



Australian Government

**LEGAL CONSEQUENCES OF THE SEPARATION OF THE CHAGOS
ARCHIPELAGO FROM MAURITIUS IN 1965 (REQUEST FOR ADVISORY
OPINION)**

WRITTEN STATEMENT
OF THE GOVERNMENT OF AUSTRALIA

27 FEBRUARY 2018

LIST OF ANNEXES

- Annex 1** British Indian Ocean Territory Order 1965 (S.I. 1965 No.1920), amended by the British Indian Ocean Territory (Amendment) Order 1968 (S.I. 1968 No. 111).
- Annex 2** Government of the Republic of Mauritius, Aide Memoire dated May 2017 in relation to Item 87 of the Agenda of the 71st Session of the UN General Assembly.
- Annex 3** Government of the Republic of Mauritius, *Prime Minister Meets Chagos Refugees Group Leader on Advisory Opinion Request* (31 October 2017).

 STATUTORY INSTRUMENTS

1976 No. 893

OVERSEAS TERRITORIES

The British Indian Ocean Territory Order 1976

Made - - - - - 9th June 1976

Coming into Operation 28th June 1976

At the Court at Buckingham Palace, the 9th day of June 1976

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, by virtue and in exercise of the powers in that behalf by the Colonial Boundaries Act 1895(a) or otherwise 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 Order 1976 and shall come into operation on the appointed day.

Interpretation

2.—(1) In this Order unless the context otherwise requires—

“the Territory” means the British Indian Ocean Territory specified in the Schedule hereto;

“the appointed day” means the 28th day of June 1976;

“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.

(2) The Interpretation Act 1889(b) 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 of the United Kingdom.

Revocations

3.—(1) The British Indian Ocean Territory Order 1965(c) and the British Indian Ocean Territory (Amendment) Order 1968(d) are revoked.

(2) The revocation of those Orders shall be without prejudice to the continued operation of any laws made and laws having effect thereunder and having effect as part of the law of the Territory immediately before the appointed day; and any such laws shall have effect on and after the

(a) 1895 c. 34. (b) 1889 c. 63.
 (c) S.I. 1965/1920 (1965 III, p. 5767).
 (d) S.I. 1968/111 (1968 I, p. 304).

appointed day as if they had been made under this Order and (without prejudice to their amendment or repeal by any law made under this Order) shall be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with this Order.

Establishment of office of Commissioner

4.—(1) There shall be a Commissioner for the Territory who shall be appointed by Her Majesty by Commission under Her Majesty's Sign Manual and Signet and shall hold office during her Majesty's pleasure.

(2) During any period when the office of Commissioner is vacant or the holder thereof is for any reason unable to perform the functions of his office those functions shall, during Her Majesty's pleasure, be assumed and performed by such person as Her Majesty may designate in that behalf by instructions given through a Secretary of State.

Powers and duties of Commissioner

5. The Commissioner shall have such powers and duties as are conferred or imposed upon him by or under this Order or any other law and such other functions as Her Majesty may from time to time be pleased to assign to him and, subject to the provisions of this Order and of any other law by which any such powers or duties are conferred or imposed, shall do and execute all things that belong to his office according to such instructions, if any, as Her Majesty may from time to time see fit to give him.

Official Stamp

6. There shall be an Official Stamp for the Territory which the Commissioner shall keep and use for stamping all such documents as may be by any law required to be stamped therewith.

Constitution of offices

7. The Commissioner, in the name and on behalf of Her Majesty, may constitute such offices for the Territory as may lawfully be constituted by Her Majesty and, subject to the provisions of any law for the time being in force in the Territory and to such instructions as may from time to time be given to him by Her Majesty through a Secretary of State, the Commissioner may likewise—

- (a) make appointments, to be held during Her Majesty's pleasure, to any office so constituted : and
- (b) dismiss any person so appointed or take such other disciplinary action in relation to him as the Commissioner may think fit.

Concurrent appointments

8. Whenever the substantive holder of any office constituted by or under this Order is on leave of absence pending relinquishment of his office—

- (a) another person may be appointed substantively to that office :
- (b) that person shall, for the purpose of any functions attaching to that office, be deemed to be the sole holder of that office.

