m.'!

45. Sir Michael says that the record tells a different story. Never mind the note by the Private Secretary – it does not reflect State policy. Never mind the transcript of the meeting at which Prime Minister Wilson clearly connects the questions of independence and excision. Sir Michael

[99] Transcript, Day 5, p. 536, lines 16-17.
[100] Transcript, Day 5, p. 523, lines 9-10.

concedes that there was, it is true, a connection between independence and excision, but he says it was 'one of timing,' not one of 'substance'.[101] We respectfully disagree.

46. Sir Michael ignored a key document which I bring again to your attention, an omission which is eloquent. You should – with respect – consider this document carefully. It's the 'top secret' minute of the meeting of the Defence and Oversea Policy Committee – held on 25 May 1967, which is at Tab 3.3 of your folder.[102] The meeting concerned the upcoming disclosure of the US' contribution to the compensation paid to Mauritius and the Seychelles for dismemberment. At page 48 of the folder, first paragraph, second sentence, Herbert Bowden, then the Commonwealth Secretary, says the following: 'At the time when the agreement for the detachment of BIOT was signed in 1965, Mauritian Ministers were unaware of our negotiations with the United States Government for a contribution by them towards the cost of compensation for detachment. They were further told there was no question of a further contribution to them by the United States Government since this was a matter between ourselves [that is, the United Kingdom] and Mauritius [that's at page 48], that the £3 million was the maximum we could afford, and [I stress], that unless they accepted our proposals we should not proceed with the arrangements for the grant to them of independence.'

47. This is a candid account of a high-ranking British official of what happened in 1965. This meeting concerned specifically the excision of the Archipelago. There is no room to argue that 'our proposals' signifies guarantees for minorities or electoral reforms. Mr. Bowden was Anthony Greenwood's successor.

48. Of course, he didn't participate in the Constitutional Conference. But attending the meeting in 1967 was someone deeply familiar with the events of 1965, the Prime Minister himself.

[101] Transcript, Day 5, p. 527, line 4.
[102] Extract from Minutes of 20th Meeting of Defence and Oversea Policy Committee held on 25 May 1967 (MR, Annex 59).

He did not point out to the Commonwealth Secretary: 'you've got it wrong, I didn't frighten Sir Seewoosagur with hope of independence'.

49. Sir Michael makes much of Sir Seewoosagur's subsequent statements in parliamentary debates. I've explained to you in the first round what the context in which those statements were made was, and I won't repeat myself. To the present members of the Tribunal, since it falls within your jurisdiction, I leave it in your hands to weigh the evidence from the documents referring to the 'package deal;' the minutes of the parallel meetings at the Constitutional Conference; the covering note; and the unambiguous minutes of the 1967 Cabinet meeting against the speeches that Sir Seewoosagur made years later, in public in the highly politicised context of the legislative debates in Mauritius.

50. I've also explained the reasons why Mauritius did not formally protest against the excision in the first years of independence, and again I won't repeat them. I leave you to consider the lessons of the *Nauru* case in this regard: the International Court expressly took into account the character of relations between a former administering authority and a small island State and, we suggest, you should do likewise.

51. Finally, counsel referred to the General Elections held in Mauritius in 1967, which, they said, ratified the excision.[103] But the excision was already a *fait accompli* so far as the electorate was concerned. They had many other issues to face, including the choice between independence and free association. The Mauritian opposition, which favoured free association, was equally opposed to excision.[104] In the circumstances, if the Council of Ministers was not free to reject excision neither was the electorate.

V. Conclusion

Mr. President, Members of the Tribunal:

[103] Transcript, Day 6, p. 719, lines 11-17.

[104] Cf. e.g. Extract from Minutes of 20th Meeting of Defence and Oversea Policy Committee held on 25 May 1967 (MR, Annex 59), p. 2.

52. You have the arguments on consent. You have experience in inter-colonial and international relations. You can assess for yourselves whether consent was truly given. But what is particularly remarkable is that the United Kingdom now treats the whole exercise as a charade. For we are told there cannot have been an agreement between Her Majesty's Government and the colonized, even in the negotiations for independence. The members of the Tribunal will be familiar with the 'clean slate' theory espoused by many African States at the end of decolonization and reflected to a degree in the 1978 Vienna Convention on Succession with respect of Treaties. This is perhaps the first time that the colonial power has argued for a clean slate! The UK now says it came free from Mauritius' independence. Independence was to make the colony free, but it made Britain free, free from any commitments it made, with a slate wiped clean of prior understandings. And the UK says that it is still free of them because, on the *Nuclear Tests* principle, there was no new undertaking after 1968. There didn't need to be. There was reaffirmation of a prior undertaking.

53. The true position, as we have said – and we said it in the first round, so that Mr. Wordsworth's incomprehension of the point is all the more surprising – is that these understandings or commitments were most certainly articulated by the United Kingdom as the *quid pro quo* for the 'consent' given. You may still judge that the 'consent' was not given in accordance with the applicable standards for the treatment of a colonizer towards an independence movement. Even so, the conditions remain, and they are, as I have said, and as Mr. Reichler demonstrated in our first round, conditions that were repeatedly referred to with reference back to the events of 1965 in the subsequent inter-State relations of Mauritius and the United Kingdom. For the United Kingdom now to seek to deny them is nothing short of astonishing. Mr. President and Members of the Tribunal, that concludes this presentation.

ARBITRATOR WOLFRUM: Thank you, Mr. President.

Professor Crawford, let's leave aside for a moment that this consent was given, as you say, due to some pressure put upon the Mauritian Ministers. Let's just talk about the consent. How would you qualify the consent legally? That's the first part of my question.

Has it still, even today, an ongoing effect in international law?

Thank you.

PROFESSOR CRAWFORD: Sir, the consent was vitiated by the circumstances in which it was given. I use the word 'vitiated' carefully because, in the law relating to consent, you have degrees of consent, and that's for the Tribunal to assess. What is absolutely clear is that the consent was given, if it was given at all, on conditions – conditions which the United Kingdom now seeks to trivialize or deny or to remain silent about.

In a situation in which an excision has occurred, which is vitiated by conduct analogous to by, let's say, coercion– I won't use the word duress– or by circumstances amounting to a failure to allow people to make a real choice, it's possible for subsequent conduct of a person when it becomes *sui juris*, so to speak, for that defect to be repaired or to be waived. We say that nothing that happens subsequently, silence for a period of time and so on, amounts to waiver. As we said, nothing that Nauru did…Sorry, I've got the wrong 'we': as counsel argued in the Nauru case, nothing that happened after independence amounted to a waiver of a claim to rehabilitation of the lands. I have given you the standard to be applicable in determining whether there has been waiver, and it is for you to apply. We say there has been no waiver. There was no waiver by silence, and rights of this character which are very important rights are not to be deemed to have been waived by silence.

I'm not sure I can take matters further. We do not deny that the Council of Ministers gave a sort of consent, and I didn't deny that in the first round. What we said is the circumstances under which that consent was given and the very character of the Council of Ministers was that the consent was vitiated by the applicable law. It is for you to work out the

consequences of that in light of the subsequent relations between the States at a time when there was sui juris…

ARBITRATOR WOLFRUM: Mr. Crawford, this doesn't answer my second part of the question.

PROFESSOR CRAWFORD: Sorry, sir, I was focusing on the first.

ARBITRATOR WOLFRUM: Whether such a consent has an ongoing effect.

PROFESSOR CRAWFORD: Well, if the consent had no effect *ab initio*, it's that the only – I mean, it was part of what happened. It's part of the *res gestae*.

ARBITRATOR WOLFRUM: I was working under the assumption it had an effect at the beginning, that it was a theoretical case. Would it then have an ongoing effect.

PROFESSOR CRAWFORD: You might have a situation in which an entity under disability gave consent in circumstances where the consent was vitiated, but there is something written down. It remains defective until cured, and it can be cured in a variety of ways, so we would say that whatever deficiency existed in 1968, we say still exists because it hasn't been waived. But we say further to that, assuming *ex hypothesi* that you don't have jurisdiction to determine whether the consent was given because it's associated with a jurisdictional lacuna or gap in your competence, what is perfectly clear is that the conditions that were attached to the events as occurred and which were reaffirmed by the United Kingdom, reaffirmed on the multiple occasions are still binding, and we say you have jurisdiction to determine that in any event.

The case is difficult because of the interplay between questions of jurisdiction and questions of substantive law. And I will return to that tomorrow in various ways.

PRESIDENT SHEARER: Thank you very much, Professor Crawford. No further questions.

Oh, sorry, you have a question, Judge Greenwood.

ARBITRATOR GREENWOOD: Professor Crawford, it seems to me that this is a somewhat unusual case in that you are saying that – both parties are saying there was an agreement of some kind in 1965. I heard you say that you don't – in both rounds, you don't deny that some agreement was reached. That Mauritius' position appears to be that it is not bound by what it agreed to, but the United Kingdom is bound by its undertakings.

The United Kingdom is saying Mauritius is bound by what its Ministers agreed to and the United Kingdom is not bound by what its Ministers had said. You will appreciate, as I'm sure the United Kingdom does, that for the Tribunal, the path to either of those conclusions is going to be a rather difficult one. I just want to try and sort out precisely what the case is as a matter of law on each side without entering into the question of whether the rhetoric behind it is overblown.

It seems to me that in 1965, there could not have been an internationally binding – sorry, an agreement binding in international law concluded between a colony and a metropolitan power because Commonwealth and colonial law at that stage did not provide that agreements of that kind were treaties or equivalent treaties. And since both the Parties concerned were negotiating within the framework of the United Kingdom Commonwealth and colonial law, one has to start from that standpoint. But if I'm wrong in that, I'd be grateful if you'd explain the basis on which I'm wrong. If I'm right, then it must presumably follow that the character of the Agreement as binding in international law must derive from something that happened after independence in 1968.

Now, that, I suppose, could have been a reaffirmation after independence of what was said by the two Parties prior to independence, or it could have been a unilateral undertaking along what can loosely be described as the Eastern Greenland/Nuclear Tests line of authorities, and I'd just like you please to sketch out whether I'm wrong in my premise which is only a

provisional one, and if I'm right in my premise, which of the two courses you are relying on for the post-1968 period.

PROFESSOR CRAWFORD: With respect, sir, you're wrong on your premise. For the United Kingdom to say that consent could have been given which is legally effective in international law in relation to the excision of territory – because, as Judge Wolfrum pointed out earlier, we're talking about the sovereignty of the territory, we're not talking about the inconceivable possibility of a suit for breach of contract after 1968 –assuming that that's right, it was possible for the representatives of a non-self-governing territory to agree to a course of conduct in the context of the negotiation of independence provided they did so freely, and that agreement could have legal effects after independence. It's not a clean slate to the extent that nothing done before independence can have effect.

The United Kingdom, on independence, not after independence – on independence – retained the Archipelago. It therefore affirmed the conditions on which it had come to receive the Archipelago, even if the consent given was vitiated.

Let's assume I'm your grandfather, sir, and I live in a nice house, and you rather like my house, and I'm a bit frail and you come to me and you say 'I want to take over your house, but you can have the upstairs granny flat'. And I say 'this is very unfair', and I don't want to be thrown out in the streets, and you deny me access to my great grandchildren, so I sign the piece of paper and go and live in the granny flat. The position is, under any civilized system of law, that that agreement is vitiated by the circumstances in which it is made, undue influence, improper pressure or whatever you call it.

There is an agreement, but it's defective.

The United Kingdom's position is that they can throw me out of the granny flat and keep the house.

ARBITRATOR GREENWOOD: So, what you're saying is, irrespective of whether the Agreement is valid, to the extent the United Kingdom retains the benefit, it must also carry the burden.

PROFESSOR CRAWFORD: That's exactly right, sir.

ARBITRATOR GREENWOOD: Now, just explain – I understand that. Just explain to me, please, how you latch that on to public international law. Was that the case – was that an internationally – was that an agreement binding under international law between November 1965 and March 1968, or does it only acquire that character after the I think it's the 12th of March 1968?

PROFESSOR CRAWFORD: It was not a treaty, nor was it intended as a binding arrangement under British law for the reason stated by Mr. Wordsworth. It was an arrangement made in the context of negotiations for independence which take some time between persons who knew what they were doing in virtue of independence. It's a bit like a pre-incorporation contract, not nothing. The role of domestic analogies in this area is obviously an issue, but the example I've given you shows that there is something to the humanity of the situation, even if we're dealing with States.

At the very second of independence, when the excision was affirmed by the continued presence of the United Kingdom in the Archipelago, the United Kingdom disabled itself from denying the conditions attached to its presence. It would have been open, I suppose, for the representatives of the people in the period from 1965 to 1968 to try and reverse the excision. I don't know what efforts were made in that regard, but they certainly weren't bound to accept an agreement obtained in the circumstances in which it was obtained. After independence, they were *sui juris* and free to accept, but there's a presumption that they didn't do so, and there's some tolerance for silence in that period. So I would say this is a situation in which the colonial authority exercising its power assumed a responsibility which it affirms not after independence, but on

independence, the very second of independence, because otherwise it would have to hand the territory back. We don't suggest that there's an obligation of reversion after reversion has occurred, but we do say that, in the circumstances, the United Kingdom is bound by the obligations it assumed while it holds on to the territory in the same way that my hypothetical grandchild is obliged to allow me to occupy the granny flat while he occupies the house.

ARBITRATOR GREENWOOD: Of course, as I am a grandfather, I listen with great interest, and I will take it into account as planning advice for my own future.

PROFESSOR CRAWFORD: There is a law about these arrangements in many countries, which are quite common.

ARBITRATOR GREENWOOD: Let me see if I've understood the point all right because I think this is very important for this arbitration. Mauritius is not saying that there was a treaty or something akin to a treaty in 1965, nor is it basing its case on events that took place after independence, though they may be relevant in showing the nature of what had happened before. Essentially what you're saying is that where in the process of moving to independence the colonial power gives "undertakings" in exchange for "consent" to a territorial change, then on independence that, on those undertakings, assumed the character of a commitment binding under international law between the colonial State and the newly independent State.

PROFESSOR CRAWFORD: Sir, that's what we're saying, and we're saying that for various reasons, including the possibility of a reversal of the situation between the time the original consent is given and independence, as happened in the case of the Seychelles, but the very act of conferring independence in those circumstances affirms the obligations. There is a law of obligations beyond the law of treaties, just as there is in domestic law.

ARBITRATOR GREENWOOD: That's very helpful, Professor Crawford. Thank you.

ARBITRATOR WOLFRUM: Thank you, Mr. Crawford. Indeed, I join Sir Christopher's remark. That was extremely helpful as a discourse.

Let me just add a small point: What you're referring to after independence, is that a situation you would qualify under estoppel?

PROFESSOR CRAWFORD: Estoppel is, of course, an English law concept, and it's been received into international law more or less as it stands in English law. It has quite strict requirements: representation, reliance, detriment.

What we say happened after independence was reaffirmation, recognition, acknowledgment of an obligation already existing. It already existed at independence. There was no second after independence when it didn't exist. And, therefore, Mr. Wilberforce's analysis of the de novo in a *Nuclear Tests* situation is inappropriate.

I think that's probably all I need to say.

ARBITRATOR GREENWOOD: Mr. Wordsworth –

PROFESSOR CRAWFORD: We're talking about freedom, but probably not that sort of freedom. I apologize to Mr. Wordsworth.

PRESIDENT SHEARER: I'm sorry to extend this discussion on this, but as Judge Greenwood has said, this is a really vital question. I just wonder whether another possible interpretation is that when a self-determination unit approaches independence, there is a sort of a period of quasi-sovereignty that occurs. I think I mentioned before the practice in the Application of treaties as a self-determination, as internal self-government develops and one approaches independence, the colonial territory had a say in what Treaty should be applied to it and so on. Could that be any part of your argument, or is that irrelevant?

PROFESSOR CRAWFORD: Well, sir, we don't have to argue that there was a State *instatunascendi* in 1965. That would be going too far. But in some situations there is; in some situations there was national liberation, for example. But we do say that a government which

represented the people – the people who, after all, is the right holder in relation to self-determination – could give valid consent in the pre-independence situation, if it was not coerced. If there had been a free choice, they could have given valid consent, and that consent would have been binding on the people after independence. International law is, after all, fundamentally a system of representation, and it's not limited to the representation of States.

PRESIDENT SHEARER: Very good, Professor Crawford. Thank you. That's very helpful.

And now I gather that we will hear from Professor Sands; is that correct?

Yes, thank you. Thank you very much.

PROFESSOR SANDS: Sir, it is correct, by my watch, we've got only seven or eight minutes left. I'm in your hands. I can make a start on set of submissions that are essentially inviting you to continue the conversation over the next period because you have jurisdiction, we say, to have this conversation on this vitally important issue, but I'm not sure whether it's sensible for me to start now, run for a few minutes or break now and keep it coherent. I'm in your hands, whatever is convenient for the Tribunal.

PRESIDENT SHEARER: Thank you, Mr. Sands. I think probably, as you implied, it doesn't make much sense to make a short start and then have to break. So, I think it would be a good idea if we did adjourn at this point, and we return at 2:00 p.m. for the special procedures that we outlined at the beginning. Thank you very much.

PROFESSOR SANDS: Thank you very much, Mr. President.

PRESIDENT SHEARER: We'll adjourn until 2:00.

(Whereupon, at 12:22 p.m., the hearing was adjourned until 2:00 p.m., the same day.)

Annex 172

Non-Aligned Movement, 17th Mid-Term Ministerial Meeting of the Non-Aligned Movement, *Final Document: Chagos Archipelago* (26-29 May 2014)

EXTRACT

17th Mid-Term Ministerial Meeting of the Non-Aligned Movement

Algiers, Algeria

26-29 May 2014

FINAL DOCUMENT

Chagos Archipelago

307. The Ministers reaffirmed that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius.

308. The Ministers further noted with grave concern that despite the strong opposition expressed by the Republic of Mauritius, the United Kingdom purported to establish a marine protected area around the Chagos Archipelago, further infringing the territorial integrity of the Republic of Mauritius and impeding the exercise of its sovereignty over the Chagos Archipelago as well as the exercise of the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom.

309. Cognizant that the Government of the Republic of Mauritius is committed to taking all appropriate measures to affirm the territorial integrity of the Republic of Mauritius and its sovereignty over the Chagos Archipelago under international law, the Ministers resolved to fully support such measures including any action that may be taken in this regard at the United Nations General Assembly.

Annex 173

Group of 77 and China, Summit of Heads of State and Government of the Group of 77, *Declaration: For a New World Order for Living Well* (14-15 June 2014)

EXTRACT

Summit of Heads of State and Government of the Group of 77

For a New World Order for Living Well

Santa Cruz de la Sierra, Plurinational State of Bolivia, 14 and 15 June 2014

Declaration

237. We reaffirm the need to find a peaceful solution to the sovereignty issues facing developing countries, including the dispute over the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the United Kingdom from the territory of Mauritius, prior to independence, in violation of international law and General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Failure to resolve these decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries. In this regard, we note with great concern that despite the strong opposition of Mauritius, the United Kingdom purported to establish a "marine protected area" around the Chagos Archipelago, which contravenes international law and further impedes the exercise by Mauritius of its sovereign rights over the archipelago and the right of return of Mauritius citizens who were forcibly removed from the archipelago by the United Kingdom.

Annex 174

Group of 77 and China, 38th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (26 Sept. 2014)

EXTRACT

THIRTY-EIGHTH ANNUAL MEETING
OF MINISTERS FOR FOREIGN AFFAIRS
OF THE GROUP OF 77 AND CHINA
New York, 26 September 2014

MINISTERIAL DECLARATION

45. The Ministers reaffirmed the need to find a peaceful solution to the sovereignty issues facing developing countries, including the dispute over the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the United Kingdom from the territory of Mauritius, prior to independence, in violation of international law and General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Failure to resolve these decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries. In this regard, they noted with great concern that despite the strong opposition of Mauritius, the United Kingdom purported to establish a "marine protected area" around the Chagos Archipelago, which contravenes international law and further impedes the exercise by Mauritius of its sovereign rights over the archipelago and the right of return of Mauritius citizens who were forcibly removed from the archipelago by the United Kingdom.

Annex 175

Assembly of the African Union, 25th Ordinary Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/901(XXVII), Assembly/AU/Rev.1(XXV) (14-15 June 2015)

RESOLUTION ON CHAGOS ARCHIPELAGO
Doc. EX.CL/901(XXVII)

The Assembly,

Recalling the unlawful excision of the Chagos Archipelago, including Diego Garcia, from the territory of Mauritius by the United Kingdom, the former colonial power, prior to the independence of Mauritius, in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence, as well as UN Resolutions 2232 (XXI) of 20 December 1966 and 2357(XXII) of 19 December 1967;

Reaffirming that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius;

Deploring the continued unlawful occupation by the United Kingdom of the Chagos Archipelago, thereby denying the Republic of Mauritius the exercise of its sovereignty over the Archipelago and making the decolonization of Africa incomplete;

Recalling in this regard, *inter alia*:

i) Resolution Assembly/AU/Res. 1 (XVI) of January 2011 of the Assembly of the African Union held in Addis Ababa, Ethiopia;

ii) the Malabo Declaration adopted by the Third Africa-South America Summit held in Malabo, Equatorial Guinea in February 2013;

iii) Declaration Assembly/AU/Decl.1 (XXI) of May 2013 of the Assembly of the African Union held in Addis Ababa, Ethiopia;

iv) the Solemn Declaration on the 50th Anniversary of the OAU/AU adopted by 21st Ordinary Session of the Assembly of the African Union held in Addis Ababa, Ethiopia in May 2013.

Reiterating its grave concern that the United Kingdom purported to establish a 'marine protected area' ('MPA') around the Chagos Archipelago, in a manner that was inconsistent with its international legal obligations and which further impeded the exercise by the Republic of Mauritius of its sovereignty over the Chagos Archipelago;

Noting that the purported 'MPA' has been ruled to be illegal by the Arbitral Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea in the case brought by the Government of the Republic of Mauritius on 20 December 2010 against the Government of the United Kingdom of Great Britain and Northern Ireland;

Welcoming the confirmation by two members of the Arbitral Tribunal that the Republic of Mauritius is the "coastal State" in relation to the Chagos Archipelago;

Considering that the Government of the Republic of Mauritius is resolutely committed to taking all appropriate measures for the effective exercise by the Republic of Mauritius of its sovereignty over the Chagos Archipelago, including Diego Garcia, in keeping with the principles of international law:

1. **WELCOMES** the Award of the Arbitral Tribunal constituted under Annex VII to the United Nations Convention on the Law of the Sea, which is binding on the United Kingdom, and the confirmation that the purported 'MPA' has been unlawfully established under international law;

2. **REAFFIRMS** that the United Kingdom is not to be treated as the "coastal State" in relation to the Chagos Archipelago and that any attempt by the United Kingdom to claim such a status in any international forum is to be treated as contrary to international law and opposed;

3. **REITERATES** its support to the Republic of Mauritius in its legitimate pursuit to effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia;

4. **RENEWS** its call on the United Kingdom to expeditiously end its unlawful occupation of the Chagos Archipelago with a view to enabling the Republic of Mauritius to effectively exercise its sovereignty over the Archipelago;

5. **URGES** the United Kingdom, pending the return of the Chagos Archipelago to the effective control of the Republic of Mauritius, not to take any measures or decisions that might affect the interests of the Republic of Mauritius without the latter's full prior involvement, in accordance with the Award of the Arbitral Tribunal and international law; and

6. **FULLY SUPPORTS** further efforts and actions in accordance with international law, including those of a diplomatic and legal nature at the level of the United Nations system, which may be taken by the Government of the Republic of Mauritius for the early and unconditional return of the Chagos Archipelago, including Diego Garcia, to the effective control of the Republic of Mauritius.

Annex 176

Shabtai Rosenne, *The Law and Practice of the International Court, 1920-1996*, Vol. II, Jurisdiction (1997)

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THE LAW AND PRACTICE OF THE INTERNATIONAL COURT, 1920–1996

THIRD EDITION

VOLUME II
JURISDICTION

by

SHABTAI ROSENNE

MARTINUS NIJHOFF PUBLISHERS
THE HAGUE / BOSTON / LONDON

FEB 1999

Annex 176

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A C.I.P. Catalogue record for this book is available from the Library of Congress

ISBN 90-411-0264-7 (Set)

Published by Kluwer Law International,
P.O. Box 85889, 2508 CN The Hague, The Netherlands.

Sold and distributed in the U.S.A. and Canada
by Kluwer Law International,
675 Massachusetts Avenue, Cambridge, MA 02139, U.S.A.

In all other countries, sold and distributed
by Kluwer Law International, Distribution Centre,
P.O. Box 322, 3300 AH Dordrecht, The Netherlands.

Printed on acid-free paper

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Printed in the Netherlands

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pending between two or more States, where the *Eastern Carelia* principle applies, and a dispute between a State and the United Nations on a matter of internal United Nations law. In that type of case the Court's standing as the principal judicial organ permits it to give an opinion despite the unwillingness of the State concerned. Nevertheless, the early precedents date to the period before disputes between a State and an international organization had assumed any prominence. There is no reason why the *Eastern Carelia* doctrine should not also apply when an advisory opinion is requested in relation to a dispute actually pending between a State (whether a member or not of the organization in question) and an international organization, identified, for this purpose, by those States which voted in favour of the request. This is a matter which deserves further attention whenever Article 102, paragraph 2, of the Rules is reviewed by the Court.

II.248. Discretion based on the Court's Status as a Principal Organ. The second principle regarding the consequences on the advisory jurisdiction of the Court's discretion deriving from its status as a principal organ of the United Nations first appeared in the *Peace Treaties* opinion. Here the Court explained that its opinion, given to the requesting organ, 'represents its [the Court's] participation in the activities of the Organization, and, in principle, should not be refused'.[67] In the *ILOAT* (UNESCO) opinion the Court, after extending the scope of the duty to include co-operation with specialized agencies authorized to request advisory opinions, reformulated it as follows: 'Notwithstanding the permissive character of Article 65 of the Statute in the matter of advisory opinions, only compelling reasons could cause the Court to adopt in this matter a negative attitude which would imperil the working of the regime established by the Statute of the Administrative Tribunal for the judicial protection of officials.'[68] This was followed in the *Certain Expenses* opinion which also

[67] [1950] at 71.

[68] [1956] at 86. For a recapitulation of the case-law, see *Legality of the Threat or Use of Nuclear Weapons* advisory opinion, [1996] 8 July (para. 14).

illustrates how the Court in a case put to it by the General Assembly examines whether any such compelling reasons exist. The combination of the substantive discretion of Article 65 with the procedural discretion of Article 68, to which allusion was made in the *Peace Treaties* opinion, was formally recognized in the following passage in the *Reservations* opinion:

> A reply to a request for an Opinion should not, in principle, be refused. The permissive provision of Article 65 of the Statute recognizes that the Court has the power to decide whether the circumstances of a particular case are such as to lead the Court to decline to reply to the request for an Opinion. At the same time, Article 68 of the Statute recognizes that the Court has the power to decide to what extent the circumstances of each case must lead it to apply to advisory proceedings the provisions of the Statute which apply in contentious cases.[69]

Those opinions bring out one important factor. Owing to the organic relation now existing between the Court and the United Nations, the Court regards itself as being under the duty of participating, within its competence, in the activities of the Organization, and no State can stop that participation. This emerges from the Charter of which the Statute is an integral part.[70] The Rules of Court, which lay down a special procedure where the request for the advisory opinion relates to a legal question pending between two or more States, are subordinate to the Charter and the Statute. Yet the finding of the Court in the *Peace Treaties* opinion that the opposition of those States to the request did not, in the circumstances of the case, constitute any reason why the Court should abstain from replying to the request, should not have led the Court to refrain from considering the extent to which it recognized the provisions of the Statute which apply in contentious cases as guiding it in the present case. The duty of the Court to act in this way is contained not in the Rules of Court but in Article 68 of the

[69] [1951] at 19.

[70] Cf. J.-F. Lalive's doctrinal note on the *Peace Treaties* opinion in 77 *Journal du Droit International* 1246, 1248 (1950).

Statute. The Court's conclusion that it had the power to answer the questions put to it, and was under a duty to do so, does not in itself provide an answer to the question whether the contentious procedure should be followed. To the extent that the Court refrained from considering this aspect, the question remains an open one from the point of view of the development of the Court's case-law.

Clearly, in this type of problem the Court is compelled to deviate from any general approach of considering the questions as abstract in the limited sense in which that term is used in connection with advisory cases. The Court's interpretation of Articles 65 and 68 of the Statute specifically requires it to examine whether the circumstances of the case should lead it to decline to give an answer to the questions put to it. However, a reading of the opinions in the *Peace Treaties* and *Reservations* cases leads to the conclusions that this circumstantial examination will be confined within the narrowest limits, and that once the jurisdictional issue is settled the tendency towards the abstract (in the sense previously mentioned) will, if appropriate, again assert itself.

In the *Peace Treaties* and *Reservations* cases, issues relating to the Court's discretion were presented in another form. In those cases it was argued on various grounds that the action of the General Assembly in dealing with the agenda item out of which the requests emerged, or the decision to request the opinion itself, were *ultra vires* the General Assembly. In the *Peace Treaties* advisory opinion, that view was based on the contention that in dealing with the question of human rights and fundamental freedoms in what were then the ex-enemy States, the General Assembly was contravening the domestic jurisdiction provisions of the Charter. This argument had been put forward in the General Assembly, where it had been rejected. In similar vein, the domestic jurisdiction clause was cited as a direct impediment to the exercise of jurisdiction by the Court. A more subtle variation of this argument, put forward by Hungary, said that no right to control the execution of its provisions was conferred by the Peace Treaty on the General Assembly. In the *Reservations* case it was argued that the request for the opinion constituted an inadmissible interference by the General Assembly and by States hitherto strangers to the Convention, as

only States which are parties to the Convention are entitled to interpret it or to seek an interpretation of it. The Court gave different, but similar, answers to those contentions.

The object of the request (in the *Peace* Treaties case) was directed solely to obtaining from the Court certain clarifications of a legal character regarding the applicability of the procedure for the settlement of disputes under the terms of the Peace Treaties which, for this purpose, conferred certain functions upon the Secretary-General of the United Nations. (The question arose of the possible performance of those functions by the Secretary-General, and it was in connection with that possibility that the General Assembly was directly involved in the matter. The Court did not refer to this very material aspect in either of its advisory opinions, although it declared, in the second, what the Secretary-General was not authorized to do.) As to the right of the General Assembly to concern itself with this matter having regard to the domestic jurisdiction clause, the Court contented itself with quoting the manner in which the General Assembly itself had justified its own resolution, that is by reference to Article 55 of the Charter. This justification was only made 'for the purposes of the present opinion'. The opinion therefore does not consist of a general exegesis on the scope of Article 2, paragraph 7, of the Charter. As for the Court, the interpretation of the terms of a treaty for this purpose could not be considered as a question essentially within the domestic jurisdiction of a State. It is a question of international law which, by its very nature, lies within the competence of the Court.[71] The Court continued:

> These considerations also suffice to dispose of the objection based on the principle of domestic jurisdiction and directed specifically against the competence of the Court, namely, that the Court, as an organ of the United Nations, is bound to observe the provisions of the Charter, including Article 2, paragraph 7.[72]

[71] This principle was first enunciated by the Permanent Court in the *Tunis and Morocco Nationality Decrees* advisory opinion. B4 (1923) at 24. This was cited in oral argument, but not by the Court.

[72] [1950] at 71.

In the *Reservations* opinion the Court followed a similar line of reasoning, although the connection between the General Assembly and this Convention was very different from and more direct than its connection with the Peace Treaties. The Court pointed out that not only did the General Assembly take the initiative in respect of the Genocide Convention, draw up its terms and open it for signature and accession, but that express provisions of the Convention associate the General Assembly with the life of the Convention; and finally that the General Assembly had actually associated itself with it by certain actions it had taken.

> In these circumstances, there can be no doubt that the precise determination of the conditions for participation in the Convention constitutes a permanent interest of direct concern to the United Nations which has not disappeared with the entry into force of the Convention.

The Court also indicated that the power of the General Assembly to request an advisory opinion in no way impaired the rights of the parties to the Convention in the matter of its interpretation. This right is independent of the General Assembly's power and is exercisable in a parallel direction. Furthermore, States which are parties to the Convention can invoke the contentious jurisdiction of the Court in accordance with the Convention.[73]

[73] [1951] 19–20. See further at ch. 14, § II.238 n. 50 above. In dealing with the substance the Court again pointed out, on p. 27, that a divergence of views as to the admissibility of a reservation could always be submitted to the Court by special agreement or by invoking the compulsory jurisdiction clause of the Convention. This may be another hint of the preference of the Court that the advisory procedure be reserved for 'abstract' questions, so far as is possible, leaving concrete questions to the contentious procedure. Nevertheless the wisdom of encouraging parallel recourse to the advisory and contentious procedure is questionable, for the possibility of conflicting opinions by the Court may lead to unnecessary uncertainty as to the law. Furthermore, in contentious cases, Article 59 of the Statute limits the extent of the application of a judgment of the Court. For an illustration of the invocation of the Convention in contentious proceedings between two States, see the *Application of the Genocide Convention* case. And note the comments of a Member of the Court (not in his judicial capacity) on the

In neither of these cases did the Court go so far as to deny, as a matter of principle, the validity of arguments advanced against the jurisdiction of the Court based upon an alleged incompetence of the General Assembly to deal with the item which led it to request the advisory opinion. What the Court did was to demonstrate the inapplicability of those arguments in the cases under discussion. Having regard to the very wide competence of the General Assembly under the Charter, it is difficult to conceive of cases in which a request for an advisory opinion would be *ultra vires* the competence of the General Assembly, except, perhaps, where competence is specifically given by the Charter to another organ, or where the General Assembly had acted say in violation of a provision such as Article 12 of the Charter.

On the other hand, when an organ or specialized agency which is authorized by the General Assembly to request advisory opinions on matters arising within the scope of its activities makes the request, then, obviously, the question of the competence of that organ to request the opinion and, by derivation, of the Court to give it, may arise, as occurred in the *Threat or Use by a State of Nuclear Weapons in Armed Conflict* advisory opinion, requested by the World Health Assembly. The Court's dicta in the *Peace Treaties* and *Reservations* advisory opinions are useful clarifications of the manner in which the Court will approach this problem. On the other hand, it is doubtful if they establish any new principle of law, except in a general way to emphasize that while the Court has to be satisfied that the organ requesting the opinion was competent to do so, the States represented in an organ of the United Nations may have their own reasons for being interested in the matter, those reasons having a broad basis in the Charter and in the activities of the organ making the request, and which may exist independently of the actual placing of the item on the agenda out of which the decision to request the opinion emerged.

relation of the Court to the International Tribunal for the former Yugoslavia (ICTY) as regards the Genocide Convention. G. Guillaume, 'La Cour internationale de Justice: Quelques propositions concrètes à l'occasion du Cinquantenaire', RGDIP 1996 323, 330.

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An objection put forward in the *Peace Treaties* case was to the effect that were the Court to exercise its advisory jurisdiction, the advisory procedure would take the place of the procedure instituted in the Peace Treaties for the settlement of disputes. In the *Reservations* case this line of argument was developed more forcefully, even if contradictorily. There one State contended that as the Genocide Convention has its own compromissory clause conferring jurisdiction on the Court, and as there was no dispute in the present case, the effect of the compromissory clause was to deprive the Court not only of any contentious jurisdiction, except in conformity with that clause, but also of any power to give an advisory opinion. Another State urged that precisely because of the existence of a dispute the Court was not empowered to exercise its advisory jurisdiction.[74] The Court pointed out in its reply that so far as the Peace Treaties were concerned, the object of the request was to facilitate the application of the disputes articles by seeking information for the General Assembly as to their applicability in the circumstances of the case.[75] This line of argument was further developed in the *Reservations* advisory opinion, in the passage quoted at n. 73 above. In the *Peace Treaties* case it was argued that as some of the States concerned were not members of the

[74] The blatant contradiction between these two arguments based on the same elements of fact in this case illustrates the possibility of serious confusion under the present procedure, in which the preliminary questions in an advisory case are discussed and decided simultaneously with the substantive question, although occasionally by a separate vote. The effective functioning of a judicial organ requires a procedure which avoids confusion about uncontested facts and makes the definition of the different issues possible. In the written proceedings in the *Reservations* case, Israel and Poland specifically based their written statements on the assumption that there was no concrete dispute. The Philippines announced that it was then a party to a dispute. (Incidentally, that dispute ceased to exist when the correspondence addressed to the Registrar by the Australian and Philippines Governments, to which the advisory opinion refers on p. 69, was received. Cf. also annexed letter No. 16A to the oral statement of the representative of the Secretary-General, I. Kerno, and his remarks in his oral statement. Pleadings 326, 445.) There was no further reference to this in the oral statements of in the advisory opinion itself.

[75] [1950] at 71.

United Nations or parties to the Statute of the Court, the Court could not exercise its advisory jurisdiction. The Court dismissed this argument summarily in the course of its discussion of the objection based on the judicial character of the Court, examined in § II.247 n. 63 above.

This case-law taken as a whole shows that only one circumstance has been recognized as requiring the Court to exercise its discretion and refrain from giving the opinion requested. That has been when the Court was satisfied that the question put to it was directly related to the main point of a dispute actually pending between two States when there was no agreement that the dispute should be settled by the Court, so that answering the question would be substantially equivalent to deciding the dispute and that at the same time the question raised issues of fact which could not be elucidated without hearing both parties (the *Eastern Carelia* case). The Permanent Court itself, in the *Interpretation of the Treaty of Lausanne* advisory opinion, had made it plain that the mere absence of the consent of one of the States directly concerned was not in itself sufficient to prevent the giving of an advisory opinion on a question of procedure and the interpretation of the Covenant, and it was probably on that basis that the present Court was able to distinguish the *Peace Treaties* case from the *Eastern Carelia* case.[76] On the other hand, despite the powerful trend manifested by the Court in rejecting all suggestions that it should exercise its discretion and decline to render a requested opinion, it has on the whole been careful to limit the apparent generality of its observations by relating them closely to the circumstances of each concrete case, including the asserted purposes for which the request was made. Perusal of the individual opinions in all these cases brings out the difficulties of attempting to establish rules for a matter which essentially is decided, in each case, on the basis of a

[76] B12 (1925). The record of the discussion in the League Council does not indicate any vote on this request, but later the representative of Turkey, not a member of the Council, stated that he had voted negative. Hudson, *Permanent Court* 491. Given the major differences between the Covenant and the Charter on this aspect. that can hardly be regarded as controlling today.

subjective weighing of the issues by the Court. That subjective element is of the essence of judicial discretion, in international as in national judicial practice, especially when that judicial discretion is deliberately written into the Statute.

The repeated affirmation of the Court of its duty, in principle, to reply to a request as its participation in the activities of the United Nations, an affirmation which is not entirely free from ambiguity, cannot be accepted uncritically. It implies two presumptions, that the resolution adopting the request was *intra vires* the requesting organ, and that the question was a legal question. But clearly, the assertion of this principle does not diminish the Court's responsibility to establish that its jurisdiction exists in terms of Article 65 of the Statute, and there is no indication that the Court has intended otherwise. On the other hand, the introduction of this principle into the Court's case-law can be interpreted as meaning that the Court will not question the propriety of the requesting organ's action, but without prejudice to the Court's own statutory responsibilities in this regard. Such an interpretation would accord with the view that each organ is master of its own proceedings. In this way, the conclusion is reached that even if the *dicta* of the Court have had the effect of restricting the area within which the advisory competence of the Court can be challenged, they have not closed it entirely. The presumptions are rebuttable. Operative only so long as they are not sought to be rebutted, once its competence is challenged, the Court must adopt positive arguments to establish it. In all the cases to date, the underlying issue contained in the request was whether an organ of the United Nations, and notably the Secretary-General, could, as a matter of law, undertake functions which he was required to do either by a specific provision of a treaty, or as a matter of direct concern to the United Nations (or possibly a combination of both).

The discussions in the Special Committee on Review of Administrative Tribunal Judgments, established by the General Assembly in resolution 888 (IX), 17 December 1954, to study the question of the establishment of procedure to provide for review of judgments of the United Nations Administrative Tribunal, led to an important public airing of the issue of propriety. When the Special

Committee was considering the possibility of conferring reviewing functions upon the Court through the advisory procedure, some members thought that this would be contrary to the spirit of the Statute of the Court. The sponsors of this proposal then suggested that the Secretary-General should, before the tenth session of the General Assembly, transmit the text of the proposal to the President of the Court for his views on whether the Court would be prepared to exercise the functions proposed to be conferred upon it, and could do so in a manner completely fair to the parties concerned. (This referred to the ability of the individual staff members to bring their views to the notice of the Court.)[77] However, it is doubtful if this procedure for seeking the views of the Court was compatible with the Statute, and the tenth session discussed the issue without being acquainted with the Court's attitude. It adopted a procedure for the review of Administrative Tribunal judgments similar to that advanced by the Special Committee.[78]

II.249. JURISDICTION IN SPECIAL ADVISORY PROCEEDINGS. The General Assembly, in resolution 957 (X), 8 November 1955, amended the Statute of the United Nations Administrative Tribunal (UNAT) by providing for a system of recourse through the advisory competence of the Court if a judgment of the Tribunal was challenged on the ground that the Tribunal had succeeded its jurisdiction or competence, or that it had failed to exercise jurisdiction vested in it, had erred on a question of law relating to

[77] See in detail the Report of the Special Committee, 10 GAOR (X) Annexes, a.i. 49 (A/2909). The debate was substantially repeated in the Fifth Committee. See Report of the Fifth Committee, ibid. (A/3606).

[78] Resolution 937 (X), 8 November 1955. In the course of the discussions in the plenary meetings it was proposed to seek an advisory opinion on the question of propriety, but this was rejected. It was explained by the opponents of the suggestion to request the advisory opinion that the Court would be able to decide the issue of propriety and of compatibility with the Statute when faced with a concrete case. See 10 GAOR Plenary 277 ff. That the Court did later, in the *ILOAT* (UNESCO) advisory opinion, and again in the advisory opinions on review of judgements of UNAT, discussed in § II.249 below.

Annex 177

Republic of Mauritius, Ministry of Finance & Economic Development, *Mauritius in Figures* (2016)

REPUBLIC OF MAURITIUS

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2016

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Ministry of Finance & Economic Development

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Symbols & abbreviations

-	Nil
...	Data not available
n.a	not applicable
000	Thousand
000,000	Million
Gg	Gigagram (000 Tonne)
GWh	Million kilowatt hour
c.i.f.	Cost, insurance and freight
f.o.b.	Free on board

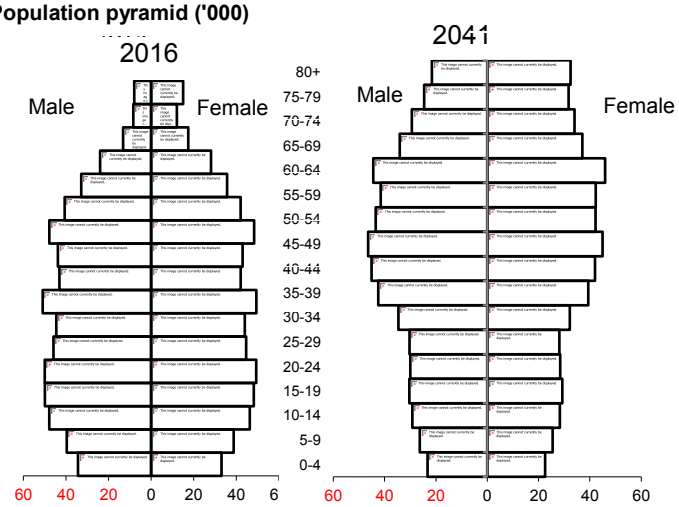
Printed by
The Government Printer
Republic of Mauritius
June 2017

2. POPULATION & VITAL STATISTICS

	2011	2015	2016
Total mid-year resident population ('000)	**1,252.4**	**1,262.6**	**1,263.5**
Male	619.6	624.8	625.2
Female	632.8	637.8	638.3
Age composition (%)			
under 15 years	21.7	19.6	19.0
(15-59) years	65.8	65.6	65.6
(60-64) years	4.6	5.4	5.4
65 years and over	7.9	9.4	10.0
Median age (years)	**33.4**	**35.3**	**35.7**
Dependency ratio	**420.4**	**408.6**	**408.6**
Population density (per km^2)	**636**	**638**	**639**
Mid-year geographical distribution ('000)			
Port Louis	121.4	120.0	119.6
Pamplemousses	137.0	139.8	140.3
Riv. du Rempart	107.2	108.0	108.0
Flacq	137.0	138.5	138.5
Grand Port	112.3	113.0	113.0
Savanne	68.7	68.7	68.5
Plaine Wilhems	369.2	369.0	368.6
Moka	82.3	83.2	83.3
Black River	76.8	80.6	81.4
Rodrigues	40.4	41.9	42.3
Vital statistics			
Live births	14,701	12,738	13,082
Deaths	9,170	9,747	10,174
Marriages	10,499	9,709	10,042
Divorces	1,788	2,161	1,910

	2011	2015	2016
Vital statistics (contd.)			
Crude birth rate	11.7	10.1	10.4
Total fertility rate	1.6	1.4	1.4
Crude death rate	7.3	7.7	8.1
Marriage rate	16.8	15.4	15.9
Divorce rate	2.9	3.4	3.0
	2021	**2031**	**2041**
Projected population ('000)	**1,263.5**	**1,238.0**	**1,163.7**
Male	625.7	613.3	577.4
Female	637.8	624.7	586.3
Age composition (%)			
under 15 years	16.6	14.7	13.3
15-59 years	64.9	60.9	57.9
60-64 years	6.1	6.3	7.7
65 years and over	12.4	18.1	21.1

Population pyramid ('000)



[1] Revised

[2] Provisional

Annex 178

U.K. Foreign and Commonwealth Office, *"BIOT Resettlement Policy Review: Summary of Responses to Public Consultation"* (21 Jan. 2016)

Foreign &
Commonwealth
Office

BIOT Resettlement Policy Review: Summary of Responses to Public Consultation

Background

The Foreign and Commonwealth Office conducted a public consultation about a potential resettlement of the British Indian Ocean Territory (BIOT) between 4 August 2015 and 27 October 2015. The consultation sought the views of Chagossians and others on three questions: the likely demand for resettlement; the UK Government's assessment of the likely costs and liabilities to the UK taxpayer; and alternative options not involving resettlement that could respond to Chagossian aspirations. A direct questionnaire was also used to obtain further information on these issues. The consultation emphasised that the description of resettlement was not a statement of UK Government policy but represented the most realistic scenario in which resettlement might take place. This document summarises the responses received as Ministers prepare to take a decision on whether to permit some form of resettlement.

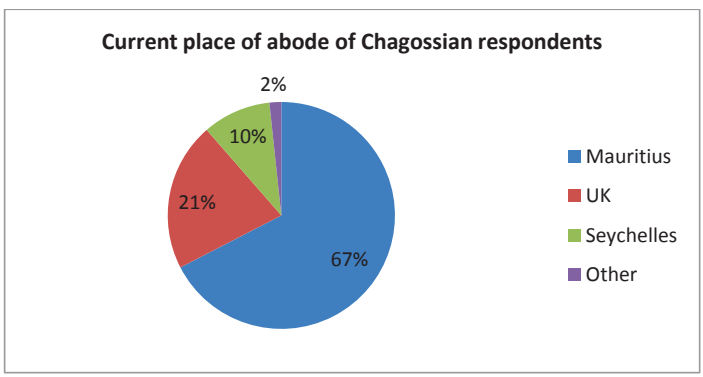
Types of responses

During the consultation period, we received 844 individual responses from Australia, Belgium, Canada, France, Mauritius, Reunion Island, Seychelles, Switzerland, Thailand, the USA and the UK. 832 (98%) of the individual respondents described themselves as Chagossians, with 11 other responses from other individuals. In addition to these 844 returns from individuals, 6 replies were received from organisations including the UK Foreign Affairs Committee, and 1 from a foreign Government – the Government of Mauritius. Government Officials held 5 meetings with Chagossians in group settings in Mauritius, Seychelles, Manchester and London.