Power to make laws

9.—(1) The Commissioner may make laws for the peace, order and good government of the Territory.

(2) All laws made by the Commissioner in exercise of the powers conferred by this Order shall be published in such manner and at such place or places in the Official Gazette for the Territory as the Commissioner may from time to time direct.

(3) Every such law shall come into operation on the date on which it is published in accordance with the provisions of subsection (2) of this section unless it is provided, either in such law or in some other enactment, that it shall come into operation on some other date, in which case it shall come into operation on that date.

Disallowance of laws

10.—(1) Any law made by the Commissioner in exercise of the powers conferred by this Order may be disallowed by Her Majesty through a Secretary of State.

(2) Whenever any law has been disallowed by Her Majesty, the Commissioner shall cause notice of such disallowance to be published in such manner and in such place or places in the Official Gazette for the Territory as the Commissioner may from time to time direct.

(3) Every law so disallowed shall cease to have effect as soon as notice of disallowance has been published as aforesaid; and thereupon any enactment repealed or amended by, or in pursuance of, the law so disallowed shall have effect as if such law had not been made, and, subject thereto, the provisions of section 38(2) of the Interpretation Act 1889 shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

Commissioner's powers of pardon, etc.

11. The Commissioner may, in Her Majesty's name and on Her Majesty's behalf—

- (a) grant to any person concerned in or convicted of any offence against the laws of the Territory a pardon, either free or subject to lawful conditions; or
- (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any sentence imposed on that person for any such offence; or
- (c) substitute a less severe form of punishment for any punishment imposed by any such sentence; or
- (d) remit the whole or any part of any such sentence or of any penalty or forfeiture otherwise due to Her Majesty on account of any offence.

Judicial proceedings

12.—(1) All proceedings that, immediately before the commencement of this Order, are pending before any court established by or under the existing Order may be continued and concluded after the commencement of this Order before the corresponding court established under the provisions of this Order.

(2) Any decision given before the commencement of this Order by any such court as aforesaid shall for the purpose of its enforcement or for the purpose of any appeal therefrom, have effect after the commencement of this Order as if it were a decision of the corresponding court established by or under this Order.

Disposal of land

13. Subject to any law for the time being in force in the Territory and to any Instructions from time to time given to the Commissioner by Her Majesty under Her Sign Manual and Signet or through a Secretary of State, the Commissioner, in Her Majesty's name and on Her Majesty's behalf, may make and execute grants and dispositions of any lands or other immovable property within the Territory that may be lawfully granted or disposed of by Her Majesty.

Amendment of Seychelles (Constitution) Order 1975

14. The First Schedule to the Seychelles (Constitution) Order 1975(a) is amended as follows:—

(a) the word "Desroches" is added to the list of islands under the heading "Poivre Islands":

(b) the words

"Aldabra Group, consisting of:

West Island

Middle Island

South Island

Cocoanut Island

Polymnie Island

Euphratis and other small islets"

are added immediately below the list of islands under the heading "Cosmoledo Group":

(c) the words "Farquhar Islands" are added immediately below the list of Islands under the heading "Aldabra Group".

Power reserved to Her Majesty

15. There is reserved to Her Majesty full power to make laws from time to time for the peace, order and good government of the British Indian Ocean Territory (including, without prejudice to the generality of the foregoing, laws amending or revoking this Order).

N. E. Leigh

THE SCHEDULE

Section 2(1)

Diégo Garcia	Salomon Islands
Egmont or Six Islands	Three Brothers Islands
Péros Banhos	Nelson or Legour Island
	Eagle Islands
	Danger Island.

EXPLANATORY NOTE

(This Note is not part of the Order.)