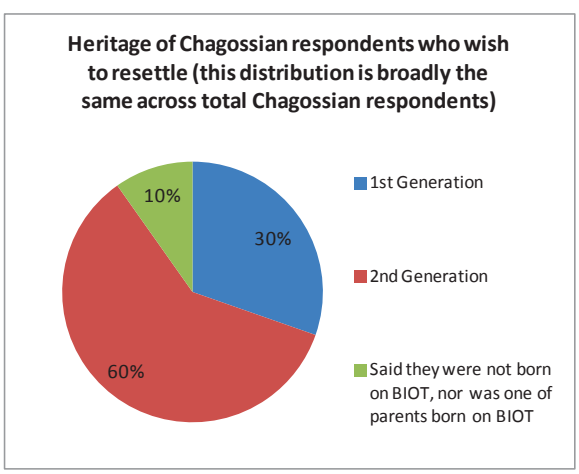
Individual responses from Chagossians

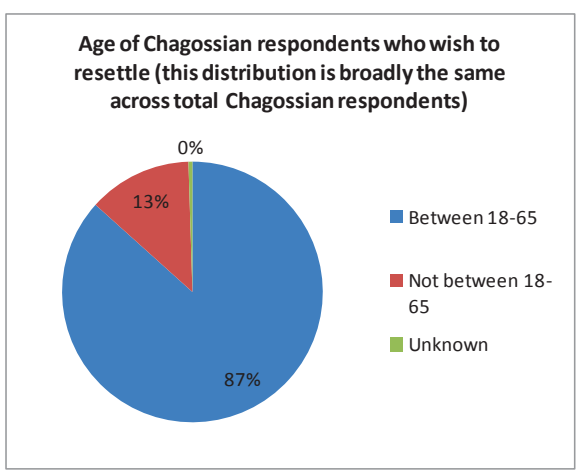
Chagossian respondents

The majority of Chagossians who responded are currently living in Mauritius.



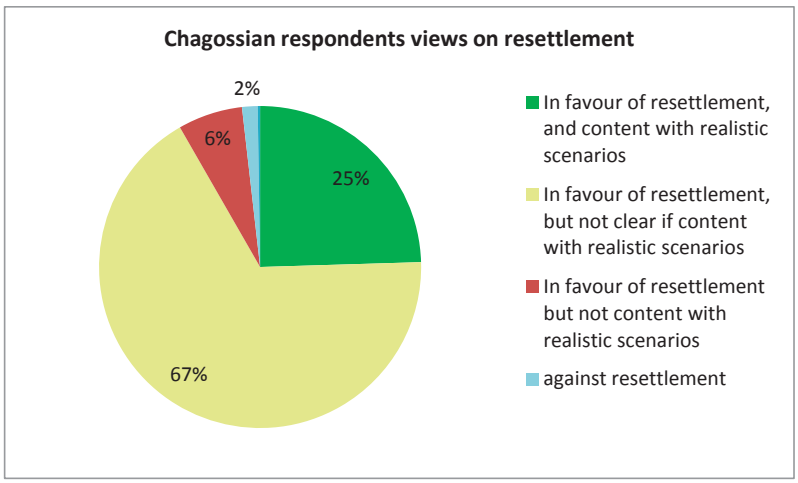
Most Chagossian respondents are of working age and have a connection to BIOT through their parents (what we define as “2nd Generation” in the table below) rather than having been born there themselves.





Views on resettlement

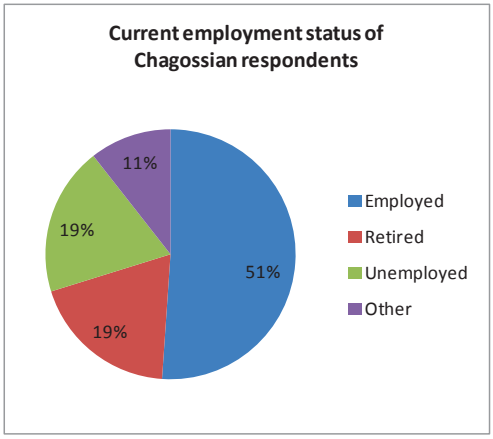
Though the vast majority of Chagossians were in favour of resettlement in principle, there were more nuanced views about the scenarios that were presented in the consultation document as the most realistic description of how it might work.

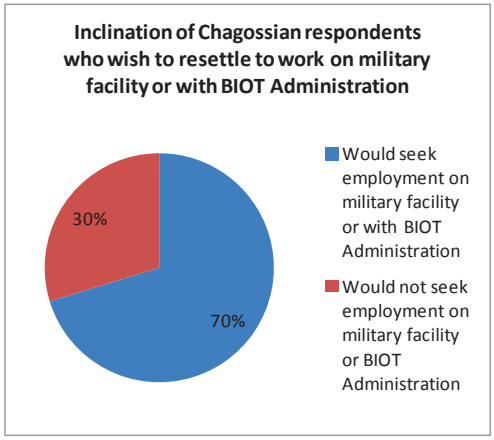


Employment opportunities in any resettlement

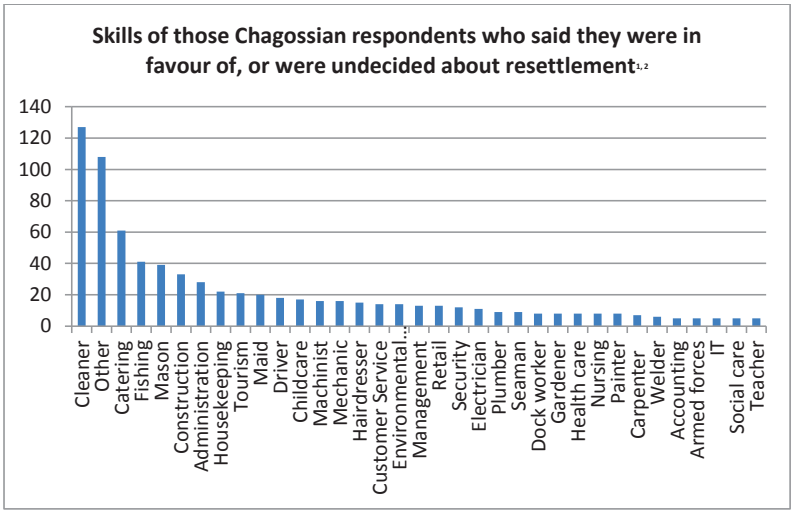
Around half of Chagossians who wanted to return are currently in employment (see chart overleaf). Of those who responded to the questionnaire, over 1,000 additional dependents were indicated, though it is impossible to determine whether some of these dependents are also respondents themselves.

Most respondents who were in favour of resettling said they would be inclined to seek jobs either on the military facility or with the BIOT Administration.



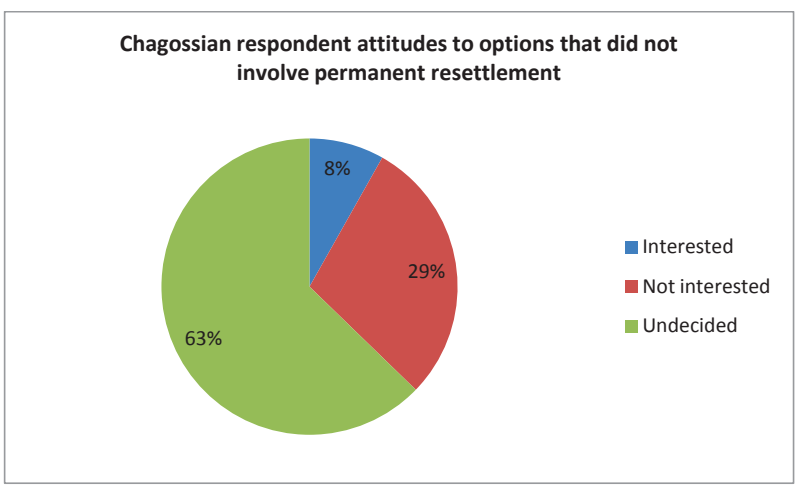


A range of practical skills were declared by Chagossians in their responses, though many indicated they would seek training in other areas including tourism, environmental management, and Territory administration.



Alternatives to resettlement

Responses from Chagossians indicated a degree of uncertainty about alternatives to resettlement while around a third were clear they would not wish to participate in such options.



[1] Note that some Chagossian respondents declared multiple skills, so total skill responses do not sum to total Chagossian responses; Officials have consolidated skill descriptions used by Chagossians into broad subjects to provide meaningful statistical analysis

[2] Skills recorded as "Other" are: Agriculture, Cashier, Community support, Secretarial skills, Student, Tailor, Copra Industry, Dressmaker, Languages, Maintenance. Police, Textile, Training, Beauty, Cabin Crew, Communications skills, Crane operator, Decorator, Forklift Driver, Handicraft, HR, Nursing, Receptionist, Sewing, Shipping, Social work, Solderer, Air freight, Blacksmith, Building draughtsman and Quantity Surveyor, Caretaker, Childcare, Commercial, Containering, Counselling, Draftman, Factory worker, Fish processing, Fishing, Good communication skills, Health & Safety, Housekeeping, Lawyer, Licence, Loader, Meteorologist, Musician, Planning and Development Surveyor, Port worker, Printing agent, Professional Sega Dancer, "Ratbun" maker, Skill worker, "Supenser", "Caussten", Supervisor, Taxi Driver, Technician, Telephonist, Textile, Transport, Waitress

Responses from non-Chagossian individuals

All non-Chagossian responses from individuals came from yachters who had some experience of passing through BIOT's outer islands for the purposes of safe passage (tourism is not permitted). Overwhelmingly, they said they supported resettlement but also the idea of some form of Chagossian engagement in limited tourism of the outer islands and restoration of historic structures on these islands.

Organisational Responses and Meetings

Government of Mauritius

The Government of Mauritius told the UK Government that it rejected the consultation exercise on the basis that it felt it was the only party which had the lawful authority to determine and discuss issues relating to the Chagos Archipelago, including resettlement.

UK Parliament Foreign Affairs Committee

The Foreign Affairs Committee confirmed that it did not intend to provide a response to the public consultation.

UK Chagos Support Association (UKChSA)

UKChSA said that the consultation document failed to provide enough information for Chagossians to make a fully informed choice on return. And that the consultation document did not offer a 'meaningful choice' due to the closed questions in the questionnaire.

As follow-up, officials met with six UKChSA representatives to explain, as they had in other meetings, and subsequently by letter circulated to all stakeholders, that the consultation document and the questionnaire sought qualitative views on all aspects of the scenarios, and responses need not be limited to binary responses. Further feedback was received from the representatives:

- UKChSA criticised what they perceived to be a sense of the resettlement options being developed as a "business model" where Chagossians were viewed according to their ability to support an economy.
- Representatives of UKChSA said there was anxiety about what will happen next - the UKChSA representatives were likely to recommend that people in their community should not fill out the questionnaire for fear of being committed to a course of action.
- UKChSA representatives said that they wanted a timeline for decisions on connected matters such as citizenship and their immigration status under resettlement.

Royal Society for the Protection of Birds (RSPB)

RSPB said that they took no view on the policy question of potential resettlement but expressed the need for comprehensive Environmental Impact Assessments, and a Strategic Environmental Assessment as appropriate, to be undertaken prior to any detailed planning of a resettlement. They stated that the costs of carrying out such assessments and funding any mitigation that they identify must be properly built into the cost projections for all infrastructure development.

Chagos Refugees Group (CRG)
CRG believed that there is a lack of clarity in the consultation about most of the basic requirements of a settled community, including jobs, employment conditions, salaries, housing, pensions, education, visits from wider family members, and transport.

CRG suggested that current and expected returnees exceeds the Medium Option of 500 people, and therefore more land will be required than is provided for in that option. CRG suggests that further planning must include Diego Garcia and Peros Banhos/Salomon Groups.

CRG state that the capital costings in the consultation document ignore the availability of alternative funding from sources such as the European Development Fund, the USA, sovereign wealth funds and partnership funding from commercial enterprises.

Chagos Conservation Trust (CCT)
CCT commented on the need to conduct environmental assessments of all construction work that might be done before construction commenced. They said that neglect of these and of the ability of such assessments to direct impact-free constructions is the main cause of tropical coastal environmental degradation worldwide, to the detriment of people.

CCT pointed out that even low level reef fishing causes damage to coral reef fish biomass and reef health and that climate change consequences must be taken into account if substantial cost later on is to be avoided. They recommend that well-documented scientific findings regarding climate change and sea level rising in BIOT, food sustainability and potential damage from construction are used for decision making.

The Linnean Society of London
The Society response was to endorse the comments from the Chagos Conservation Trust.

United Micronations Multi-Oceanic Archipelago (UMMOA)
UMMOA urged the United Kingdom to try to make right the wrongs that were done against the Chagossians, and allow them to return. They also hoped that sustainable fishing by Chagossians would be allowed as part of managing the Marine Protected Area in the future.

BIOT Deputy Commissioner meeting with Chagossians in Mauritius
Chagossians at the meeting expressed unhappiness with the consultation document and the options outlined. However, the Deputy Commissioner assessed that Chagossians wanted to engage in the consultation.

First generation Chagossians expressed a desire to spend time on the islands they were born on and conclude their lives there. The potential security restrictions on visits by friends and family to Diego Garcia were deemed unacceptable by the Chagossians.

There was a low degree of interest in employment opportunities on the military facility because wages might be lower than on Mauritius and there was a high likelihood they could have to leave family and friends behind.

BIOT Deputy Commissioner meeting with Chagossians in Seychelles
Chagossians suggested developing a tourist industry on the outer islands and that heritage visits are crucial.

BIOT Administrator meeting with Chagossians in Crawley
Chagossians expressed anxiety about the length of time that resettlement could take. Those who want to go back did not want to wait several years without any change to their situations in the UK, which they consider to be unacceptable.

Chagossians were keen to know more about employment on BIOT, including the training that would be made available. They were also keen to know how issues like citizenship would be addressed, though as the consultation document says, this was not possible before a decision in principle on resettlement by Ministers.

BIOT Administrator meeting with Chagossians in Manchester
The Chagossians were keen that a decision account for the fact that there was no “one size fits all” for the community. Some would want to return and some would not, and they wanted a decision that was not one or the other.

There was some anxiety about the need to leave families behind in any model, particularly a pilot. Many Chagossians were interested in training, both for resettlement or in the UK as an alternative to it. Chagossians were keen to create a sustainable economy and not remain dependent on UK taxpayers.

Chagossians were very keen to conserve the culture of the Chagossians, and protecting the “relics” in the Territory so they were not lost to time. They thought this was important as part of any heritage activity even if a resettlement did not take place.

The Chagossians were worried about the prospect of Mauritius taking on the islands in the future, after they had resettled. Several criticised Mauritius for their current situation.

There was determination that resettlement should not be focussed entirely on those who were born in the Territory, but other generations should have the chance to return.

Annex 179

African, Caribbean and Pacific Group of States, *Declaration of the 8th Summit of Heads of State and Government of the ACP Group of States: Port Moresby Declaration* (31 May-1 June 2016)

EXTRACT

DECLARATION OF THE 8TH SUMMIT OF ACP HEADS OF STATE AND GOVERNMENT OF THE ACP GROUP OF STATES

PORT MORESBY DECLARATION

I. PREAMBLE

*We, Heads of State and Government of the African, Caribbean and Pacific Group of States (ACP Group), meeting at our 8th Summit in Port Moresby, Papua New Guinea on 31 May and 1 June 2016 under the theme "**Repositioning the ACP Group to respond to the challenges of sustainable development"**,*

….

HEREBY DECLARE:

21. **We recognise** that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius prior to its independence in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius and are resolved to support Mauritius in its efforts to effectively exercise its sovereignty over the Chagos Archipelago.

Annex 180

United Kingdom, *"British Indian Ocean Territory Ordinance No. 1 of 2016: An ordinance to make provision for the expenditure of public funds between 1 April 2016 and 31 March 2017"* (30 June 2016)

BRITISH INDIAN OCEAN TERRITORY

ORDINANCE No. 1 OF 2016

An ordinance to make provision for the expenditure of public funds between 1 April 2016 and 31 March 2017.

Enacted by the Commissioner for the British Indian Ocean Territory.

30 June 2016

Peter Hayes
Commissioner

Short title and commencement.

1. This Ordinance may be cited as the Appropriation (2016-17) Ordinance 2016 and shall come into force forthwith.

Appropriation of £4,225,000.00 for the financial year 2016/17

2. The Commissioner may cause to be issued out of the public funds of the Territory and applied to the service of the financial year beginning on 1 April 2016 a sum not exceeding **£4,225,000.00** which sum is granted for, and shall be appropriated to the purposes of, and to defray the charges of, the several services specified in the schedule to this Ordinance that will come in the course of payment during that period of the financial year.

SCHEDULE

Summary of Expenditure

Marine	£3,405,000.00
Legal	£150,000.00
Commercial	£11,000.00
Science	£90,000.00
Finance	£3,000.00
Diego Garcia	£120,000.00
Administration	£446,000.00
Total	**£4,225,000.00**
Diego Garcia Expenditure ($853,820.24 @ 0.674)	£575,474.00

THE BRITISH INDIAN OCEAN TERRITORY.

THE CORONERS (AMENDMENT) ORDINANCE 2016

Ordinance No. 2 of 2016

An Ordinance to amend the Coroners Ordinance 1985.

Arrangement of sections.

Section		Page.
1.	Citation and commencement.	2.
2.	Definition.	2.
3.	Amendment of section 4(4)(b) of the Principal Ordinance.	2.

Enacted by the Commissioner for the British Indian Ocean Territory

05 August 2016

.....

Peter Hayes

Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 2 of 2016

Citation and commencement.

1. This Ordinance may be cited as the Coroners (Amendment) Ordinance 2016 and shall come into force forthwith.

Definition.

2. "The Principal Ordinance" means the Coroners Ordinance 1985.

Amendment of section 4(4)(b) of the Principal Ordinance.

3. Section 4(4)(b) of the Principal Ordinance is amended by deleting this subsection and replacing it with:

"(b) This section shall also be read subject to The United Kingdom Forces (Jurisdiction of Overseas Territories' Courts) Order 2015."

THE BRITISH INDIAN OCEAN TERRITORY.

THE MARRIAGE (AMENDMENT) ORDINANCE 2016

Ordinance No. 3 of 2016

An Ordinance to amend the Marriage Ordinance of 1984.

Arrangement of sections.

Section		Page
1.	Citation and commencement.	2.
2.	Definition.	2.
3.	Repeal of sections 2, 5 and 6 of the Principal Ordinance.	2.
4.	Amendment of section 3 of the Principal Ordinance.	2.
5.	Amendment of section 4 of the Principal Ordinance.	2.
6.	Amendment of sections 13, 18 and 19 of the Principal Ordinance.	2.
7.	Amendment of section 16 of the Principal Ordinance.	2.
8.	Repeal of Schedules 1 and 2 of the Principal Ordinance.	3.
9.	Amendment of Schedules 3 and 4 of the Principal Ordinance.	3.
10.	Amendment of Schedule 4 of the Principal Ordinance.	3.

Enacted by the Commissioner for the British Indian Ocean Territory

15 December 2016

John Kittmer
Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

Ordinance No. 3 of 2016

Citation and commencement.

1. This Ordinance may be cited as the Marriage (Amendment) Ordinance 2016 and shall come into force forthwith.

Definition.

2. "The Principal Ordinance" means the Marriage Ordinance 1984.

Repeal of sections 2, 5 and 6 of the Principal Ordinance.

3. Sections 2, 5 and 6 of the Principal Ordinance are hereby repealed.

Amendment of section 3 of the Principal Ordinance.

4. Section 3 of the Principal Ordinance is hereby amended by deleting the words "the commencement of this Ordinance" in subsection (a) and the proviso, and "commencement of this Ordinance" in subsection (b) and replacing them with "1st June 1984".

Amendment of section 4 of the Principal Ordinance.

5. Section 4 of the Principal Ordinance is hereby amended by deleting it and replacing it with the following:

"Law relating to capacity to marry, etc.

4. The law of England, as for the time being in force in England, relating to –

(a) the capacity of a person to marry;
(b) the capacity of persons to marry each other;
(c) the requirement for the prior consent of a person to be given to the marriage of another person; and
(d) the legal effect, in the case of any purported marriage, of the absence of such capacity or such consent

shall be the law relating to those matters in force in the Territory."

Amendment of sections 13, 18 and 19 of the Principal Ordinance.

6. Sections 13, 18 and 19 of the Principal Ordinance are hereby amended by deleting the sums shown in column 1 and replacing them with the sums shown in column 2.

Column 1	Column 2
£200	£2000
£500	£5000
£500	£5000

Amendment of section 16 of the Principal Ordinance.

7. Section 16 of the Principal Ordinance is hereby amended by deleting the words "one copy shall be given to the husband" and replacing them with "one copy shall be given to one of the parties to

the marriage".

Repeal of Schedules 1 and 2 of the Principal Ordinance.

8. Schedules 1 and 2 of the Principal Ordinance are hereby repealed.

Amendment of Schedules 3 and 4 of the Principal Ordinance.

9. Schedules 3 and 4 of the Principal Ordinance are hereby amended by deleting the word "Christian" wherever it appears and replacing it with the words "name" or "names" as the context shall require.

Amendment of Schedule 4 of the Principal Ordinance.

10. Schedule 4 of the Principal Ordinance is hereby amended by deleting the words "One shall be given to the husband" and replacing them with "One shall be given to one of the parties to the marriage".

THE BRITISH INDIAN OCEAN TERRITORY

THE LAW REVISION (MISCELLANEOUS PROVISIONS) ORDINANCE 2016

Ordinance No. 4 of 2016

An Ordinance to amend existing laws to ensure that they correctly correlate to each other, to increase the maximum penalties for specific offences and to remove or otherwise amend outdated or incorrect provisions.

Arrangement of sections.

		Page.
1.	Citation and commencement.	2
2.	Amendment of existing laws.	2

Enacted by the Commissioner for the British Indian Ocean Territory

15 December 2016

John Kittmer
Commissioner

THE BRITISH INDIAN OCEAN TERRITORY

THE LAW REVISION (MISCELLANEOUS PROVISIONS) ORDINANCE 2016

Ordinance No. 4 of 2016

Citation and commencement.

1. This Ordinance may be cited as the Law Revision (Miscellaneous Provisions) Ordinance 2016 and shall come into force on 1st April 2017.

Amendment of existing laws.

2. For each of the laws specified in the Schedule, the items listed in Column 1 shall be replaced, or otherwise amended by the corresponding items in Column 2.

SCHEDULE

Column 1	Column 2
Protection and Preservation of Wild Life Ordinance 1970	
Section 2 "Imports and Exports Control Officer" "Imports and Exports Control Ordinance 1984" "Outer Islands (Services for Visiting Vessels) Ordinance 1993" "Immigration Ordinance 2000" "Fisheries (Conservation and Management) Ordinance 1998"	Replace with "Customs Officer" Replace with "Imports and Exports Control Ordinance 2009" Replace with "Visitors and Visiting Vessels Ordinance 2006" Replace with "British Indian Ocean Territory (Immigration) Order 2004" Replace with "Fisheries (Conservation and Management) Ordinance 2007"
Section 3(2)(g) £500	£5000
The Firearms Ordinance 1970	
Section 3(8) "Imports and Exports Control Ordinance 1984" "Imports and Exports Control Officer"	Replace with "Imports and Exports Control Ordinance 2009" Replace with "Customs Officer"
The Taxation Ordinance 1981	
Section 3 "Section 3(2) of the British Indian Ocean Territory Order 1976"	Replace with "Section 3(2)(a) of the British Indian Ocean Territory (Constitution) Order 2004"
The Penal Code 1981	
Section 5 "Courts Ordinance 1976" *Section 51(1)* £750 *Section 51(2)* £375	Replace with "Courts Ordinance 1983" £5000 £2500

Section 71(4)	
£750	£5000
Section 78	
£750	£5000
Section 101	
£150	£1000
Section 102(2)	
£75	£500
Section 111	
£375	£2500
Section 139(3)	
£1000	£5000
Section 160(4)	
£75	£500
£375	£2500
Section 163(2)	
£750	£5000
Section 165(1)	
£750	£5000
Section 166	
£150	£1000
Section 168(1)	
£75	£500
Section 168(3)	
£150	£1000
Section 168(4)	
£300	£2000
Section 171A(13)(a)	
£100	£500
Section 216	
£750	£5000
Section 246(4)	
£75	£500
Section 261(1)	
£75	£500
Section 261(2)	
£375	£2500
Section 262(1)	
£375	£2500
Section 262(2)	
£375	£2500
Section 296	
£1500	£10000
Section 306(1)	
£750	£5000
Section 314	
£4500	£20000
Section 315	
£7500	£30000

The Courts Ordinance 1983	
Section 3(2)(a) After "Order 1976"	Insert "or The British Indian Ocean Territory (Constitution) Order 2004" and replace 'or' with a comma before "section 9".
Section 4(2) Delete "section 9" to "1976"	Replace with "section 10 of the British Indian Ocean Territory (Constitution) Order 2004"
Section 10 £500 £500	£5000 £5000
Section 23 £250	£2500
Section 40 £100	£1000
Section 41 £100	£1000
Section 42 £10,000 *(in each of the seven instances where this figure appears)*	£100,000
Section 42(5) & (6) £500	£5000
Section 43 £500	£5000
Section 48(2) £200 *(in the two instances where this figure appears)* £500	£2000 £5000
The Administration of Estates Ordinance 1983	
Section 11(2) £1000	£5000
Section 12 £500	£2500
The Births and Deaths Registration Ordinance 1984	
Section 15(2) £100	£1000
Section 18	

£25 *Section 19* £250	£2500 £5000
The Emergency Powers Ordinance *Section 3(2)(f)* £500	 £5000
The Employment Ordinance 1984 *Section 21(3)* £50	 £500
The Explosives Ordinance 1984 *Section 10(1)(a)* £1000 *Section 10(1)(b)* £100	 £5000 £1000
The Criminal Procedure Code 1986 *Section 20(1)* £20 *Section 31(2)(a)* "The Immigration Ordinance, 1971" "The Fishery Limits Ordinance 1992" *Section 31(2)(c)* "Motor Vehicles Ordinance, 1981" *Section 68* £50 *Section 141* £200 *Section 162* £250 *Section 167(2)(a)* £250 *Section 167(2)(d)* £50 *Section 167(4)* £100 *Section 176(1)*	 £200 Replace with "The British Indian Ocean Territory (Immigration) Order 2004" Replace with "The Fisheries (Conservation and Management) Ordinance 2007" Replace with "Road Traffic Ordinance 1998" £500 £2000 £2500 £2500 £500 £1000

"section 27 of the Motor Vehicles Ordinance, 1981" "28 or 29" *Section 176(2)* "section 28 of the Motor Vehicles Ordinance, 1981" "29" *Section 215(2)* £25 £25 £50 £50 £200 £200 £500 £500 £1000 £1000 *Section 226(1)* £500 £200 *Section 226(2)* £500 £200 *Section 231* £1000 *Section 232(1)(b)* £20 *Section 263(1)* £200 *Section 271(1)(a)(i)* £500 *Schedule 2, item 24* "The Dangerous Drugs Ordinance, 1974" (*in the two instances where these words appear*)	Replace with "section 26 of the Road Traffic Ordinance 1998" "27 or 28" Replace with "section 27 of the Road Traffic Ordinance 1998" "28" £100 £100 £250 £250 £500 £500 £1000 £1000 £2500 £2500 £1000 £500 £1000 £500 £5000 £100 £1000 £5000 Replace with "The Misuse of Drugs Ordinance 1992"
The Public Funds (Procedures) Ordinance 1992 *Section 1* "; and" and (*definition of Crown Agents*) *Section 3(4)* "or with the Crown Agents"	 Repeal "; and" and definition of Crown Agents, insertion of full stop after "March" Repeal "or with the Crown Agents"
The Charges for Services Ordinance 1992 *Section 3(4)* £1000	 £5000

The Misuse of Drugs Ordinance 1992 *Section 4(4)* "Imports and Exports Control Ordinance 1984" *Section 18(1)* £1000 *Section 18(3)* £2000 £1000	 Replace with "Imports and Exports Control Ordinance 2009" £5000 £10000 £5000
Interpretation and General Provisions Ordinance 1993 *Section 6* "section 9(2) and (3) of the British Indian Ocean Territory Order 1976" *Section 8* "British Indian Ocean Territory Order 1976" *Section 8* *(Definition of the Crown Agents)* *Section 8* "British Indian Ocean Territory Order 1976"	 Replace with "section 10(3) and (4) of the British Indian Ocean Territory (Constitution) Order 2004" Replace with "British Indian Ocean Territory (Constitution) Order 2004" Repeal definition of the Crown Agents Replace with "British Indian Ocean Territory (Constitution) Order 2004"
The Criminal Proceedings (Tape Recording of Interviews) Ordinance 1994 *Section 2* "Imports and Exports Control Officer" "Imports and Exports Control Ordinance 1984" "Fisheries (Conservation and Management) Ordinance 1991"	 Replace with "Customs Officer" Replace with "Imports and Exports Control Ordinance 2009" Replace with "Fisheries (Conservation and Management) Ordinance 2007"
The Ozone Layer Protections Ordinance 1994 *Section 2* "Imports and Exports Control Ordinance 1984" *Section 4* "Imports and Exports Control Ordinance 1984"	 Replace with "Imports and Exports Control Ordinance 2009" Replace with "Imports and Exports Control Ordinance 2009"

"Imports and Exports Control Officers" "Imports and Exports Control Ordinance 1984"	Replace with "Customs Officers" Replace with "Imports and Exports Control Ordinance 2009"
The Diego Garcia Conservation (Restricted Area) Ordinance 1994	
Section 3(4) £500	£2000
Section 8 "Immigration Ordinance 1971"	Replace with "British Indian Ocean Territory (Immigration) Order 2004"
"Immigration Ordinance 1971"	Replace with "British Indian Ocean Territory (Immigration) Order 2004"
The Prevention of Oil Pollution Ordinance 1994	
Section 7(2) £500	£2000
The BIOT Waters (Regulation of Activities) 1997	
Section 2(1) "Imports and Exports Control Ordinance 1984"	Replace with "Imports and Exports Control Ordinance 2009"
"Fisheries (Conservation and Management) Ordinance 1991"	Replace with "Fisheries (Conservation and Management) Ordinance 2007"
"Outer Islands (Services for Visiting Vessels) Ordinance 1993"	Replace with "Visitors and Visiting Vessels Ordinance 2006"
Section 2(2)(b) "Fisheries (Conservation and Management) Ordinance 1991"	Replace with "Fisheries (Conservation and Management) Ordinance 2007"
Section 2(2)(c) "Outer Islands (Services for Visiting Vessels) Ordinance 1993"	Replace with "Visitors and Visiting Vessels Ordinance 2006"
Section 2(3) "Fisheries (Conservation and Management) Ordinance 1993"	Replace with "Fisheries (Conservation and Management) Ordinance 2007"
Section 6 "Immigration Ordinance 1971"	Replace with "British Indian Ocean Territory (Immigration) Order 2004"
"Fisheries (Conservation and Management) Ordinance 1991"	Replace with "Fisheries (Conservation and Management) Ordinance 2007"
"Outer Islands (Services for Visiting Vessels) Ordinance 1993"	Replace with "Visitors and Visiting Vessels Ordinance 2006"

"Immigration Ordinance 1971"	Replace with "British Indian Ocean Territory (Immigration) Order 2004"
The Road Traffic Ordinance 1998	
Section 2 "Naval Discipline Act 1957 or the Army Act 1955 or the Air Force Act 1955"	Replace with "Armed Forces Act 2006"
Section 4(3) £200	£1000
Section 5(2) £200	£1000
Section 6(2)	insert "37(6)," between "30(2)" and "38(4)"
Section 6(7) (*The whole subsection*)	Repeal whole subsection
Section 6(8) £1000	£5000
Section 7(2) £1000	£5000
Section 13(5) £200	£1000
Section 17 £200	£1000
Section 18(1) £200	£1000
Section 18(2) £200	£1000
Section 22(1) £200	£1000
Section 22(5) £30	£150
Section 23(3) £500	£2500
Section 23(5) £200	£1000
Section 26 "five"	"fourteen"
Section 28 £500	£2500
Section 29(1) £2000	£10000
Section 29(2) £1000	£5000
Section 30(1) £2000	£10000
Section 30(2) £1000	£5000
Section 31(9)	

£2000 *Section 32(3)* £2000 *Section 36(3)* £50 *Section 37(6)* £200 *Section 38(4)* £200 *Section 39(1)* £200 *Section 40* £200 *Section 41* £50 £100 *Section 42(1)* £20 £40 *Section 43(1)* £50 £100 *Section 44(2)* £10 *Section 45(3)* £20 £50 *Section 46(5)* £25 *Section 47* £200 *Section 48(4)* £15	£10000 £10000 £250 £2000 £1000 £1000 £1000 £250 £500 £100 £200 £250 £500 £50 £100 £200 £100 £1000 £60
Visitors and Visiting Vessels Ordinance 2006 *Section 3(2)* "Imports and Exports Control Officer" "Imports and Exports Control Ordinance 1984" "Fisheries (Conservation and Management) Ordinance 1998" *Section 19* "Fisheries (Conservation and Management) Ordinance 1998"	 Replace with "Customs Officer" Replace with "Imports and Exports Control Ordinance 2009" Replace with "Fisheries (Conservation and Management) Ordinance 2007" Replace with "Fisheries (Conservation and Management) Ordinance 2007"

Trade in Endangered Species (Control) Ordinance 2007 *Section 3(5)* £1000 *Section 3(7)* £1000 *Section 8(2)* "Imports and Exports Control Ordinance 1984"	 £5000 £5000 Replace with "Imports and Exports Control Ordinance 2009"
Fisheries (Conservation and Management) Ordinance 2007 *Section 5(5)(c)* "Imports and Exports Control Officer" "Imports and Exports Control Ordinance 1984"	 Replace with "Customs Officer" Replace with "Imports and Exports Control Ordinance 2009"

BRITISH INDIAN OCEAN TERRITORY

Statutory Instrument No. 1 of 2016

The Delegation of Powers (Appointment of Customs Officers) Order 2016

1. This Order may be cited as the Delegation of Powers (Appointment of Customs Officers) Order 2016.

2. In exercise of the power in that behalf vested in me by section 28 of the Interpretation and General Provisions Ordinance 1993, I hereby delegate to the Commissioner's Representative the Commissioner's authority and powers to appoint Customs Officers pursuant to section 3(a) of the Imports and Exports Control Ordinance 2009.

3. This Order shall come into force forthwith and may be revoked at any time, for any reason.

4. For the avoidance of doubt, this delegation shall not preclude the Commissioner from himself exercising the powers or discharging the duties set out in paragraph 2 whenever he sees fit.

Peter Hayes
Commissioner
British Indian Ocean Territory

Dated: 08 March 2016

BRITISH INDIAN OCEAN TERRITORY

Statutory Instrument No. 2 of 2016

The Delegation of Powers (Electronic Communications Ordinance 2009) Order 2016

1. This Order may be cited as the Delegation of Powers (Electronic Communications Ordinance) Order 2016.

2. In exercise of the power in that behalf vested in me by section 28 of the Interpretation and General Provisions Ordinance 1993, I hereby delegate the Commissioner's authority and powers set out in paragraph (a) to the Commissioner's Representative where the criteria set out in paragraph (b) apply.

(a) The powers and duties of the Commissioner set out in sections 4(1), 4(5)(b), 4(5)(c), 4(5)(d), 4(6) and 4(7) of the Electronic Communications Ordinance 2009.

(b) A person present in the British Indian Ocean Territory has made an application for a licence, pursuant to section 4(1) of the Electronic Communications Ordinance 2009, for the purposes of using radio equipment:

(i) for self-training in radio communications (including technical investigation), and

(ii) as a leisure activity,

and not for commercial purposes of any kind.

3. This Order shall come into force forthwith and may be revoked at any time, for any reason.

4. For the avoidance of doubt, this delegation shall not preclude the Commissioner from himself exercising the powers or discharging the duties set out in paragraph (a) whenever he sees fit.

Peter Hayes
Commissioner
British Indian Ocean Territory

Dated: 03 June 2016

Annex 181

Group of 77 and China, 14th Session, *Ministerial Declaration of the Group of 77 and China on the occasion of UNCTAD XIV*, TD/507 (17-22 July 2016)

United Nations TD/507

United Nations Conference on Trade and Development

Distr.: General
19 July 2016

Original: English

Fourteenth session
Nairobi
17–22 July 2016

Ministerial Declaration of the Group of 77 and China to UNCTAD XIV

From decisions to actions

We, the Ministers of the Member States of the Group of 77 and China, meeting in Nairobi on the occasion of the fourteenth session of the United Nations Conference on Trade and Development (UNCTAD XIV),

Express our appreciation and gratitude to the Government and people of Kenya for hosting the ministerial meeting, and for the warm hospitality and the excellent organization from which we have benefited since our arrival,

Reaffirm our support for the outcomes of previous UNCTAD ministerial conferences, in particular, the Doha Mandate of 2012 and the Accra Accord of 2008,

Also reaffirm previous declarations of the Group of 77 and China; in particular, the declaration emanating from our ministerial meeting held in Doha on the margins of UNCTAD XIII in 2012, and the Ministerial Declaration of the thirty-ninth Annual Meeting of Ministers for Foreign Affairs held in New York in 2015, as well as the declaration "For a new world order for living well" adopted by the Summit of Heads of State and Government on the occasion of the fiftieth anniversary of the Group of 77 in Santa Cruz, Bolivia, in 2014,

Welcome all decisions made at the international level in 2015 that underscore the crucial role of the United Nations in sustainable development and in enhancing international economic and financial governance, in particular, the 2030 Agenda for Sustainable Development, the Addis Ababa Action Agenda, the Sendai Framework for Disaster Risk Reduction, the Paris Agreement[1] under the United Nations Framework Convention on Climate Change, as well as the decisions reached at the Tenth Ministerial Conference of the World Trade Organization (WTO),

Reaffirm the importance of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2011–2020 (Istanbul Programme of Action), the

[1] The Republic of Nicaragua is not a party to the Paris Agreement.

Vienna Programme of Action for Landlocked Developing Countries for the Decade 2014–2024 (Vienna Programme of Action) and the Small Island Developing States Accelerated Modalities of Action (SAMOA) Pathway, as well as Agenda 2063 of the African Union and the New Partnership for Africa's Development,

Underscore the importance of public–private partnerships for infrastructure development and ask UNCTAD to take note in its work of the outcome documents of the other United Nations bodies in this regard,

We must now focus on moving from decisions to actions

In this regard:

1. We stress that the ambitious collective outcomes reached in 2015 represent both opportunities and challenges for developing countries, and that the call for the universality of the challenges should be fully cognizant of the respective capabilities and specific circumstances of developing countries, which poses particular challenges to them in dealing with issues such as industrialization and macroeconomic stability, climate change, health and achieving poverty eradication and sustainable development, and that dealing with those challenges requires a global enabling environment that ensures the effective transfer of technology on preferential terms and sustainable, predictable and adequate flows of finance to support the national efforts of developing countries.

2. We reaffirm the need for committed multilateralism with an architecture that is truly fair, inclusive, democratic and supportive of sustainable development; an architecture that focuses on enabling developing countries to achieve prosperity and well-being for their people by fulfilling their development goals.

3. We call for the reform of global economic and financial governance structures with the participation of all, on an equal footing, as being crucial to development and to the implementation of the Sustainable Development Goals and demand that efforts to sideline multilateral processes and institutions must be avoided.

4. We reaffirm that planet Earth and its ecosystems are our home and that Mother Earth is a common expression in a number of countries and regions; and we agree to deepen engagement with our partners and stakeholders in support of sustainable development efforts and to address our development needs.

5. We confirm that the right to development is an inalienable human right and that equality of opportunity for development is a prerogative both of nations and of individuals who make up nations.

6. We recognize that practical and pragmatic steps must be taken to address challenges consistent with the profile, needs and development goals of individual developing countries in a people-centred manner, eschewing a one-size-fits-all approach.

7. We underscore that adhering to principles such as equity, inclusiveness, common but differentiated responsibilities, special and differential treatment, less than full reciprocity and the right to development, are crucial to strengthening the role of developing countries in the global economy.

8. We recognize that the potential of women to engage in, contribute to and benefit from sustainable development as leaders, participants and agents of change has not been fully realized. We support prioritizing measures to promote gender equality and the empowerment of women and girls in all spheres of our societies. We resolve to unlock the potential of women as drivers of sustainable development through many measures and commit to creating an enabling environment for improving the situation of women and girls

everywhere, particularly in rural areas and local communities among indigenous peoples and ethnic minorities.

9. We stress the need to build strong economic foundations for all our countries, and recognize, in this context, that, since our meeting in Doha, developments at the global level have created new and aggravated existing challenges for the entire international community, in particular, the peoples of the developing world.

10. We reiterate that the global economic, financial and trading system, including the multilateral trading system, remains unbalanced; that global inequality remains with many still in the abyss of poverty; that the high volatility of food and commodity prices is a persistent challenge and that, furthermore, the impact of the global economic and financial crisis has revealed new vulnerabilities, affecting, in particular, developing countries.

11. We also recognize that new opportunities have emerged, and resolve that developing countries should intensify efforts to take advantage of these opportunities, while underscoring the importance of a conducive international environment to complement these efforts.

12. We stress the importance of multilateral efforts to tackle increasingly complex cross-border challenges that have serious effects on development, such as financial market volatility and spillovers to developing countries, illicit capital and financial flows, tax evasion and tax avoidance, sovereign debt crisis prevention and resolution, cyber security, the influx of refugees, foreign terrorist fighters and bribery, as well as the need for technology transfer, absorption and its financing, and commend UNCTAD for its work, as appropriate, regarding addressing these challenges and other systemic issues, and request UNCTAD to strengthen such work.

13. We recall that sovereign debt matters should concern both developed and developing countries. This should be considered as a matter that has the potential to adversely impact the global economy and the achievement of the Sustainable Development Goals if left unchecked. We recognize the need to assist developing countries in attaining long-term debt sustainability through coordinated policies aimed at fostering debt financing, debt relief, debt restructuring and sound debt management, as appropriate. We reiterate our concern about the activities of so-called vulture funds and their actions of a highly speculative nature, which pose a risk to all future debt-restructuring processes for developing countries. We urge all United Nations Member States to further discuss sovereign debt restructuring and management processes, with active, inclusive participation and engagement by all relevant stakeholders, in order to nurture and strengthen these processes to make them more effective, equitable, durable, independent and development-oriented, and reaffirm the roles of the United Nations and the international financial institutions in accordance with their respective mandates. We also welcome the adoption of General Assembly resolution 69/319 on basic principles on sovereign debt restructuring processes on 10 September 2015 as an important step.

14. We take note of the increasing calls by ordinary citizens across geographic regions and within developed and developing countries, for their Governments to secure adequate policy space within the context of bilateral, regional and international agreements and commitments, in order to ensure their well-being. In this regard, we therefore demand that international rules must allow for policy space and policy flexibility for developing countries, which are crucial to enabling our countries to formulate development strategies, in accordance with their sovereign right, that reflect national interests and differing needs, which are not always taken into account by international economic policymaking in the process of integration with the global economy.

15. We stress the importance of respecting policy space, recognizing national priorities and leadership to formulate, identify and pursue the most appropriate mix of economic and

social policies to achieve equitable and sustainable development, understanding that national ownership is key to achieving development.

16. We stress that unilateral coercive measures and legislation are contrary to international law, international humanitarian law, the United Nations Charter, the norms and principles governing peaceful relations among States and the rules and principles of the World Trade Organization. These measures impede the full achievement and further enhancement of the economic and social development of all countries, particularly developing countries, by imposing unconscionable hardships on the people of the affected countries.

17. We stress that effective taxation, including combating tax evasion and reducing opportunities for tax avoidance by multinational corporations, will be critical in the mobilization of resources for the implementation of the Sustainable Development Goals and the overall economic advancement of developing countries, and hence requires collective and inclusive, democratic action with the active participation of developing countries, at the global level, while respecting the policy space of countries.

18. We call for economic structural transformation that strengthens productive capacities, productivity and productive employment; financial inclusion; sustainable agriculture, rural and fisheries development; sustainable industrial development; universal access to affordable, reliable, sustainable and modern energy services; sustainable transport systems; and infrastructure that is resilient and of a high standard. We reaffirm the importance and crucial and effective role of the State in leading and promoting development, even as efforts to strengthen the contribution of all stakeholders, including the private sector and civil society, are enhanced.

19. We express serious concern over the widening income and other inequalities between the developed and developing countries. We, therefore, reaffirm the Group's objective to nurture a community of the shared future of humankind through a new type of international relations based on win-win cooperation to ensure inclusive development. For this purpose, we call upon the international community to intensify development cooperation, make financial resources available for development, build a more vigorous multilateral partnership and create a better enabling environment for development, as well as prevent the politicization of the international trading system, depriving many developing countries of the opportunity to be integrated into, and benefit from, the multilateral trading system.

20. We reiterate the importance of achieving, in particular, targets for official development assistance of 0.7 per cent of gross national income as official development assistance to developing countries and 0.15 per cent to 0.2 per cent of gross national income as official development assistance to the least developed countries, as well as further enhancing the resources for the least developed countries.

21. We call for active and strong global partnerships and cooperation and for greater focus on building productive capacities to address the main challenges to our achievement of sustainable and inclusive socioeconomic development, including poverty, hunger, food insecurity, unemployment, inequality, the lack of access to renewable energy and relevant technologies, the adverse effects of climate change and burgeoning debt levels, as well as the promotion of industrialization, the diversification of economies, the promotion of value addition, the implementation of national and regional hubs of innovation and development and the realization of the modern and successful infrastructure of communications. We request UNCTAD to continue capacity-building activities, including TrainForTrade and in the framework of paragraph 166 of the Bangkok Plan of Action.

22. We recognize that achieving sustainable economic growth requires the talents, creativity and entrepreneurial vigour of the entire population, as well as supportive policies

towards micro, small and medium-sized enterprises, skills development, capacities to innovate and absorb new technologies and the ability to produce a higher quality and greater range of products, infrastructure and other investments.

23. We call for continued and enhanced North–South cooperation, which is the core of the Global Partnership for Sustainable Development and remains critical in overcoming global development disparities, and recognize its importance, along with triangular cooperation.

24. We recognize that global challenges and opportunities have reinforced the need for continued and enhanced cooperation and solidarity among developing countries; it is in this spirit that we also call for enhanced South–South cooperation, including the sharing of home-grown approaches and best practices in sustainable development and governance; increased dialogue and coordination in major regional and international issues; strengthening of South–South business initiatives; and enhanced cooperation in areas such as agriculture, education, industrialization and infrastructural development, as an important element of international cooperation for development as a complement, not a substitute, to North–South cooperation.

25. We note that the digital economy is an important and growing part of the global economy, and that information and communications technologies have a great potential to create jobs, enhance innovation and enhance market access, in particular for developing countries.

26. We express concern that a digital divide remains between developed and developing countries, and that many developing countries lack affordable access to information and communications technologies, which remains a critical challenge to many developing countries, which needs to be addressed through, among others, international cooperation and technology transfer, including through the effective participation of developing countries in research and development, equal participation in Internet governance forums and stronger commitment from the private sector in the developed countries to support the private sector in developing countries.

27. We stress that the expeditious and effective transfer, dissemination and diffusion of appropriate technology to developing countries, on favourable terms, including on concessional and preferential terms, as mutually agreed, respect for policy space to build technological and absorptive capacities and the promotion of innovation in developing countries remain important. This is most important as we recognize the opportunities and challenges posed by rapid advances in information and communications technology and the need to address the digital divide and other systemic and entrenched inequalities within the sphere of information and communications technology, including the Internet.

28. We call, in this regard, for the enhanced support and cooperation of key partners, such as UNCTAD and the International Trade Centre, the Group of 15 and the South Centre, as well as other multilateral and regional institutions and stakeholders, in advancing our goals and objectives.

29. We express our continued support to the Secretary-General of UNCTAD and look forward to the strengthening of the bond between UNCTAD and the Group of 77 and China.