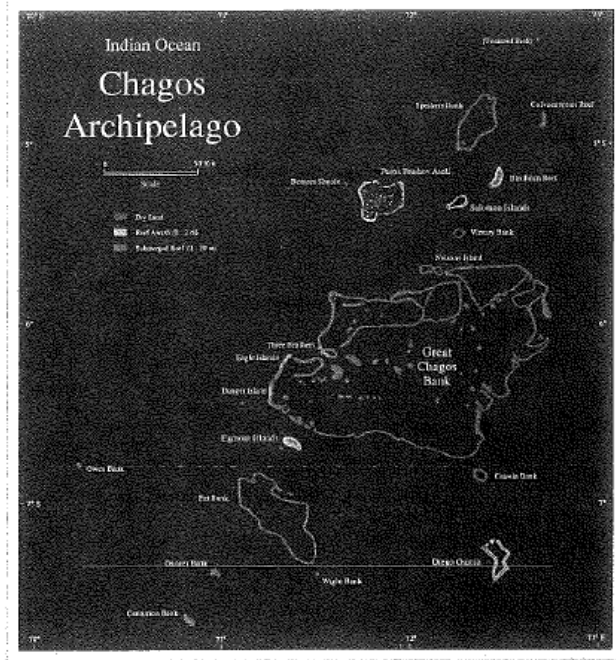
This Order makes new provision for the administration of the British Indian Ocean Territory and for the return to Seychelles of the Aldabra Group of islands, Desroches and Farquhar Islands from the Territory.

(a) 1975 III, p. 8585.



REPUBLIC OF MAURITIUS

Aide Memoire



ITEM 87 OF THE AGENDA OF THE 71ST SESSION OF THE UN GENERAL ASSEMBLY

*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*

MAY 2017

1. On 16 September 2016, the UN General Assembly (UNGA) decided to include 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" on the agenda of its current session, on the understanding that it would not be considered before June 2017 and that thereafter it may be considered upon notification by a Member State.
2. The period between September 2016 and June 2017 was intended to allow time for Members to ascertain whether progress could be made on the issues raised by the item, which relates to the completion of the process of decolonization of Mauritius, thereby enabling Mauritius to exercise its full sovereignty over the Chagos Archipelago. Unfortunately, no progress has been possible. Accordingly, action should now be taken by the UNGA.

Background

3. The Chagos Archipelago is a group of islands in the Indian Ocean. They have been part of Mauritius since at least the eighteenth century, when Mauritius was under French colonial rule. All of the islands forming part of the French colonial territory of Île de France (as Mauritius was then known) were ceded to Britain in 1810, after which Mauritius, including the Chagos Archipelago, was under British colonial rule.
4. Prior to granting independence to Mauritius on 12 March 1968, the United Kingdom of Great Britain and Northern Ireland ("United Kingdom" or "UK") unlawfully dismembered Mauritius in 1965 by excising the Chagos Archipelago from its territory to create the so-called "British Indian Ocean Territory."
5. This excision was carried out in violation of international law and UNGA Resolutions 1514 (XV) of 14 December 1960 and 2066 (XX) of 16 December 1965. Resolution 2066 (XX),

dealing specifically with Mauritius, required the administering Power to take effective measures with a view to the immediate and full implementation of Resolution 1514 (XV) and invited "the administering Power to take no action which would dismember the Territory of Mauritius and violate its territorial integrity."

6. Dismemberment occurred, and its effects continue to this day. Subsequent efforts to seek the return of the Chagos Archipelago to the effective sovereign control of Mauritius have been unsuccessful. The United Kingdom claims that it exercises sovereignty lawfully over the Chagos Archipelago, yet it also tacitly admits the impropriety of its actions, stating that it will return the Chagos Archipelago to Mauritius once it is no longer required for defence purposes without providing any clarity on the date of return, while the criteria to determine when defence needs will cease to exist keep on changing.

7. In 2015, an Arbitral Tribunal acting under Part XV of the UN Convention on the Law of the Sea (UNCLOS) unanimously found that this commitment to return the Chagos Archipelago to Mauritius is binding under international law,¹ acknowledging that Mauritius has inalienable legal rights with respect to the Chagos Archipelago and that the process of decolonization remains incomplete. Two members of the Tribunal found, *inter alia*, that the excision of the Chagos Archipelago from Mauritius in 1965 showed 'a complete disregard for the territorial integrity of Mauritius by the United Kingdom',² in violation of the right to self-determination. No contrary view was put forward by any other members of the Tribunal.