30. We reaffirm the central role of UNCTAD as the focal point within the United Nations for the integrated treatment of trade and development and interrelated issues, including in the areas of finance, debt, technology transfer, transit and transport issues, regional and global value chains, the international investment regime and sustainable development.

31. We call for the strengthening of the mandate of UNCTAD and its three pillars of research and analysis, consensus-building and technical cooperation, as well as the intergovernmental machinery, recognizing its central role as the focal point within the United Nations for the integrated treatment of trade and development and interrelated issues such as those within the areas of finance, technology, investment and sustainable development. In this context, the outcome of UNCTAD XIV should identify key issues where consensus would be built in the period between UNCTAD XIV and the following session, with a view to specific and measurable intergovernmental action. A benefit would be that intergovernmental decisions and agreements would form a coherent and holistic body of work that would serve as an important input in the preparation for the following session. To this end, adequate and additional budgetary and human resources should be provided to UNCTAD from the United Nations regular budget to enable UNCTAD, as a body of the General Assembly, to effectively and fully carry out its mandate under its three pillars.

32. We recognize the vital role of investment in support of sustainable development and will work intensively with UNCTAD, as well as other multilateral and regional institutions and stakeholders, to reform the international investment regime, improving the development dimension of international investment agreements, ensuring a balance between investor rights and obligations and safeguarding the right of States to regulate in the public interest, including through alternative approaches to dispute settlement, to better serve and reflect the new context of the 2030 Agenda for Sustainable Development. In this regard, we take note with appreciation of the Report of the Group of 77 Meeting on Investment for Sustainable Development, held from 4 to 5 May 2016 in Pattaya, Thailand.

33. We express serious concern at the lack of meaningful progress in the WTO Doha Round, particularly on domestic support and market access issues of interest to developing countries and the efforts by some members to undermine the commitments contained in the Doha Development Agenda, while welcoming the commitment of the Tenth Ministerial Conference to maintain development at the centre of future negotiations and its reaffirmation of the principles of special and differential treatment, flexibilities for developing countries and collective commitment to advancing on the Doha Round issues. In this context, we urge all WTO members to uphold and reiterate their commitment to promote an apolitical, universal, fair and balanced, open, inclusive, non-discriminatory, transparent, equitable, rules-based and predictable multilateral trading system, that has development at its centre, which would enable developing countries and especially the least developed countries, to secure a share in the growth of international trade commensurate with the needs of their economic development and to fully integrate into the multilateral trading system.

34. We underscore the need to improve global economic governance by, among others, strengthening the multilateral trading regime and increasing the representation and voice of developing countries in the international system with equal rights to participate in international rule-making. In this regard, we endeavour to enhance the participation in and role of developing countries in the areas of trade, investment and development in international economic forums, including the Group of 20.

35. We emphasize the need to focus on analysing and monitoring how subsidies and various forms of market access restrictions from developed countries have historically affected and continue to undermine the development of productive capacities in the agricultural sector of developing countries.

36. We underscore the importance of collective international action towards achieving the graduation of half of the least developed countries by 2020, as envisioned in the Istanbul Programme of Action.

37. We emphasize the importance of facilitating accession to WTO, especially for developing countries, recognizing the contribution that this would make to the rapid and full integration of these countries into the multilateral trading system. In this regard, we urge that the accession process be accelerated without political impediments and in an expeditious and transparent manner for developing countries that have applied for WTO membership, and reaffirm the importance of the WTO decision of 25 July 2012 on accession by the least developed countries. We also underscore and commend the pivotal role of UNCTAD in this regard, particularly through its technical assistance and capacity-building to developing countries before, during and after the process of accession to WTO. We call upon UNCTAD to strengthen this work. We welcome the results from WTO accessions so far. These results have contributed to the strengthening of the rules-based multilateral trading system.

38. We will continue to fight against all threats to economic growth and development, including all forms of protectionist measures and unilateral economic pressures, especially by the leading industrial economies, while preserving our policy space.

39. We, therefore, firmly reject the imposition of laws and regulations with extraterritorial impact and all other forms of coercive economic, financial and trade measures, including unilateral sanctions against developing countries, and urge the international community to take urgent and effective actions to eliminate the use of such measures.

40. We call upon UNCTAD to enhance its work towards addressing the trade and development challenges of all developing countries and, in so doing, to strengthen its work on the special problems of the least developed countries; African countries; landlocked developing countries; small island developing States; structurally weak, vulnerable and small economies and the related problems and challenges faced by middle-income countries, as well as to assist transit developing countries with their specific needs and challenges, particularly in relation to infrastructure development and transport.

41. We further call upon UNCTAD to provide the appropriate support necessary to contribute to the implementation of specific actions requested in the Addis Ababa Action Agenda, the Istanbul Programme of Action, the Vienna Programme of Action and the SAMOA Pathway. UNCTAD should also support the implementation of Agenda 2063 of the African Union and the New Partnership for Africa's Development. In this regard, adequate and additional resources should be provided to UNCTAD.

42. We call for the allocation of additional human and budgetary resources from the United Nations regular budget to enable UNCTAD to implement its mandate, which has a great relevance for all countries and in particular for developing countries, including its work on systemic issues, global macroeconomics and finance, debt, taxation, investment, trade and development and technology transfer.

43. We reaffirm our commitment to strengthen our ability as a Group to collectively promote our interests, particularly within multilateral trade and development forums, and commit, in this context, to ensuring that the Group continues to be a proactive force in the global effort to solve global issues, building on its solidarity, maximizing its competitive advantage and applying its collective capacity. We welcome steps taken to enhance coordination among Group chapters, and urge that these efforts be deepened.

44. We reiterate our call for support to the Palestinian people to be sustained by relevant research, policy analysis, advisory services and effective technical cooperation activities to alleviate the adverse economic impact of the unbearable conditions imposed by the prolonged Israeli occupation; and urge UNCTAD to strengthen and intensify its programme of assistance to the Palestinian people with adequate resources; and support paragraphs 9 of General Assembly resolutions 69/20 and 70/12, which request UNCTAD to report to the

General Assembly on the economic cost of occupation for the Palestinian people and exert all efforts to secure the resources required to fulfil these resolutions.

45. We reaffirm the need for the Government of Argentina and of the United Kingdom of Great Britain and Northern Ireland to resume negotiations in accordance with the principles and the objectives of the United Nations Charter and the relevant resolutions of the General Assembly, in order to find, as soon as possible, a peaceful solution to the sovereignty dispute relating to "the Question of the Malvinas Islands", which seriously damages the economic capacities of Argentina and the need for both parties to refrain from taking decisions that would imply introducing unilateral modifications in the situation while the Islands are going through the process recommended by the General Assembly.

46. We reaffirm the need to find a peaceful solution to the decolonization and sovereignty issues affecting developing countries, recognizing that failure to resolve these issues will seriously damage and undermine the development and economic capacities and prospects of these countries. In this context, recalling the concerns expressed by the Summit of Heads of State and Government and the Ministers for Foreign Affairs of the Group of 77 and China in their previous declarations regarding the dispute over the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the United Kingdom from the territory of Mauritius prior to independence, and the "marine protected area" that was declared by the United Kingdom around the Chagos Archipelago, we take note of the ruling of the Arbitral Tribunal in the case brought by Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea that the "marine protected area" was unlawfully established under international law.

47. We urge UNCTAD and other partners in the international community to assist developing countries facing specific circumstances, in particular related to terrorism, increasing numbers of displaced populations or hosting large numbers of refugees in protracted situations, in addressing the challenges they face in the implementation of national development goals and the 2030 Agenda for Sustainable Development.

Annex 182

17th Summit of Heads of State and Government of the Non-Aligned Movement, *Chagos Archipelago*, No. NAM 2016/CoB/DOC.1. Corr.1 (17-18 Sept. 2016)

NAM 2016/CoB/DOC.1. Corr.1
Original: English

17th Summit of Heads of State and Government of the Non-Aligned Movement

Island of Margarita, Bolivarian Republic of Venezuela
17 - 18 September 2016

FINAL DOCUMENT

Margarita, B.R. Venezuela
17-18 September 2016

rejects any form of permanent settlement or local integration in Lebanon, they called for increased international efforts in order to mitigate the impact of the humanitarian crisis in expediting the only durable solution for those temporarily displaced into Lebanon, which is their safe return to their homeland and livelihoods;

332. The Heads of State or Government *supported* the efforts of the Lebanese Government to save Lebanon from all threats to its security and stability, and *expressed* their understanding of the policy the Government pursues vis-à-vis the developments in the Arab region;

333. *The* Heads of State or Government *commended* Lebanon's generosity in hosting refugees from Syria, *reiterated* the importance to continue supporting Lebanese government institutions in this regard, and *expressed* the need for the international community to intensify efforts to provide appropriate assistance to those refugees during their temporary stay and to their host communities. They *emphasized* the importance of reaching a political solution to the crisis in Syria, which will expedite the safe and dignified return of those refugees to their homeland and livelihoods*;*

Africa

334. The Heads of State or Government acknowledged the adoptions of the Agenda 2063 by the 24th ordinary session of the Heads of State or Government of the Assembly of the African Union held from 30 to 31 January 2015 in Addis Ababa, Ethiopia and expressed their support for effective implementation of this initiative in order to promote peace, stability and socio-economic development in Africa.

335. The Heads of State or Government *welcomed* the successful third Arab–African Summit held in Kuwait on 19 November 2013 under the title "Partners in Development and Investment. They welcomed as well all initiatives to strengthen the historic relations, solidarity and cooperation between the two regions.

Chagos Archipelago

336. The Heads of State or Government *reaffirmed* that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius.

337. The Heads of State or Government further *noted* with grave concern that despite the strong opposition expressed by the Republic of Mauritius, the United Kingdom purported to establish a **"** marine protected area" ("MPA") around the Chagos Archipelago, further infringing the territorial integrity of the Republic of Mauritius and impeding the exercise of its sovereignty over the Chagos Archipelago as well as the exercise of the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom. In this regard, they *welcomed* the ruling of the Arbitral Tribunal in the case brought by the Republic of Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea that the "MPA" was unlawfully established under international law.

338. The Heads of State or Government also *noted* that on 18 March 2015, following proceedings initiated by Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the "MPA", the Arbitral Tribunal set up under Annex VII to UNCLOS, unanimously ruled that the "MPA" violates international law.

339. Cognizant that the Government of the Republic of Mauritius is committed to taking all appropriate measures to affirm the territorial integrity of the Republic of Mauritius and its sovereignty over the Chagos Archipelago under international law, the Heads of State or

Government *resolved* to fully support such measures including any action that may be taken in this regard at the United Nations General Assembly.

340. The Heads of State or Government also *took note* of the concern expressed by the Republic of Maldives regarding the legal and technical issues arising from the United Kingdom's illegal decision in 2010 to declare a "MPA" in the Chagos Archipelago which overlaps the exclusive economic zone of the Republic of Maldives as declared in its Constitution without prejudice to future resolution of maritime delimitations.

Libya

341. The Heads of State or Government *welcomed* the signing on 17 December 2015 of the Libyan Political Agreement of Sokherat, Morocco and *urged* UNSMIL, the neighboring countries, the League of Arab States and the African Union to assist the Libyan Parties in the full implementation of the Agreement. They *affirmed* their support to the Authorities emanating from the Agreement as the legitimate Authorities of Libya, and *encouraged* them to work in a consensual way to end the division, ensure security and stability of the country and provide the Libyan People with the necessary services.

342. The Heads of State or Government *reiterated* their commitment to the sovereignty, independence and territorial integrity of Libya and called on all states to refrain from interfering into the internal affairs of Libya, including by supplying arms to armed groups in violation of Security Council resolutions, using mass media to incite to violence and attempts to undermine the political process.

343. The Heads of State or Government called on the Parliament and Presidential Council to meet their commitments in accordance with the Libyan political agreement to expedite the process of approval of the Government of National Accord (GNA) to be proposed by the presidential council of the GNA as soon as possible, in order to achieve security and stability in Libya and to its people.

Tunisia

344. The Heads of State or Government *welcomed* the completion of the transition in Tunisia, with the holding, in November and December 2014, of presidential election; Commends all Tunisian social and political actors for a peaceful and consensual transition, and for their maturity, which allowed for a peaceful and consensual transition, and Underscores the exemplary nature of the Tunisian experience, Appeals to the international community to provide Tunisia with economic and financial support necessary for consolidation of democracy.

345. The Heads of State or Government *condemned* the recent terrorist attacks in Bardo Museum on the 18 March 2015 in Tunis and expressed their sincere condolences to the families of victims. The Heads of State or Government *pledged* their continued solidarity with the people and government of Tunisia in the fight against terrorism and stressed that no terrorist attack can reverse the path of Tunisia towards democracy and all efforts directed towards economic recovery and development".

Somalia

346. The Heads of State or Government *reaffirmed* their respect for the sovereignty, territorial integrity, political independence and unity of Somalia, consistent with the Charter of the United Nations;

Annex 183

Group of 77 and China, 40th Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (23 Sept. 2016)

EXTRACT

FORTIETH ANNUAL MEETING
OF MINISTERS FOR FOREIGN AFFAIRS
OF THE GROUP OF 77 AND CHINA
New York, 23 September 2016

MINISTERIAL DECLARATION

150. Ministers reaffirmed the need to find a peaceful solution to the sovereignty issues facing developing countries, including the dispute over the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the United Kingdom from the territory of Mauritius, prior to independence, in violation of international law and General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Failure to resolve these decolonization and sovereignty issues would seriously damage and undermine the development and economic capacities and prospects of developing countries. Ministers noted with great concern that despite the strong opposition of Mauritius, the United Kingdom purported to establish a "marine protected area" around the Chagos Archipelago, which contravenes international law and further impedes the exercise by Mauritius of its sovereign rights over the archipelago and the right of return of Mauritius citizens who were forcibly removed from the archipelago by the United Kingdom. In this regard, they noted the ruling of the Arbitral Tribunal in the case brought by the Republic of Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea that the "MPA" was unlawfully established under international law. Ministers resolved to support Mauritius in its endeavor to affirm its territorial integrity and sovereignty over the Chagos Archipelago.

151. The Ministers also took note of the concern expressed by the Republic of Maldives regarding the legal and technical issues arising from the United Kingdom's illegal decision in 2010 to declare a "MPA" in the Chagos Archipelago which overlaps the exclusive economic zone of the Republic of Maldives as declared in its Constitution without prejudice to future resolution of maritime delimitations.

Annex 184

U.N. General Assembly, 71st Session, *Agenda of the seventy-first session of the General Assembly*, U.N. Doc. A/71/251 (16 Sept. 2016)

United Nations A/71/251*

General Assembly

Distr.: General
16 September 2016

Original: English

Seventy-first session

Agenda of the seventy-first session of the General Assembly**

Adopted by the General Assembly at its 2nd plenary meeting, on 16 September 2016

1. Opening of the session by the President of the General Assembly.
2. Minute of silent prayer or meditation.
3. Credentials of representatives to the seventy-first session of the General Assembly:
   (a) Appointment of the members of the Credentials Committee;
   (b) Report of the Credentials Committee.
4. Election of the President of the General Assembly.[1]
5. Election of the officers of the Main Committees.[1]
6. Election of the Vice-Presidents of the General Assembly.[1]
7. Organization of work, adoption of the agenda and allocation of items: reports of the General Committee.
8. General debate.

A. Promotion of sustained economic growth and sustainable development in accordance with the relevant resolutions of the General Assembly and recent United Nations conferences

9. Report of the Economic and Social Council.
10. Implementation of the Declaration of Commitment on HIV/AIDS and the political declarations on HIV/AIDS.
11. Sport for development and peace.

* Reissued for technical reasons on 10 October 2016.

** Organized under headings corresponding to the priorities of the Organization.

[1] In accordance with rule 30 of the rules of procedure, the General Assembly will hold these elections for its seventy-second session at least three months before the opening of that session.

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Please recycle

12. 2001-2010: Decade to Roll Back Malaria in Developing Countries, Particularly in Africa.

13. Integrated and coordinated implementation of and follow-up to the outcomes of the major United Nations conferences and summits in the economic, social and related fields.

14. Culture of peace.

15. The role of the United Nations in promoting a new global human order.

16. Information and communications technologies for development.

17. Macroeconomic policy questions:

    (a) International trade and development;

    (b) International financial system and development;

    (c) External debt sustainability and development.

18. Follow-up to and implementation of the outcomes of the International Conferences on Financing for Development.

19. Sustainable development:

    (a) Implementation of Agenda 21, the Programme for the Further Implementation of Agenda 21 and the outcomes of the World Summit on Sustainable Development and of the United Nations Conference on Sustainable Development;

    (b) Follow-up to and implementation of the SIDS Accelerated Modalities of Action (SAMOA) Pathway and the Mauritius Strategy for the Further Implementation of the Programme of Action for the Sustainable Development of Small Island Developing States;

    (c) Disaster risk reduction;

    (d) Protection of global climate for present and future generations of humankind;

    (e) Implementation of the United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa;

    (f) Convention on Biological Diversity;

    (g) Report of the United Nations Environment Assembly of the United Nations Environment Programme;

    (h) Harmony with Nature;

    (i) Promotion of new and renewable sources of energy;

    (j) Sustainable mountain development.

20. Implementation of the outcomes of the United Nations Conferences on Human Settlements and on Housing and Sustainable Urban Development and strengthening of the United Nations Human Settlements Programme (UN-Habitat).

21. Globalization and interdependence:

    (a) Globalization and interdependence;

    (b) International migration and development.

22. Groups of countries in special situations:

    (a) Follow-up to the Fourth United Nations Conference on the Least Developed Countries;

    (b) Follow-up to the second United Nations Conference on Landlocked Developing Countries.

23. Eradication of poverty and other development issues:

    (a) Implementation of the Second United Nations Decade for the Eradication of Poverty (2008-2017);

    (b) Industrial development cooperation.

24. Operational activities for development:

    (a) Operational activities for development of the United Nations system;

    (b) South-South cooperation for development.

25. Agriculture development, food security and nutrition.

26. Social development:

    (a) Social development, including questions relating to the world social situation and to youth, ageing, disabled persons and the family;

    (b) Literacy for life: shaping future agendas.

27. Advancement of women.

B. Maintenance of international peace and security

28. Report of the Security Council.

29. Report of the Peacebuilding Commission.

30. The role of diamonds in fuelling conflict.

31. Prevention of armed conflict.

32. Protracted conflicts in the GUAM area and their implications for international peace, security and development.

33. Zone of peace and cooperation of the South Atlantic.

34. The situation in the Middle East.

35. Question of Palestine.

36. The situation in Afghanistan.

37. The situation in the occupied territories of Azerbaijan.

38. Question of the Comorian island of Mayotte.[2]

39. Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba.

40. The situation in Central America: progress in fashioning a region of peace, freedom, democracy and development.[3]

41. Question of Cyprus.[4]

42. Armed aggression against the Democratic Republic of the Congo.[4]

43. Question of the Falkland Islands (Malvinas).[4]

44. The situation of democracy and human rights in Haiti.[4]

45. Armed Israeli aggression against the Iraqi nuclear installations and its grave consequences for the established international system concerning the peaceful uses of nuclear energy, the non-proliferation of nuclear weapons and international peace and security.[4]

46. Consequences of the Iraqi occupation of and aggression against Kuwait.[4]

47. Effects of atomic radiation.

48. International cooperation in the peaceful uses of outer space.

49. United Nations Relief and Works Agency for Palestine Refugees in the Near East.

50. Report of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories.

51. Comprehensive review of the whole question of peacekeeping operations in all their aspects.

52. Comprehensive review of special political missions.

53. Questions relating to information.

54. Information from Non-Self-Governing Territories transmitted under Article 73 *e* of the Charter of the United Nations.

55. Economic and other activities which affect the interests of the peoples of the Non-Self-Governing Territories.

56. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples by the specialized agencies and the international institutions associated with the United Nations.

57. Offers by Member States of study and training facilities for inhabitants of Non-Self-Governing Territories.

[2] At its second meeting, on 16 September 2016, the General Assembly decided to include this item on its agenda on the understanding that there would be no consideration of the item by the Assembly until further notice.

[3] In accordance with decision 60/508, this item remains on the agenda for consideration upon notification by a Member State.

[4] In accordance with paragraph 4 (b) of the annex to resolution 58/316, this item remains on the agenda for consideration upon notification by a Member State.

58. Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples.

59. Permanent sovereignty of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, and of the Arab population in the occupied Syrian Golan over their natural resources.

60. Report of the United Nations High Commissioner for Refugees, questions relating to refugees, returnees and displaced persons and humanitarian questions.

61. Peacebuilding and sustaining peace.

C. Development of Africa

62. New Partnership for Africa's Development: progress in implementation and international support:

(a) New Partnership for Africa's Development: progress in implementation and international support;

(b) Causes of conflict and the promotion of durable peace and sustainable development in Africa.

D. Promotion of human rights

63. Report of the Human Rights Council.

64. Promotion and protection of the rights of children:

(a) Promotion and protection of the rights of children;

(b) Follow-up to the outcome of the special session on children.

65. Rights of indigenous peoples:

(a) Rights of indigenous peoples;

(b) Follow-up to the outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples.

66. Elimination of racism, racial discrimination, xenophobia and related intolerance:

(a) Elimination of racism, racial discrimination, xenophobia and related intolerance;

(b) Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action.

67. Right of peoples to self-determination.

68. Promotion and protection of human rights:

(a) Implementation of human rights instruments;

(b) Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms;

(c) Human rights situations and reports of special rapporteurs and representatives;

(d) Comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action.

E. Effective coordination of humanitarian assistance efforts

69. Strengthening of the coordination of humanitarian and disaster relief assistance of the United Nations, including special economic assistance:

(a) Strengthening of the coordination of emergency humanitarian assistance of the United Nations;

(b) Assistance to the Palestinian people;

(c) Special economic assistance to individual countries or regions;

(d) Strengthening of international cooperation and coordination of efforts to study, mitigate and minimize the consequences of the Chernobyl disaster.

F. Promotion of justice and international law

70. Report of the International Court of Justice.

71. Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

72. Report of the International Criminal Court.

73. Oceans and the law of the sea:

(a) Oceans and the law of the sea;

(b) Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments.

74. Responsibility of States for internationally wrongful acts.

75. Criminal accountability of United Nations officials and experts on mission.

76. Report of the United Nations Commission on International Trade Law on the work of its forty-ninth session.

77. United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law.

78. Report of the International Law Commission on the work of its sixty-eighth session.

79. Diplomatic protection.

80. Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm.

81. Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts.

82. Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives.

83. Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization.

84. The rule of law at the national and international levels.

85. The scope and application of the principle of universal jurisdiction.

86. The law of transboundary aquifers.

87. Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.[5]

G. Disarmament

88. Report of the International Atomic Energy Agency.

89. Reduction of military budgets.

90. African Nuclear-Weapon-Free Zone Treaty.

91. Consolidation of the regime established by the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco).

92. Maintenance of international security — good-neighbourliness, stability and development in South-Eastern Europe.

93. Developments in the field of information and telecommunications in the context of international security.

94. Establishment of a nuclear-weapon-free zone in the region of the Middle East.

95. Conclusion of effective international arrangements to assure non-nuclear-weapon States against the use or threat of use of nuclear weapons.

96. Prevention of an arms race in outer space:

(a) Prevention of an arms race in outer space;

(b) No first placement of weapons in outer space.

97. Role of science and technology in the context of international security and disarmament.

[5] At its second meeting, on 16 September 2016, the General Assembly decided to include this item on its agenda on the understanding that there would be no consideration of the item by the Assembly before June 2017 and that thereafter it may be considered upon notification by a Member State.

98. General and complete disarmament:

(a) Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices;

(b) Further measures in the field of disarmament for the prevention of an arms race on the seabed and the ocean floor and in the subsoil thereof;

(c) Nuclear disarmament;

(d) Notification of nuclear tests;

(e) Relationship between disarmament and development;

(f) Regional disarmament;

(g) Transparency in armaments;

(h) Conventional arms control at the regional and subregional levels;

(i) Convening of the fourth special session of the General Assembly devoted to disarmament;

(j) Nuclear-weapon-free southern hemisphere and adjacent areas;

(k) Observance of environmental norms in the drafting and implementation of agreements on disarmament and arms control;

(l) Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons;

(m) Consolidation of peace through practical disarmament measures;

(n) Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;

(o) Measures to uphold the authority of the 1925 Geneva Protocol;

(p) Implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction;

(q) Assistance to States for curbing the illicit traffic in small arms and light weapons and collecting them;

(r) Treaty on a Nuclear-Weapon-Free Zone in Central Asia;

(s) Reducing nuclear danger;

(t) The illicit trade in small arms and light weapons in all its aspects;

(u) Towards a nuclear-weapon-free world: accelerating the implementation of nuclear disarmament commitments;

(v) Mongolia’s international security and nuclear-weapon-free status;

(w) Missiles;

(x) Disarmament and non-proliferation education;

(y) Promotion of multilateralism in the area of disarmament and non-proliferation;

(z) Measures to prevent terrorists from acquiring weapons of mass destruction;

(aa) Confidence-building measures in the regional and subregional context;

(bb) The Hague Code of Conduct against Ballistic Missile Proliferation;

(cc) Information on confidence-building measures in the field of conventional arms;

(dd) Transparency and confidence-building measures in outer space activities;

(ee) Preventing the acquisition by terrorists of radioactive sources;

(ff) The Arms Trade Treaty;

(gg) Effects of the use of armaments and ammunitions containing depleted uranium;

(hh) United action with renewed determination towards the total elimination of nuclear weapons;

(ii) Preventing and combating illicit brokering activities;

(jj) Women, disarmament, non-proliferation and arms control;

(kk) Taking forward multilateral nuclear disarmament negotiations;

(ll) Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament;

(mm) Countering the threat posed by improvised explosive devices;

(nn) Humanitarian consequences of nuclear weapons;

(oo) Humanitarian pledge for the prohibition and elimination of nuclear weapons;

(pp) Ethical imperatives for a nuclear-weapon-free world;

(qq) Implementation of the Convention on Cluster Munitions.

99. Review and implementation of the Concluding Document of the Twelfth Special Session of the General Assembly:

(a) United Nations disarmament fellowship, training and advisory services;

(b) United Nations Disarmament Information Programme;

(c) Convention on the Prohibition of the Use of Nuclear Weapons;

(d) United Nations Regional Centre for Peace and Disarmament in Africa;

(e) United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean;

(f) United Nations Regional Centre for Peace and Disarmament in Asia and the Pacific;

(g) Regional confidence-building measures: activities of the United Nations Standing Advisory Committee on Security Questions in Central Africa;

(h) United Nations regional centres for peace and disarmament.

100. Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session:

(a) Report of the Conference on Disarmament;

(b) Report of the Disarmament Commission.

101. The risk of nuclear proliferation in the Middle East.

102. Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects.

103. Strengthening of security and cooperation in the Mediterranean region.

104. Comprehensive Nuclear-Test-Ban Treaty.

105. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

H. Drug control, crime prevention and combating international terrorism in all its forms and manifestations

106. Crime prevention and criminal justice.

107. International drug control.

108. Measures to eliminate international terrorism.

I. Organizational, administrative and other matters

109. Report of the Secretary-General on the work of the Organization.

110. Report of the Secretary-General on the Peacebuilding Fund.

111. Notification by the Secretary-General under Article 12, paragraph 2, of the Charter of the United Nations.

112. Elections to fill vacancies in principal organs:

(a) Election of five non-permanent members of the Security Council;

(b) Election of eighteen members of the Economic and Social Council.

113. Appointment of the Secretary-General of the United Nations.

114. Elections to fill vacancies in subsidiary organs and other elections:

(a) Election of seven members of the Committee for Programme and Coordination;

(b) Election of the members of the International Law Commission;

(c) Election of five members of the Organizational Committee of the Peacebuilding Commission;

(d) Election of fourteen members of the Human Rights Council.

115. Appointments to fill vacancies in subsidiary organs and other appointments:

(a) Appointment of members of the Advisory Committee on Administrative and Budgetary Questions;

(b) Appointment of members of the Committee on Contributions;

(c) Confirmation of the appointment of members of the Investments Committee;

(d) Appointment of members of the International Civil Service Commission;

(e) Appointment of members of the Independent Audit Advisory Committee;

(f) Appointment of members and alternate members of the United Nations Staff Pension Committee;

(g) Appointment of members of the Committee on Conferences;

(h) Appointment of members of the Joint Inspection Unit;

(i) Appointment of members of the Board of the 10-Year Framework of Programmes on Sustainable Consumption and Production Patterns;

(j) Confirmation of the appointment of the Administrator of the United Nations Development Programme;

(k) Confirmation of the appointment of the Secretary-General of the United Nations Conference on Trade and Development;

(l) Appointment of the judges of the United Nations Dispute Tribunal.

116. Admission of new Members to the United Nations.

117. Follow-up to the outcome of the Millennium Summit.

118. The United Nations Global Counter-Terrorism Strategy.

119. Commemoration of the abolition of slavery and the transatlantic slave trade.

120. Implementation of the resolutions of the United Nations.

121. Revitalization of the work of the General Assembly.

122. Question of equitable representation on and increase in the membership of the Security Council and other matters related to the Security Council.

123. Strengthening of the United Nations system:

(a) Strengthening of the United Nations system;

(b) Central role of the United Nations system in global governance.

124. United Nations reform: measures and proposals.

125. Multilingualism.

126. Cooperation between the United Nations and regional and other organizations:

(a) Cooperation between the United Nations and the African Union;

(b) Cooperation between the United Nations and the Organization of Islamic Cooperation;

(c) Cooperation between the United Nations and the Asian-African Legal Consultative Organization;

(d) Cooperation between the United Nations and the League of Arab States;

(e) Cooperation between the United Nations and the Latin American and Caribbean Economic System;

(f) Cooperation between the United Nations and the Organization of American States;

(g) Cooperation between the United Nations and the Organization for Security and Cooperation in Europe;

(h) Cooperation between the United Nations and the Caribbean Community;

(i) Cooperation between the United Nations and the Economic Cooperation Organization;

(j) Cooperation between the United Nations and the International Organization of la Francophonie;

(k) Cooperation between the United Nations and the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization;

(l) Cooperation between the United Nations and the Council of Europe;

(m) Cooperation between the United Nations and the Economic Community of Central African States;

(n) Cooperation between the United Nations and the Organization for the Prohibition of Chemical Weapons;

(o) Cooperation between the United Nations and the Black Sea Economic Cooperation Organization;

(p) Cooperation between the United Nations and the Southern African Development Community;

(q) Cooperation between the United Nations and the Pacific Islands Forum;

(r) Cooperation between the United Nations and the Association of Southeast Asian Nations;

(s) Cooperation between the United Nations and the Eurasian Economic Community;

(t) Cooperation between the United Nations and the Community of Portuguese-speaking Countries;

(u) Cooperation between the United Nations and the Shanghai Cooperation Organization;

(v) Cooperation between the United Nations and the Collective Security Treaty Organization;

(w) Cooperation between the United Nations and the Central European Initiative;

(x) Cooperation between the United Nations and the Organization for Democracy and Economic Development — GUAM;

(y) Cooperation between the United Nations and the Commonwealth of Independent States;

(z) Cooperation between the United Nations and the International Organization for Migration.

127. Global health and foreign policy.

128. International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

129. International Residual Mechanism for Criminal Tribunals.

130. Investigation into the conditions and circumstances resulting in the tragic death of Dag Hammarskjöld and of the members of the party accompanying him.

131. Global awareness of the tragedies of irregular migrants in the Mediterranean basin, with specific emphasis on Syrian asylum seekers.

132. Financial reports and audited financial statements, and reports of the Board of Auditors:

(a) United Nations;

(b) United Nations peacekeeping operations;

(c) International Trade Centre;

(d) United Nations University;

(e) Capital master plan;

(f) United Nations Development Programme;

(g) United Nations Capital Development Fund;

(h) United Nations Children's Fund;

(i) United Nations Relief and Works Agency for Palestine Refugees in the Near East;

(j) United Nations Institute for Training and Research;

(k) Voluntary funds administered by the United Nations High Commissioner for Refugees;

(l) Fund of the United Nations Environment Programme;

(m) United Nations Population Fund;

(n) United Nations Human Settlements Programme;

(o) United Nations Office on Drugs and Crime;

(p) United Nations Office for Project Services;

(q) United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women);

(r) International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994;

(s) International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991;

(t) International Residual Mechanism for Criminal Tribunals;

(u) United Nations Joint Staff Pension Fund.

133. Review of the efficiency of the administrative and financial functioning of the United Nations.

134. Programme budget for the biennium 2016-2017.

135. Programme planning.

136. Improving the financial situation of the United Nations.

137. Pattern of conferences.

138. Scale of assessments for the apportionment of the expenses of the United Nations.

139. Human resources management.

140. Joint Inspection Unit.

141. United Nations common system.

142. United Nations pension system.

143. Administrative and budgetary coordination of the United Nations with the specialized agencies and the International Atomic Energy Agency.

144. Report on the activities of the Office of Internal Oversight Services.

145. Administration of justice at the United Nations.

146. Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994.

147. Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

148. Financing of the International Residual Mechanism for Criminal Tribunals.

149. Administrative and budgetary aspects of the financing of the United Nations peacekeeping operations.

150. Financing of the United Nations Interim Security Force for Abyei.

151. Financing of the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic.

152. Financing of the United Nations Operation in Côte d'Ivoire.

153. Financing of the United Nations Peacekeeping Force in Cyprus.

154. Financing of the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo.

155. Financing of the United Nations Mission in East Timor.

156. Financing of the United Nations Stabilization Mission in Haiti.

157. Financing of the United Nations Interim Administration Mission in Kosovo.

158. Financing of the United Nations Mission in Liberia.

159. Financing of the United Nations Multidimensional Integrated Stabilization Mission in Mali.

160. Financing of the United Nations peacekeeping forces in the Middle East:

(a) United Nations Disengagement Observer Force;

(b) United Nations Interim Force in Lebanon.

161. Financing of the United Nations Mission in South Sudan.

162. Financing of the United Nations Mission for the Referendum in Western Sahara.

163. Financing of the African Union-United Nations Hybrid Operation in Darfur.

164. Financing of the activities arising from Security Council resolution 1863 (2009).

165. Report of the Committee on Relations with the Host Country.

166. Observer status for the Cooperation Council of Turkic-speaking States in the General Assembly.

167. Observer status for the Eurasian Economic Union in the General Assembly.

168. Observer status for the Community of Democracies in the General Assembly.

169. Observer status for the International Conference of Asian Political Parties in the General Assembly.

170. Observer status for the Conference of Ministers of Justice of the Ibero-American Countries in the General Assembly.

171. Observer status for the International Youth Organization for Ibero-America in the General Assembly.

172. Observer status for the Pacific Islands Development Forum in the General Assembly.

173. Observer status for the International Chamber of Commerce in the General Assembly.

Annex 185

U.K. House of Lords, *"Written Statement: Update on the British Indian Ocean Territory"*, No. HLWS257 (16 Nov. 2016)

Written statements

WS Foreign and Commonwealth Office

Made on: 16 November 2016

Made by: **Baroness Anelay of St Johns** (The Minister of State, Foreign and Commonwealth Affairs)

Lords **HLWS257**

Update on the British Indian Ocean Territory

On 24 March 2016 the former Parliamentary Under-Secretary for Foreign and Commonwealth Affairs, the hon. Member for Rochford and Southend East (James Duddridge) informed the House that the Government would be carrying out further work on its review of resettlement policy in the **British Indian Ocean Territory** (BIOT). I would now like to inform Parliament of two decisions which have been made concerning the future of BIOT.

Parliament will be aware of the Government's review and consultation over the resettlement of the Chagossian people to BIOT. The manner in which the Chagossian community was removed from the **Territory** in the 1960s and 1970s, and the way they were treated, was wrong and we look back with deep regret. We have taken care in coming to our final decision on resettlement, noting the community's emotional ties to BIOT and their desire to go back to their former way of life.

This comprehensive programme of work included an independent feasibility study followed by a full public consultation in the UK, Mauritius and the Seychelles.

I am today announcing that the Government has decided against resettlement of the Chagossian people to the **British Indian Ocean Territory** on the grounds of feasibility, defence and security interests, and cost to the **British** taxpayer. In coming to this decision the Government has considered carefully the practicalities of setting up a small remote community on low-lying islands and the challenges that any community would face. These are significant, and include the challenge of effectively establishing modern public services, the limited healthcare and education that it would be possible to provide, and the lack of economic opportunities, particularly job prospects. The Government has also considered the interaction of any potential community with the US Naval Support Facility – a vital part of our defence relationship.

The Government will instead seek to support improvements to the livelihoods of Chagossians in the communities where they now live. I can today announce that we have agreed to fund a package of approximately £40 million over the next ten years to achieve this goal. This money addresses the most pressing needs of the community by improving access to health and social care and to improved education and employment opportunities. Moreover, this fund will support a significantly expanded programme of visits to BIOT for native Chagossians. The Government will work closely with Chagossian communities in the UK and overseas to develop cost-effective programmes which will make the

biggest improvement in the life chances of those Chagossians who need it most.

Parliament will also be aware that the agreements underpinning the UK/US defence facility will roll over automatically on 31 December if neither side breaks silence. In an increasingly dangerous world, the defence facility is used by us and our allies to combat some of the most difficult problems of the 21st century including terrorism, international criminality, instability and piracy. I can today confirm that the UK continues to welcome the US presence, and that the agreements will continue as they stand until 30 December 2036.

This statement has also been made in the House of Commons: **HCWS260**

Annex 186

Non-Aligned Movement, 17th Summit of Heads of State and Government of the Non-Aligned Movement, *Final Document: Chagos Archipelago* (17-18 Sept. 2016)

EXTRACT FROM FINAL DOCUMENT ADOPTED BY 17TH SUMMIT OF HEADS OF STATE AND GOVERNMENT OF THE NON-ALIGNED MOVEMENT, 17-18 SEPTEMBER 2016, ISLAND OF MARGARITA, VENEZUELA

Chagos Archipelago

336. The Heads of State or Government *reaffirmed* that the Chagos Archipelago, including Diego Garcia, which was unlawfully excised by the former colonial power from the territory of Mauritius in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965, forms an integral part of the territory of the Republic of Mauritius.

337. The Heads of State or Government further *noted* with grave concern that despite the strong opposition expressed by the Republic of Mauritius, the United Kingdom purported to establish a **"** marine protected area" ("MPA") around the Chagos Archipelago, further infringing the territorial integrity of the Republic of Mauritius and impeding the exercise of its sovereignty over the Chagos Archipelago as well as the exercise of the right of return of Mauritian citizens who were forcibly removed from the Archipelago by the United Kingdom. In this regard, they *welcomed* the ruling of the Arbitral Tribunal in the case brought by the Republic of Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea that the "MPA" was unlawfully established under international law.

338. The Heads of State or Government also *noted* that on 18 March 2015, following proceedings initiated by Mauritius against the United Kingdom under the United Nations Convention on the Law of the Sea (UNCLOS) to challenge the legality of the "MPA", the Arbitral Tribunal set up under Annex VII to UNCLOS, unanimously ruled that the "MPA" violates international law.

339. Cognizant that the Government of the Republic of Mauritius is committed to taking all appropriate measures to affirm the territorial integrity of the Republic of Mauritius and its sovereignty over the Chagos Archipelago under international law, the Heads of State or Government *resolved* to fully support such measures including any action that may be taken in this regard at the United Nations General Assembly.

340. The Heads of State or Government also *took note* of the concern expressed by the Republic of Maldives regarding the legal and technical issues arising from the United Kingdom's illegal decision in 2010 to declare a "MPA" in the Chagos Archipelago which overlaps the exclusive economic zone of the Republic of Maldives as declared in its Constitution without prejudice to future resolution of maritime delimitations.

Annex 187

African, Caribbean and Pacific Group of States, 104th Session of the ACP Council of Ministers, *Support for the Claim of Sovereignty of Mauritius over the Chagos Archipelago*, Decision No. 7/CIV/16 (29-30 Nov. 2016)

DECISION No.7/CIV/16
OF THE 104th SESSION OF THE ACP COUNCIL OF MINISTERS
HELD IN BRUSSELS, BELGIUM, FROM 29 TO 30 NOVEMBER 2016

SUPPORT FOR THE CLAIM OF SOVEREIGNTY OF MAURITIUS OVER THE CHAGOS ARCHIPELAGO

The ACP Council of Ministers,

- Meeting in Brussels, Belgium, from 29th to 30 November 2016,

HAVING REGARD to the provisions of the Georgetown Agreement, including consolidating and strengthening the solidarity of the ACP Group;

HAVING REGARD to the Declaration of the 8th Summit of Heads of State and Government of the ACP Group of States adopted on 01 June 2016 in Port Moresby, Papua New Guinea;

RECALLING the unlawful excision of the Chagos Archipelago, including Diego Garcia, from the territory of Mauritius by the United Kingdom, the former colonial power, prior to the independence of Mauritius, in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence, as well as UN Resolutions 2232 (XXI) of 20 December 1966 and 2357(XXII) of 19 December 1967;

REAFFIRMING that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius;

DEPLORING the continued unlawful occupation by the United Kingdom of the Chagos Archipelago, thereby denying the Republic of Mauritius the exercise of its sovereignty over the Archipelago and making the decolonization of the Republic of Mauritius and of Africa incomplete;

CONSIDERING that the Government of the Republic of Mauritius has protested strongly against the recent unilateral decision of the Government of the United Kingdom aimed at denying Mauritian citizens of Chagossian origin their legitimate right of return to the Chagos Archipelago and reiterated that the denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago is a manifest breach of international law and outrageously flouts their human rights;

CONSIDERING also that the Government of the Republic of Mauritius is resolutely committed to taking all appropriate measures for the completion of the decolonization process of the Republic of Mauritius and the effective exercise by the Republic of Mauritius of its sovereignty over the Chagos Archipelago, including Diego Garcia, in keeping with the principles of international law;

HEREBY DECIDES TO:

1. **Reiterate** its support to the Republic of Mauritius in its legitimate pursuit to complete its decolonization process and effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia;

2. **Support** the calls of Mauritius on the United Kingdom to expeditiously end its unlawful occupation of the Chagos Archipelago so that the decolonization process of the Republic of Mauritius can be completed and the Republic of Mauritius can effectively exercise its sovereignty over the Chagos Archipelago;

3. **Fully support** all appropriate measures that the Government of the Republic of Mauritius is committed to take, including at the UN General Assembly, to complete the decolonization process of the Republic of Mauritius, thereby enabling the Republic of Mauritius to effectively exercise its sovereignty over the Chagos Archipelago.

Done at Brussels, 30th November 2016

Honourable Lindsay F.P. Grant
Minister of Tourism, International Trade,
Industry and Commerce of St Kitts and Nevis
President of ACP Council of Ministers

Annex 188

Republic of Mauritius, *Population and Vital Statistics (Jan.-June 2017)* (2017)

POPULATION AND VITAL STATISTICS REPUBLIC OF MAURITIUS, JANUARY – JUNE 2017

1. Introduction

This issue of the Economic and Social Indicators presents provisional population estimates for mid-year 2017 and vital statistics for the first semester of 2017. Forecasts of vital events and rates for the year 2017 are also included.

It is to be noted that preliminary data for the compilation of vital statistics have been extracted from the computerised system in place at the Central Civil Status Office.

Definitions of terms used are at Annex.

2. Key points

- The population of the Republic of Mauritius grew at a rate of 0.1% (+1,140) since mid-2016 and was estimated at 1,264,887 as at 1st July 2017.

- As at mid-2017, the female population outnumbered the male population by 13,085.

- The expected number of live births for the Republic of Mauritius for year 2017 is 13,100, corresponding to a crude birth rate of 10.4 per 1,000 mid-year population, same as in 2016.

- The estimated number of deaths for 2017 is around 10,030, giving a crude death rate of 7.9 per 1,000 mid-year population, compared to 8.1 in 2016.

- The forecast for the number of infant deaths for the Republic of Mauritius in 2017 is around 150, representing an infant mortality rate of 11.5 per 1,000 live births, compared to 11.8 in 2016.

- The number of still births for 2017 is estimated at 120, giving a still birth rate of 9.1 per 1,000 total births, compared to 9.6 in 2016.

- The expected number of marriages for 2017 is 9,860, corresponding to a marriage rate of 15.6 persons married per 1,000 mid-year population, against 15.9 in 2016.

3. Estimated resident population

Table 3.1 - Estimated resident population by sex, Republic of Mauritius, 1st July 2017

Island	Both sexes	Male	Female	Sex ratio
Island of Mauritius	**1,221,975**	604,780	617,195	98.0
Island of Rodrigues	**42,638**	20,947	21,691	96.6
Agalega and St. Brandon	**274**	174	100	174.0
Republic of Mauritius	**1,264,887**	**625,901**	**638,986**	**98.0**

As at 1st July 2017, the population of the Republic of Mauritius was estimated at 1,264,887, of whom 625,901 were males and 638,986 females. There were 98 males for every 100 females.

The population of the Islands of Mauritius and Rodrigues were estimated at 1,221,975 and 42,638 respectively. In both islands, females outnumbered males.

Agalega and St. Brandon had an estimated population of 274, with 74 more males than females.

Table 3.2 - Population density, Republic of Mauritius, 1st July 2017

Island	Both sexes	Area (km²)	Density per km²
Island of Mauritius	**1,221,975**	1,868.4	654
Island of Rodrigues	**42,638**	110.1	387
Agalega and St. Brandon	**274**	28.7	10
Republic of Mauritius	**1,264,887**	**2,007.2**	**630**

The Republic of Mauritius, with a total land area of 2,007.2 square kilometres, had a population density of 630 persons per square km as at mid-2017. The population densities of the Island of Mauritius and the Island of Rodrigues were 654 and 387 respectively.

Table 3.3 - Estimated resident population by sex and sex ratio, Republic of Mauritius, 2015 - 2017 (mid-year estimates)

Year	Both sexes	Male	Female	Sex ratio
2015	1,262,879	624,943	637,936	98.0
2016	1,263,747	625,380	638,367	98.0
2017	1,264,887	625,901	638,986	98.0

In the above table, population estimates and sex ratios for the past three years are given for comparative purposes. From 2015 to 2017, the sex ratio remained at 98.0.

4. Population growth

Table 4.1 - Population change, Republic of Mauritius, 1st July 2016 and 1st July 2017

Island	Population		Growth	
	1st July 2016	1st July 2017	Number	%
Island of Mauritius	1,221,213	**1,221,975**	762	0.1
Island of Rodrigues	42,260	**42,638**	378	0.9
Agalega and St. Brandon	274	**274**	0	0.0
Republic of Mauritius	**1,263,747**	**1,264,887**	**1,140**	**0.1**

The population of the Republic of Mauritius increased by 1,140 (0.1%) from mid-2016 to mid-2017. The growth rate for the Island of Mauritius was 0.1% compared to 0.9% for the Island of Rodrigues.

Table 4.2 - Components of population growth during the first semester of 2016 and 2017, Republic of Mauritius[1]

Components of population growth	2016	2017
Resident population as at beginning of year	**1,262,588**	**1,263,546**
Natural increase, January-June	**1,860**	**1,992**
Live Births, January-June	6,858	6,810
Deaths, January-June	4,998	4,818
Net international migration, January-June	**-975**	**-925**
Resident population as at mid-year	**1,263,473**	**1,264,613**

[1] excluding Agalega and St Brandon

Population growth has two components: natural increase (the number of live births minus the number of deaths) and its net international migration (the net movement of residents).

During the first semester of 2017, the population registered a natural increase of 1,992, which was the result of an addition of 6,810 live births and a subtraction of 4,818 deaths. For the same period, the net international migration of residents was estimated at -925.

5. Vital statistics and rates

5.1 Live births and crude birth rate

Table 5.1 - Live births registered and crude birth rate, Republic of Mauritius, 2016 and 2017[1]

Island	Number of live births				Crude birth rate	
	2016		2017		2016	2017 [1]
	Jan - June	Year	Jan - June	Year[1]		
Island of Mauritius	6,462	12,330	6,387	12,300	10.1	10.1
Island of Rodrigues	396	752	423	800	17.5 *	18.8
Republic of Mauritius	**6,858**	**13,082**	**6,810**	**13,100**	**10.4**	**10.4**

[1] Forecast
* Provisional

For the first six months of the current year, 6,810 live births were registered in the Republic of Mauritius, compared to 6,858 for the corresponding period of 2016. For the year 2017, the number of live births is estimated at 13,100, resulting in a crude birth rate (i.e, live births per 1,000 mid-year population) of 10.4, same as in 2016. The forecast for the Island of Mauritius is 12,300 live births (rate of 10.1), and for Rodrigues it is 800 (rate of 18.8).

5.2 Deaths and crude death rate

Table 5.2 - Deaths and crude death rate, Republic of Mauritius, 2016 and 2017[1]

Island	Number of deaths				Crude death rate	
	2016		2017		2016	2017 [1]
	Jan - June	Year	Jan - June	Year[1]		
Island of Mauritius	4,884	9,920	4,717	9,800	8.1	8.0
Island of Rodrigues	114	254	101	230	5.7 *	5.4
Republic of Mauritius	**4,998**	**10,174**	**4,818**	**10,030**	**8.1**	**7.9**

[1] Forecast
* Provisional

The number of deaths registered during the first semester of 2017 in the Republic of Mauritius was 4,818, compared to 4,998 for the corresponding period of 2016. The forecast for 2017 is 10,030 deaths, representing a crude death rate of 7.9 per 1,000 mid-year population. The expected number of deaths for the Island of Mauritius for 2017 is 9,800 (rate of 8.0) and that for Rodrigues is 230 (rate of 5.4).

5.3 Infant deaths and infant mortality rate

Table 5.3 - Infant deaths and infant mortality rate, Republic of Mauritius, 2016 and 2017[1]

Island	Number of infant deaths				Infant mortality rate	
	2016		2017		2016	2017 [1]
	Jan - June	Year	Jan - June	Year[1]		
Island of Mauritius	90	143	70	130	11.6	10.6
Island of Rodrigues	6	11	10	20	17.5 *	25.0
Republic of Mauritius	**96**	**154**	**80**	**150**	**11.8**	**11.5**

[1] Forecast
* Provisional

During the first semester of the year 2017, 80 infant deaths were registered in the Republic of Mauritius compared to 96 for the same period in 2016. 150 infant deaths are expected to occur in the Republic of Mauritius in 2017, giving an infant mortality rate of 11.5 infant deaths per 1,000 live births against 11.8 in 2016. The number of infant deaths forecast for the Islands of Mauritius and Rodrigues are 130 (rate of 10.6) and 20 (rate of 25.0) respectively.

5.4 Still births and still birth rate

Table 5.4 - Still births and still birth rate, Republic of Mauritius, 2016 and 2017[1]

Island	Number of still births				Still birth rate	
	2016		2017		2016	2017 [1]
	Jan - June	Year	Jan - June	Year[1]		
Island of Mauritius	63	117	62	110	9.4	8.9
Island of Rodrigues	8	10	5	10	11.9 *	12.3
Republic of Mauritius	**71**	**127**	**67**	**120**	**9.6**	**9.1**

[1] Forecast
* Provisional

During the first six months of 2017, 67 still births were registered in the Republic of Mauritius compared to 71 for the same period in 2016, i.e. a 5.6% decrease. The expected number of still births for the Republic of Mauritius for 2017 is 120, giving a still birth rate of 9.1 still births per 1,000 total births against 9.6 in 2016. Forecasts for the Islands of Mauritius and Rodrigues for the year 2017 are 110 (rate of 8.9) and 10 (rate of 12.3) respectively.

5.5 Marriages and crude marriage rate

Table 5.5 - Marriages and crude marriage rate, Republic of Mauritius, 2016 and 2017[1]

Island	Number of marriages				Crude marriage rate	
	2016		2017		2016	2017 [1]
	Jan - June	Year	Jan - June	Year[1]		
Island of Mauritius	4,629	9,882	4,428	9,700	16.2	15.9
Island of Rodrigues	66	160	69	160	7.5 *	7.5
Republic of Mauritius	**4,695**	**10,042**	**4,497**	**9,860**	**15.9**	**15.6**

[1] Forecast
* Provisional

A total of 4,497 marriages were registered in the Republic of Mauritius during the first semester of 2017, representing a decrease of 4.2% over the number registered (4,695) during the same period in 2016. The expected number of marriages for 2017 is 9,860, giving a crude marriage rate of 15.6 persons married per 1,000 mid-year population against 15.9 in 2016. The expected number of marriages for 2017 for the Island of Mauritius is 9,700 (rate of 15.9) and for the Island of Rodrigues is 160 (rate of 7.5).

6. International comparison of vital rates

Vital statistics for different countries in the world are published in the UN publication "The Demographic Yearbook" and the United Nations Population and Vital Statistics Report. The table below displays some comparative figures available from the latest United Nations Population and Vital Statistics Report (2001 - 2015).

Table 6.1 - Vital rates for selected countries

Country	Year	Crude Birth rate	Crude death rate	Infant mortality rate
Mauritius	2015	10.0	7.7	13.7
Reunion	2014	16.8	5.2	6.1
Australia	2014	12.8	6.5	3.4
United States	2014	12.5	8.2	5.8
India	2014	21.0	6.7	39.0
Germany	2015	9.1	11.4	3.2 *
France	2015	11.8	9.1	3.3 *

Source : United Nations Population & Vital Statistics Report Vol LXIX

** Refers to the year 2014*

It is to be noted that the crude birth/death rates are strictly not comparable between countries as it is affected by the age structure of the population. For instance, the crude death rate for Mauritius is lower than that for France. This can be explained by the fact that Mauritius has a relatively young population compared to France and hence proportionately fewer deaths are expected.

Statistics Mauritius,
Ministry of Finance and Economic Development
Port Louis
August 2017

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Annex

Definition of terms

1. Vital Statistics	The statistics pertaining to vital events which include live births, deaths, still births, marriages and divorces.
2. Population density	The number of persons per square kilometre.
3. Dependency ratio	The child population under 15 years of age and the elderly population aged 65 years and above per 1,000 population aged 15-64 years.
4. Sex ratio	The number of males to every 100 females.
5. Natural increase	The excess of live births over deaths.
6. Crude birth rate	The number of live births in a year per 1,000 mid-year population.
7. Crude death rate	The number of deaths in a year per 1,000 mid-year population.
8. Infant mortality rate	The number of deaths in a year of infants aged under one year per 1,000 live births during the year.
9. Still birth rate	The number of still births in a year per 1,000 total births (live births and still births) during the year.
10. Marriage rate	The number of persons married in a year per 1,000 mid-year population.

Note: The vital rates for Rodrigues are usually calculated as an average for three years in order to remove wide fluctuations in the yearly data. The rates for the year 2017 are however calculated on the basis of data for the year only.

Annex 189

Executive Council of the African Union, 30th Ordinary Session, *Decision on the 2016 Annual Report of the Chairperson of the AU Commission*, Doc. EX.CL/994(XXX) (27 Jan. 2017)

DECISION ON THE 2016 ANNUAL REPORT OF THE CHAIRPERSON OF THE AU COMMISSION
Doc. EX.CL/994(XXX)

The Executive Council,

1. **TAKES NOTE** of the Report of the Commission for the Period January to December 2016 and the observations and comments made by the Member States;

2. **EXPRESSES APPRECIATION** to the outgoing Commission for its sterling contributions towards the realization of the goals and objectives of the Union;

3. **COMMENDS** the Commission for its efforts so far in the implementation of Agenda 2063 and its First Ten-Year Implementation Plan, and **CALLS UPON** the Chairperson of the Commission to utilize the resources available to speed up the implementation process;

4. **CALLS UPON** all Member States to fully support the action initiated by the Government of the Republic of Mauritius at the level of the United Nations General Assembly with a view to ensuring the completion of the decolonization of the Republic of Mauritius and enabling the Republic of Mauritius to effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia;

5. **ALSO CALLS UPON** all Member States to participate at the African Economic Platform scheduled to take place on 20-22 March 2017 in the Mauritius.

6. **DIRECTS** the Commission to:

   i) Transform the "Annual Report on Activities of the Commission" to an "Annual Report on the Activities of the Union and its Organs" as provided for in Article 8 (1)(t) of the Statutes of the Commission;

   ii) Broaden the Indicators of the Gender Score Card for more inclusiveness;

   iii) Prepare and submit a Progress Report on the implementation of the 2016 AU Theme: "The African Year of Human Rights with particular focus on the Rights of Women";

   iv) Expedite the establishment of the High Level Panel of Eminent Persons to champion the fast tracking of the Continental Free Trade Area (CFTA);

   v) Develop a roadmap for the implementation of the Campaign to "Relegate the Handheld Hoe to the Museum" by 2025.

A. ON EXTENDING THE TERM OF THE CURRENT AU CHAMPION ON NUTRITION

7. **ACKNOWLEDGES** and **COMMENDS** the role of His Majesty King Letsie III of the Kingdom of Lesotho as AU Champion on Nutrition from 2014-2016;

8. **NOTES** that, in the light of the ambitious targets of the Ten Year Implementation Plan of Agenda 2063 on Hunger and Nutrition, there is a need for continuous advocacy on programmes in this area;

9. **RECOMMENDS** to the Assembly that the mandate of His Majesty King Letsie III, of the Kingdom of Lesotho as the AU Nutrition Champion be extended from January 2017 to January 2020.

B. ON IMPLEMENTATION OF THE SENDAI FRAMEWORK FOR DISASTER RISK REDUCTION IN AFRICA

10. **TAKES NOTE** of the Report of the Fifth High-level Meeting and the Sixth Session of the Africa Regional Platform on Disaster Risk Reduction held in Balaclava, in the Republic of Mauritius from 22-25 November 2016 and **ENDORSES** the recommendations contained therein;

11. **ENDORSES** the Programme of Action for the Implementation of the Sendai Framework for Disaster Risk Reduction 2015-2030 in Africa, and The 'Mauritius Declaration on the Implementation of the Sendai Framework in Africa';

12. **REQUESTS** the Commission in consultation with Member States and the Regional Economic Communities (RECs) to develop an Africa Position for the Global Platform for Disaster Risk Reduction, scheduled to take place in Cancun, Mexico in May 2017.

C. ON GRANTING THE PAN AFRICAN WOMEN'S ORGANISATION (PAWO) AND THE AFRICAN CAPACITY BUILDING FOUNDATION (ACBF) STATUS OF SPECIALISED AGENCY OF THE AU

13. **NOTES** that the Pan African Women's Organization (PAWO) is one of the first Pan African Organizations, established in 1962, and which played a critical role in mobilizing women in the struggles against colonialism and apartheid, in the development of the continent and the building of a non-sexist Africa;

14. **APPRECIATES** the continued role of the PAWO in the mobilization of women and men for the implementation of Agenda 2063, and for women and girls empowerment;

15. **FURTHER NOTES** the innovative and cutting edge support on capacity development provided by the African Capacity Building Foundation (ACBF) in Africa, including the pivotal role in helping the Commission define the capacity imperatives for Agenda 2063;

16. **RECOGNISES** the role of ACBF in establishing a strong accountability framework and coordinated platform for capacity development interventions on the continent;

17. **RECOMMENDS**, that the Summit agrees to grant specialized agency status to the Pan African Women's Organization (PAWO), the African Capacity Building Foundation (ACBF);

18. **REQUESTS** the Commission to carry out an assessment of the legal, structural and financial implications, as well as definition of criteria to grant the status of Specialized Agency to organizations, and submit a report to the Executive Council through the PRC in July 2017 Summit.

Annex 190

African Union, 28th Session, *Resolution on Chagos Archipelago*, Doc. EX.CL/994(XXX), Assembly/AU/Res.1 (XXVIII) (30-31 Jan. 2017)

RESOLUTION ON CHAGOS ARCHIPELAGO
Doc. EX.CL/994(XXX)

The Assembly,

1. **TAKES NOTE** of the Report of the Chairperson on the activities of the AU Commission;

2. **HAVING REGARD** to the unlawful excision of the Chagos Archipelago, including Diego Garcia, from the territory of Mauritius by the United Kingdom, the former colonial power, prior to the independence of Mauritius, in violation of international law and UN Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 which prohibit colonial powers from dismembering colonial territories prior to granting independence, as well as UN Resolutions 2232 (XXI) of 20 December 1966 and 2357(XXII) of 19 December 1967;

3. **REAFFIRMS** that the Chagos Archipelago, including Diego Garcia, forms an integral part of the territory of the Republic of Mauritius and that the decolonization of the Republic of Mauritius will not be complete until it is able to exercise its full sovereignty over the Chagos Archipelago;

4. **RECALLS** In this regard the previous resolutions adopted by the Assembly, in particular, Resolution Assembly/AU/Res.1(XXV) of June 2015 of the Assembly of the African Union held in Johannesburg, South Africa, expressing its full support to the efforts and actions in accordance with international law, including those of a diplomatic and legal nature at the level of the United Nations system, which may be taken by the Government of the Republic of Mauritius for the early and unconditional return of the Chagos Archipelago, including Diego Garcia, to the effective control of the Republic of Mauritius;

5. **NOTES** that at the request of the Government of the Republic of Mauritius, an item entitled "Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965" has been included in the agenda of the 71st Session of the United Nations General Assembly and that action on that item is likely to be taken in June 2017;

6. **RESOLVES** to fully support the action initiated by the Government of the Republic of Mauritius at the level of the United Nations General Assembly with a view to ensuring the completion of the decolonization of the Republic of Mauritius and enabling the Republic of Mauritius to effectively exercise its sovereignty over the Chagos Archipelago, including Diego Garcia;

7. **DECIDES** to remain seized of the matter and **REQUESTS** the Commission to report on progress and the implementation of this decision to the Assembly in July 2017.

Annex 191

Letter from H.E. Mr Jagdish Koonjul, Ambassador and Permanent Representative of the Republic of Mauritius to the United Nations, to H.E. Mr Peter Thomson, President of the 71st session of the United Nations General Assembly (1 June 2017)

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

1 June 2017

Excellency,

I have the honour to refer to item 87 which the General Assembly, at its second meeting on 16 September 2016, decided to include on the agenda of its 71st Session, on the understanding that there would be no consideration of the item by the Assembly before June 2017 and that thereafter it may be considered upon notification by a Member State.

In accordance with your expectations, Mauritius has engaged in good faith in talks with the United Kingdom. However, these talks have not been successful. Mauritius has therefore no choice but to ask for the consideration of item 87 by the General Assembly at the earliest date possible.

In this regard, I wish to officially request you to set a date for the consideration of item 87 by the General Assembly and action on a draft resolution which Mauritius will be tabling shortly.

Please accept, Excellency, the assurance of my highest consideration.

Jagdish D. Koonjul, G.O.S.K
Ambassador
Permanent Representative

H.E. Mr. Peter Thomson
President of the 71st session
of the United Nations General Assembly

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Annex 192

Letter from H.E. Mr Peter Thomson, President of the 71st session of the United Nations General Assembly, to all Permanent Representatives and Permanent Observers of the United Nations in New York (1 June 2017)

UNITED NATIONS NATIONS UNIES

NEW YORK

OFFICE OF THE PRESIDENT OF THE GENERAL ASSEMBLY

1 June 2017

Excellency,

In connection with item 87 of the agenda *(Request for an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965)* I refer to General Assembly decision 71/504 of 16 September 2016, in which the Assembly, on the recommendation of the General Committee (A/71/250), decided to include the item in the agenda of its seventy-first session on the understanding that there would be no consideration of this item by the General Assembly before June 2017 and thereafter it may be considered upon notification by a Member State.

Through the attached letter, H.E. Ambassador Jagdish D. Koonjul, Permanent Representative of Mauritius to the United Nations, has requested that a date be set for the consideration of this item by the General Assembly.

Therefore, I have decided to convene a plenary meeting of the General Assembly on 22 June 2017 at 10 a.m. for the consideration of item 87. It is my understanding that the Permanent Mission of Mauritius will be submitting a draft resolution to the Secretariat shortly. More information will be provided in the Journal.

Please accept, Excellency, the assurances of my highest consideration.

Peter Thomson

To All Permanent Representatives
and Permanent Observers of the United Nations
New York

Annex 192

PERMANENT MISSION OF THE REPUBLIC OF MAURITIUS TO THE UNITED NATIONS

MISSION PERMANENTE DE LA REPUBLIQUE DE MAURICE AUPRES DES NATIONS UNIES

1 June 2017

Excellency,

I have the honour to refer to item 87 which the General Assembly, at its second meeting on 16 September 2016, decided to include on the agenda of its 71st Session, on the understanding that there would be no consideration of the item by the Assembly before June 2017 and that thereafter it may be considered upon notification by a Member State.

In accordance with your expectations, Mauritius has engaged in good faith in talks with the United Kingdom. However, these talks have not been successful. Mauritius has therefore no choice but to ask for the consideration of item 87 by the General Assembly at the earliest date possible.

In this regard, I wish to officially request you to set a date for the consideration of item 87 by the General Assembly and action on a draft resolution which Mauritius will be tabling shortly.

Please accept, Excellency, the assurance of my highest consideration.

Jagdish D. Koonjul, G.O.S.K
Ambassador
Permanent Representative

H.E. Mr. Peter Thomson
President of the 71st session
of the United Nations General Assembly

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Annex 193

Letter from the Prime Minister of the Republic of Mauritius to the President of the United States
(11 July 2017)

Prime Minister
Republic of Mauritius

11 July 2017

Dear Mr President,

It gives me immense pleasure to convey to you, on behalf of the Government and the People of the Republic of Mauritius and in my own name, our sincere congratulations on the occasion of the celebration of the 241st Anniversary of the Independence of the United States of America.

I am convinced that under your Presidency, the long-standing bonds of friendship existing between our two countries, which date back to 1794 when President George Washington appointed Mr William Macarty as the first Consul of the United States to Mauritius, will be further strengthened.

Indeed, since Mauritius attained its independence in 1968, our bilateral relations have been further enriched and reinforced for the mutual benefit of the people of our two countries. This privileged partnership is also strongly embedded in shared values like democracy, good governance, rule of law, human rights and peaceful co-existence of different cultures and traditions.

In line with its aspiration for a safer world, Mauritius would like to reaffirm that it has no objection to the continued operation of the military base in Diego Garcia after the completion of its decolonisation process under an agreed framework.

.../2

Prime Minister's Office
New Treasury Building
Intendance Street
Port Louis
Republic of Mauritius

Tel. : (230) 207 9400
Fax : (230) 201 2976
E : privateoffice@govmu.org

Please accept, Dear Mr President, the assurances of my highest consideration and my best wishes for your personal well-being and for the progress and prosperity of the people of your country.

Pravind Kumar Jugnauth
Prime Minister

His Excellency Mr Donald Trump
President of the United States of America
The White House
1600 Pennsylvania Avenue N.W.
Washington, DC 20500
United States of America

Annex 194

Chair of the Coordinating Bureau of the Non-Aligned Movement, *Political Declaration of New York* (20 Sept. 2017)

CHAIR OF
THE COORDINATING BUREAU
OF THE NON-ALIGNED MOVEMENT

POLITICAL DECLARATION OF NEW YORK

The Ministers of Foreign Affairs of the Non-Aligned Movement (NAM), gathered on 20 September 2017, in New York, on the margins of the High Level Segment of the 72 Session of the General Assembly of the United Nations, undertook a review of the state of the international situation, particularly on the "Promulgation and Implementation of Unilateral Coercive Measures, in violation of International Law and the Human Rights of the Peoples subjected to them", and declared:

1. To reaffirm and underscore the Movement's abiding faith in and strong commitment to its founding principles, ideals and purposes, particularly in establishing a peaceful and prosperous world and a just and equitable world order as well as to the purposes and principles enshrined in the United Nations Charter.

2. To reaffirm the positions contained in its Final Document, as adopted by the Heads of State and Government of the Movement, during the XVII Summit of Island of Margarita.

3. To reaffirm the provisions of the Declaration of Havana on the Purposes and Principles and the Role of the Non-Aligned Movement in the Current International Juncture (2006), as well as of the Declaration of Island of Margarita (2016).

4. To reaffirm the purposes and principles of the UN Charter and the principles and rules of international law, which are indispensable in preserving and promoting peace and security, the rule of law, economic development and social progress, and human rights for all. In this context, UN Member States, including those Member States of the Security Council, should renew their commitment to respect, defend, preserve and promote the UN Charter and international law, with the aim of making further progress to achieving full respect for international law.

5. To reaffirm their commitment to the promotion, protection, and fulfillment of all human rights and fundamental freedoms, without discrimination, and to this end emphasize that all human rights: civil, cultural, economic, political and social are universal, indivisible, interdependent and interrelated, and that they must be treated globally in a fair and equal manner, on the same footing, and with the same emphasis; and also underline that the core values and principles of democracy, sustainable development and the respect of all human rights, including the right to development, are all closely related and mutually reinforcing.

6. To reaffirm their opposition to unilateralism and unilateral coercive measures imposed by certain States, including those of an economic, financial or trade nature not in accordance with international law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, which can lead to the erosion and violation of the UN Charter, international law and human rights, the use and threat of use of force, and pressure and coercive measures as a means to achieving their national policy objectives, including those measures used as tools for political or economic and financial pressure against any country, in particular against developing countries. They further expressed their concern at the continued imposition of such measures which hinder the well-being of population of the affected countries and that create obstacles to the full realization of their human rights.

7. To reaffirm their commitment to initiate further vigorous transparent and inclusive initiatives to achieve the realization of multilateral cooperation in the areas of economic development and social progress, peace and security, and human rights for all and the rule of law, including through enhancing the Movement's unity, solidarity and cohesiveness on issues of collective concern and interests with the aim of shaping the multilateral agenda to embrace development as a fundamental priority, which should take into account the need for the developing and developed countries, and international institutions to intensify partnerships and coordinate their efforts and resources to effectively address all imbalances in the global agenda.

8. To reaffirm their commitment to the promotion, preservation and strengthening of multilateralism and the multilateral decision making process through the United Nations, by strictly adhering to its Charter and international law, with the aim of creating a just and equitable world order and global democratic governance.

9. To reaffirm that solidarity, the highest expression of respect, friendship and peace among States, is a broad concept encompassing the sustainability of international relations, the peaceful coexistence, and the transformative objectives of equity and empowerment of developing countries, whose ultimate goal is to achieve the full economic and social development of their peoples.

10. To reaffirm their determination to refrain from recognizing, adopting or implementing extraterritorial or unilateral coercive measures or laws, including unilateral economic sanctions, other intimidating measures, and arbitrary travel restrictions, that seek to exert pressure on Non-Aligned Countries – threatening their sovereignty and independence, and their freedom of trade and investment – and prevent them from exercising their right to decide, by their own free will, their

own political, economic and social systems, where such measures or laws constitute flagrant violations of the UN Charter, international law, particularly the principles of non-intervention, self-determination and independence of States subjects to such practices, and the multilateral trading system, as well as the norms and principles governing friendly relations among States; and in this regard, oppose and condemn these measures or laws and their continued application, persevere with efforts to effectively reverse them and urge other States to do likewise, as called for by the General Assembly and other UN organs; request States applying these measures or laws to revoke them fully and immediately.

11. To reaffirm their strong condemnation to the unilateral application of economic and trade measures by one State against another that affect the free flow of international trade, which is not in accordance with international law, the Charter of the United Nations and the norms and principles governing peaceful relations among States. They called for the immediate elimination of such measures and urged States that have and continue to apply such laws and measures to fully comply with their obligations under the Charter of the United Nations and international law, which, inter alia, reaffirm the freedom of trade and navigation, and accordingly refrain from promulgating and application of such unilateral economic and trade measures against other States.

12. To reaffirm the objective of making the right to development a reality for everyone as set out in the UN Millennium Declaration, in the UN Declaration on the Right to Development and in the 2030 Agenda for Sustainable Development, and give due consideration to the negative impact of unilateral economic and financial coercive measures on the realization of the right to development.

13. To reaffirm that food should not be used as an instrument for political and economic pressure. They reaffirmed the importance of international cooperation and solidarity, as well as the necessity of refraining from undertaking unilateral coercive measures with general impact that endanger food security and are note in accordance with international law, including the general welfare and advancement of social development for communities in developing countries, with a view to mitigate the vulnerabilities particularly faced by women and children.

14. To reaffirm their determination that if any Member of the Movement suffers harm, whether this is economic, political or military in nature, or in terms of its security, as well as from the politicization of human rights, or if a Member suffers harm as a result of the imposition of unilateral sanctions or embargos that are not in accordance with international law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, the Movement should express its

solidarity with the affected country through the provision of political, moral, material and other forms of assistance.

15. To reaffirm and stress their principled positions concerning peaceful settlement of disputes, in accordance with international law, the Charter of the United Nations and the norms and principles governing peaceful relations among States, and on the non-use or threat of use of force, including through the promotion of political understanding and constructive dialogue among States, on the basis of mutual respect.

16. To reaffirm their opposition to all attempts of uniculturalism or the imposition of particular models of political, economic, social, legal or cultural systems, and promote dialogue among civilizations, culture of peace and inter-faith dialogue, which will contribute towards peace, security, stability, sustainable development and promotion of human rights.

17. To reaffirm their determination to continue opposing any attempt aimed at the partial or total disruption of the national unity or territorial integrity of a State, as well as their commitment for the respect of the sovereignty, the sovereign equality of States, the non-intervention in the internal affairs of States, the peaceful settlement of disputes, and the abstention from the threat or use of force, in accordance with the UN Charter.

18. To reaffirm their determination to advance in the enhancement of the status and role of Non-Aligned Movement (NAM) as an anti-war peace-loving force, including through its instrumentalization as a Front for World Peace, and in favor, in particular, of the respect of the right to life and the inalienable right of the peoples to their self-determination and independence.

19. To take note of the adoption by the UN General Assembly on 22 June 2017 of resolution 71/292 requesting an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 and encourage members to make written submissions in support of the completion of the decolonization of Mauritius to the Court within the prescribed time frame of 30 January 2018.

20. To reaffirm that terrorism should not be equated with the legitimate struggle of peoples under colonial or alien domination and foreign occupation for self-determination and national liberation. The brutalization of people remaining under foreign occupation should continue to be denounced as the gravest form of terrorism, and that the use of State power for the suppression and violence against peoples struggling against foreign occupation in exercising their inalienable

right to self- determination should continue to be condemned. In this regard and in accordance with the UN Charter, international law and the relevant UN resolutions, the struggle of peoples under colonial or alien domination and foreign occupation for self-determination and national liberation does not constitute terrorism (A/RES/46/51 of 9 December 1991).

21. To reaffirm that terrorism cannot and should not be associated with any religion, nationality, civilization or ethnic group, and that these attributions should not be used to justify terrorism or counter-terrorism measures that include, *inter alia*, profiling of terror suspects and intrusion on individual privacy.

22. To reaffirm their strong and unequivocal condemnation, as criminal, and reject terrorism in all its forms and manifestations, as well as all acts, methods and practices of terrorism wherever, by whomever, against whomsoever committed, including those in which States are directly or indirectly involved, which are unjustifiable whatever the considerations or factors that may be invoked to justify them, and in this context, reaffirm their support for the provisions contained in General Assembly resolution 46/51 of 9 December 1991 and other relevant UN resolutions.

23. To reaffirm the obligation of all States to ensure the security and safety of the members and premises of diplomatic and consular missions, as well as their inviolability, in accordance with international law, the provisions of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations as well as relevant UN General Assembly resolutions.

24. To reaffirm their commitment to taking all necessary measures to prevent the use of new platforms, including the internet, digital social networking and mass media, in spreading extremist religious thoughts and ideas, which eventually undermine the culture of peace and religious diversity.

25. To reaffirm the need for States to cooperate resolutely against international terrorism by taking speedy and effective measures to eliminate this scourge, and, in this regard, urge all States, in accordance with their obligations under applicable international law and the UN Charter, to deny safe haven and bring to justice or, where appropriate, extradite, on the basis of the principle of extradite or prosecute, the perpetrators of terrorist acts or any person who supports, facilitates or participates or attempts to participate in the financing, planning or preparation of terrorist acts.

26. To reaffirm their resolve to take speedy and effective measures to eliminate international terrorism, and in this context, urge all States, consistent with the UN

Charter, to fulfill their obligations under international law and international humanitarian law combating terrorism, including by prosecuting or, where appropriate, extraditing the perpetrators of terrorist acts; by preventing the organization, instigation or financing of terrorist acts against other States from within or outside their territories or by organizations based in their territories; by refraining from organizing, instigating, assisting, financing or participating in terrorist acts in the territories of other States; by refraining from encouraging activities within their territories directed towards the commission of such acts; by refraining from allowing the use of their territories for planning, training or financing for such acts; or by refraining from supplying arms or other weapons that could be used for terrorist acts in other States.

New York, 20 September 2017

Annex 195

Group of 77 and China, 41st Annual Meeting of Ministers for Foreign Affairs, *Ministerial Declaration* (22 Sept. 2017)

EXTRACT

FORTY-FIRST ANNUAL MEETING
OF MINISTERS FOR FOREIGN AFFAIRS
OF THE GROUP OF 77 AND CHINA
New York, 22 September 2017

MINISTERIAL DECLARATION

200. The Ministers recalled that the Chagos Archipelago, including Diego Garcia, was unlawfully excised by the United Kingdom from the territory of Mauritius, prior to independence, in violation of international law and UN General Assembly resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965 and that all inhabitants of the Chagos Archipelago were forcibly evicted. In this regard, the Ministers took note of the adoption by the UN General Assembly on 22 June 2017 of resolution 71/292 requesting an advisory opinion of the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. The Ministers encouraged members to make written submissions in support of the completion of the decolonization of Mauritius to the Court within the prescribed time frame of 30 January 2018.

201. The Ministers also took note of the concern expressed by the Republic of Maldives regarding the legal and technical issues arising from the United Kingdom's illegal decision in 2010 to declare a "marine protected area" in the Chagos Archipelago which overlaps the exclusive economic zone of the Republic of Maldives as declared in its Constitution without prejudice to future resolution of maritime delimitations.

Annex 196

"Chagos Islands (BIOT) All-Party Parliamentary Group", *"Statement issued at its 65th meeting on 6 December 2017 by the Chagos Islands (BIOT) All-Party Parliamentary Group on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 to be considered by the International Court of Justice"* (6 Dec. 2017)

Chagos Islands (BIOT) All-Party Parliamentary Group

Hon. President: Jeremy Corbyn MP

Chairman: Andrew Rosindell MP

Vice Chairs: Lord Steel, Baroness Whitaker, Lord Ramsbotham, Henry Smith MP, Patrick Grady MP

Secretary: Alan Brown MP

Co-ordinator: David Snoxell

House of Commons, London, SW1A OAA

Statement issued at its 65th meeting on 6 December 2017 by the Chagos Islands (BIOT) All- Party Parliamentary Group on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965 to be considered by the International Court of Justice.

On 22 June 2017 The UN General Assembly adopted resolution 71/292 requesting the ICJ to render an advisory opinion on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965. The resolution asked the ICJ to address the question:

"What are the consequences under international law, including obligations reflected in the above mentioned resolutions, arising from the continued administration by the United Kingdom of Great Britain and Northern Ireland of the Chagos Archipelago, including with respect to the inability of Mauritius to implement a programme for the resettlement on the Chagos Archipelago of its nationals, in particular those of Chagossian origin?"

The most pressing issue for the APPG is the continuing exile of the Chagossian people, a shameful blot on the UK's human rights record. The Group has urged successive governments to restore the right of abode and the right of return to their homeland for all those wishing to do so, whether for resettlement, work or visits and to establish a pilot resettlement on Diego Garcia, as recommended by KPMG in 2015. There is no need for the UK to postpone a pilot resettlement any longer. The ICJ proceedings, which can take several years, must not be used as an excuse for delaying the restoration on moral, ethical and political grounds, of the right of abode. It is noted that the Government of Mauritius strongly supports the right of return and resettlement.

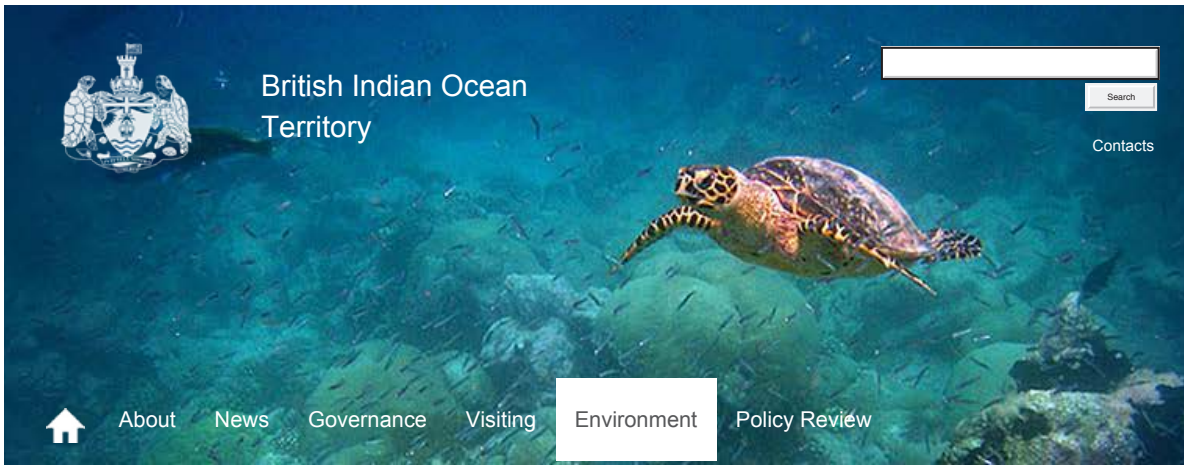
The Group believes that an overall settlement with Mauritius and the Chagos Islanders is long overdue. For the UK to continue to argue against an ICJ Advisory Opinion would have consequences for the UK's reputation in the UN. An Advisory Opinion, which addresses the question put by the General Assembly, would provide a way forward and a solid basis for settling these issues, thus contributing to a resolution of an urgent human rights tragedy that has endured for over 50 years. Members hope that the ICJ will expedite its work and that its forthcoming Advisory Opinion will inspire the United Nations General Assembly to work with the parties directly concerned to bring an end to the exile of the Chagossian people and contribute to the process of decolonisation.

The APPG has been persistent in analysing the fluctuating arguments deployed by governments against resettlement such as cost, infeasibility, defence, security, treaty obligations to the US, child safeguarding, climate change, erosion, rising sea levels and conservation. The Group continues to believe that with political will these issues can be addressed and resolved. Indeed the Group understands that the US has no objection to a pilot resettlement on Diego Garcia.

The APPG was established in December 2008 and has held 65 meetings. For nine years the Group has considered the many aspects of BIOT – human rights, humanitarian, defence, security, sovereignty, legal, nature conservation, environmental factors, Freedom of Information, bilateral concerns with the US and Mauritius, and multilateral involvement of the United Nations, the Commonwealth, African Union, European Union and the European Parliament. There has been a regular flow of correspondence with Ministers who have from time to time attended meetings with the Group and frequent Parliamentary Questions, interventions and debates.

Annex 197

United Kingdom, *"British Indian Ocean Territory: Terrestrial Protected Areas"*, *available at* https://biot.gov.io/environment/terrestrial-protected-areas/ (last accessed 3 Jan. 2018)



Marine Protected Area
Terrestrial Protected Areas
Plantation Trail Boards
Science in BIOT

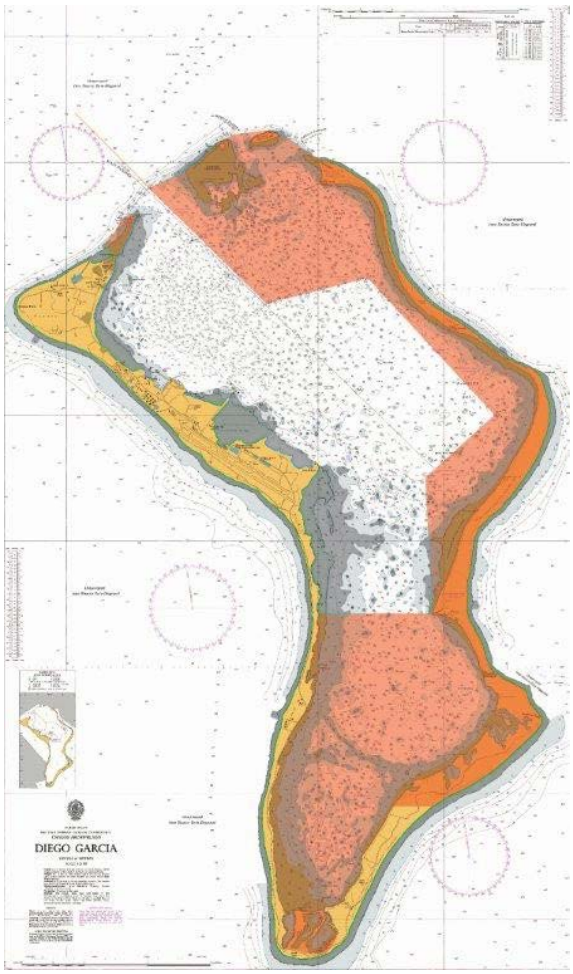
Terrestrial Protected Areas

In recognition of the unique terrestrial habitats and species in BIOT and to provide protection to internationally important breeding seabird populations, there are a number of Terrestrial Protected Area designations across the British Indian Ocean Territory.

Diego Garcia Restricted Area

To protect the biodiversity of Diego Garcia effectively, the Diego Garcia Conservation (Restricted Area) Ordinance 1994 prohibits entry to all environmentally sensitive areas, unless a permit to undertake a specific activity has been granted. Recreational fishing and other potentially damaging activities are not permitted in the Restricted Area. Any infringement may carry a maximum fine of £500.

Map of the Restricted Area (shaded red)



Ramsar site

In 2001, the provisions of the Ramsar Convention were extended to a large part of the island of Diego Garcia, in recognition of the international importance of the wetland habitats on and around the atoll. The Diego Garcia Ramsar site provides a habitat for marine flora and fauna at a critical stage of their biological cycle including the endemic coral *Ctenella chagius* and the threatened Hawksbill and Green Turtles, *Eretmochelys imbricata* and *Chelonia mydas*. The site is also important for some of the 18 species of seabirds which breed in BIOT in internationally important numbers.

RAMSAR map (PDF document)

Important Bird Areas and Strict Nature

Reserves

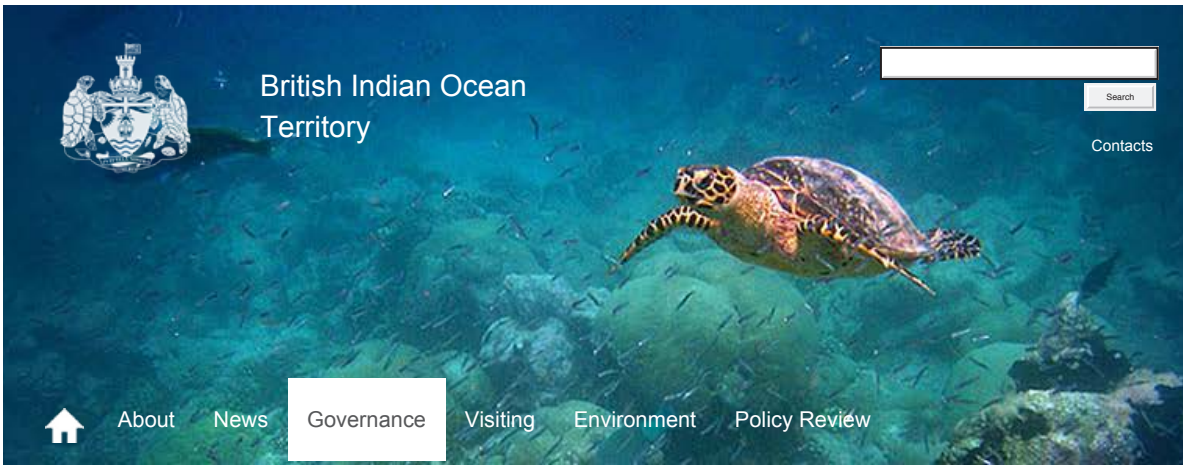
BIOT has 10 Important Bird Areas (IBAs), identified due to the presence of globally significant breeding concentrations of seabirds. The IBAs cover approximately 15% of the land area of the Chagos Archipelago and are also designated as Strict Nature Reserves to prevent any human disturbance. IBAs are designated on each of the Three Brothers Islands, Danger Island, Cow Island, Nelson Island, Petite Ile Bois Mangue, Ile Parasol, Ile Longue and at Barton Point on Diego Garcia.

Strict Nature Reserves

The Strict Nature Reserve Regulations 1998 provide the IBAs with legal protection. Under these Regulations, it is an offence for anyone to enter any of the Reserves, or to carry out particular activities there, without the written permission of the BIOT Administration.

Annex 198

United Kingdom, *"British Indian Ocean Territory: Governance"*, *available at* https://biot.gov.io/governance/ (last accessed 3 Jan. 2018)



Governance

The British Indian Ocean Territory (BIOT) was formed on 8th November 1965. It is one of 14 British Overseas Territories. There is no permanent population in BIOT, but Diego Garcia, the largest of the 58 islands hosts a joint UK-US military facility.

The Territory is currently administered from London, with a Commissioner appointed by the Queen, who is assisted by a Deputy Commissioner and Administrator. The key posts are currently held by:

Commissioner: Ben Merrick

Deputy Commissioner: Bryony Mathew

Administrator: Linsey Billing

In the Territory itself, the civilian Administration is represented by a Royal Navy Commander, who is appointed as the Commissioner's Representative (known locally as "BritRep"). As well as being the highest civilian authority in the Territory, this person is also the Officer commanding the British Forces in Diego Garcia. The post is currently held by Commander Karen Cahill.

Constitutional Status

The constitutional arrangements for BIOT are set out in the British Indian Ocean Territory (Constitution) Order 2004 and related instruments. The 2004 Order gives the Commissioner power to make laws for the peace, order and good government of the territory. As with any other

British Overseas Territory, BIOT is constitutionally distinct and separate from the UK, with its own laws and Administration.

A series of UK/US agreements set out in Exchanges of Notes regulate matters relating to the use of the Territory for defence purposes, such as jurisdiction over military and other personnel. These originate in 1966 and provide for an initial 50 year period of US use of the Territory, plus a further 20 years. The agreement was “rolled over” in 2016 and will now expire in 2036.

The BIOT Gazette is an official document published by the Government of the BIOT to chronicle the appointments of BIOT officials, note the legislation extended to BIOT and publicise Ordinances signed by the Commissioner.

The BIOT Coat of Arms

“In tutela nostra Limuria” (Limuria is in our trust).

Annex 199

U.S. Africa Command, *About the Command*, *available at* http://www.africom.mil/about-the-command (last accessed 5 Jan. 2018)

About the Command

United States Africa Command, (U.S. AFRICOM) is one of six of the U.S. Defense Department's geographic combatant commands and is responsible to the Secretary of Defense for military relations with African nations, the African Union, and African regional security organizations.

United States Africa Command, (U.S. AFRICOM) is one of six of the U.S. Defense Department's geographic combatant commands and is responsible to the Secretary of Defense for military relations with African nations, the African Union, and African regional security organizations. A full-spectrum combatant command, U.S. AFRICOM is responsible for all U.S. Department of Defense operations, exercises, and security cooperation on the African continent, its island nations, and surrounding waters. AFRICOM began initial operations on Oct. 1, 2007, and officially became fully operational capable on Oct. 1, 2008.

Leadership

Commander: General Thomas D. Waldhauser, U.S. Marine Corps

Command Senior Enlisted Leader: Chief Master Sergeant Ramon "CZ" Colon-Lopez, U.S. Air Force

Deputy to the Commander for Military Operations: Lt. Gen. James C. Vechery, U.S. Air Force

Deputy to the Commander for Civil-Military Engagement: Ambassador Alexander M. Laskaris, U.S. Department of State

Headquarters Chief of Staff: Major General Roger L. Cloutier, Jr., U.S. Army

Mission

U.S. Africa Command, with partners, disrupts and neutralizes transnational threats, protects U.S. personnel and facilities, prevents and mitigates conflict, and builds African partner defense capability

and capacity in order to promote regional security, stability and prosperity.

Personnel

U.S. Africa Command has approximately 2,000 assigned personnel, including military, U.S. federal civilian employees, and U.S. contractor employees. About 1,500 work at the command's headquarters in Stuttgart, Germany. Others are assigned to AFRICOM units at MacDill Air Force Base, Florida, and RAF Molesworth, United Kingdom. The command's programs in Africa are coordinated through Offices of Security Cooperation and Defense Attaché Offices in approximately 38 nations. The command also has liaison officers at key African posts, including the African Union, the Economic Community of West African States (ECOWAS), and the Kofi Annan International Peacekeeping and Training Centre in Ghana.

AFRICOM is part of a diverse interagency team that reflects the talents, expertise, and capabilities within the entire U.S. government. The command has four Senior Foreign Service (SFS) officers in key positions as well as more than 30 personnel from more than 10 U.S. government departments and agencies, including the Departments of State and Homeland Security, and the U.S. Agency for International Development. The most senior is a career State Department official who serves as the deputy to the commander for civil-military engagement. Our interagency partners bring invaluable expertise to help the command ensure its plans and activities complement those of other U.S. government programs and fit within the context of U.S. foreign policy.

Location

U.S. Africa Command is located at Kelley Barracks in Stuttgart-Moehringen, Germany.

Our Team

AFRICOM's team sets the conditions for success of our security cooperation programs and activities on the continent. They perform detailed planning, provide essential command and control, establish and sustain relationships with our partners, and provide timely assessments. They are:

U.S. Army Africa (USARAF) - Operating from Vicenza, Italy, USARAF conducts sustained security engagement with African land forces to promote security, stability, and peace.

U.S. Naval Forces Africa (NAVAF) - Headquartered in Naples, Italy, NAVAF's primary mission is to improve the maritime security capability and capacity of African partners. Personnel are shared with

U.S. Naval Forces Europe.

U.S. Air Forces Africa (AFAFRICA) - As the air component of USAFRICOM, AFAFRICA conducts sustained security engagement and operations to promote air safety, security, and development in Africa.

U.S. Marine Corps Forces Africa (MARFORAF) - Located in Stuttgart, Germany, MARFORAF conducts operations, exercises, training, and security cooperation activities throughout the African continent. Its staff is shared U.S. Marine Corps Forces Europe.

Combined Joint Task Force-Horn of Africa (CJTF-HOA) - In the Horn of Africa, CJTF-HOA is the U.S. Africa Command organization that conducts operations in the region to enhance partner nation capacity, promote regional security and stability, dissuade conflict, and protect U.S. and coalition interests. CJTF-HOA is critical to U.S. AFRICOM's efforts to build partner capacity to counter violent extremists and address other regional security partnerships. CJTF-HOA, with approximately 2,000 personnel assigned, is headquartered at Camp Lemonnier in Djibouti.

U.S. Special Operations Command Africa (SOCAFRICA) - SOCAFRICA, co-located with U.S. Africa Command at Kelley Barracks in Stuttgart, aims to build operational capacity, strengthen regional security and capacity initiatives, implement effective communication strategies in support of strategic objectives, and eradicate violent extremist organizations.

Annex 200

U.S. Africa Command, *Republic of Mauritius*, *available at* http://www.africom.mil/area-of-responsibility/southern-africa/mauritius (last accessed 5 Jan. 2018)

AREA OF RESPONSIBILITY SOUTHERN AFRICA

Republic of Mauritius

Capital	Area	Languages	Population	Currency
Port Louis	2,040.0 km²	en-MU,bho,fr	1,294,104	MUR

The United States established diplomatic relations with Mauritius in 1968, following its independence from the United Kingdom. In the years following independence, Mauritius became one of Africa's most stable and developed economies, as a result of its multi-party democracy and free market orientation. Relations between the United States and Mauritius are cordial, and we collaborate closely on bilateral, regional, and multilateral issues. Mauritius is a leading beneficiary of the African Growth and Opportunity Act and a U.S. partner in combating maritime piracy in the Indian Ocean.