¹ In the Matter of the Chagos Marine Protected Area (Mauritius v. United Kingdom), Annex VII Arbitral Tribunal Award (18 March 2015), para. 448.

²*Ibid*, Dissenting and Concurring Opinion of Judges Kateka and Wolfrum, para. 91. The other three members of the Tribunal considered that the Tribunal lacked jurisdiction over the issue, and therefore expressed no view on that part of the case.

Actions taken by the United Kingdom in violation of international law

8. Following the illegal excision of the Chagos Archipelago, the United Kingdom has purported to take a number of actions in respect of the Chagos Archipelago which give rise to serious violations of international law, including human rights and international environmental law. These actions, which are inconsistent with the commitment to decolonization, include, but are not limited to:
- i. Conclusion in December 1966 of a fifty-year agreement between the United Kingdom and the United States of America ("United States" or "US") concerning the availability for defence purposes of the Chagos Archipelago. While a limited naval communications facility was initially intended to be set up by the United States in Diego Garcia, which forms part of the Chagos Archipelago, it was subsequently developed into a support facility of the US Navy and later on into a full-fledged military base. The United Kingdom initially contended that the Chagos Archipelago was required for the defence of the West. Now that the Cold War is over and the threat from the Soviet Union no longer exists, the United Kingdom argues that the Chagos Archipelago is needed for the fight against terrorism and piracy.
 - ii. Forcible eviction of the former inhabitants of the Chagos Archipelago ("Chagossians") in total disregard of their fundamental human rights.
 - iii. Continued and systematic denial of the right of Mauritians, particularly those of Chagossian origin, to settle in the Chagos Archipelago, including through the creation of a 'marine protected area' around the Chagos Archipelago. Mr. Colin Roberts of the United Kingdom Foreign and Commonwealth Office is reported to have told a Political Counsellor at the US Embassy in London on 12 May 2009 that "establishing a marine reserve would, in effect, put paid to resettlement claims of the archipelago's former residents"³.

³ Cable from US Embassy, London, on UK Government's proposal for a marine reserve covering the Chagos Archipelago, May 2009, published on "WikiLeaks" website in December 2010.

- iv. Use of Diego Garcia – which, according to the United Kingdom, hosts a joint UK-US military base – as a transit point after September 2001 for rendition of persons to countries where they risked being subjected to torture or ill-treatment.
 - v. Unilateral creation of a ‘marine protected area’ (“MPA”) around the Chagos Archipelago on 1 April 2010. The Arbitral Tribunal constituted in the case brought by Mauritius against the United Kingdom to challenge the legality of the ‘MPA’ ruled that the United Kingdom had breached its obligations under Articles 2(3), 56(2) and 194(4) of UNCLOS.
 - vi. Pollution of the waters of the Chagos Archipelago with sewage and human waste by vessels acting under the authority or consent of the United Kingdom, including the *Pacific Marlin*, a patrol vessel used by the United Kingdom.
 - vii. Hydro blasting of ships in the lagoon adjoining Diego Garcia.
9. The following further unilateral actions have purportedly been taken by the United Kingdom without the prior involvement and consent of Mauritius since the ruling of the Arbitral Tribunal in the case of *Mauritius v United Kingdom*, which concluded at para. 298 of its Award that “the United Kingdom’s undertaking to return the Chagos Archipelago to Mauritius gives Mauritius an interest in significant decisions that bear upon the possible future uses of the Archipelago. Mauritius’ interest is not simply in the eventual return of the Chagos Archipelago, but also in the condition in which the Archipelago will be returned.” These include:
- i. the conduct by the UK Government of a public consultation exercise on resettlement in the Chagos Archipelago from 4 August to 27 October 2015;
 - ii. the UK Government’s decision in November 2016 against resettlement of the former inhabitants of the Chagos Archipelago and the automatic roll over of the purported UK-US agreement in respect of the Chagos Archipelago for a further period of 20 years until 30 December 2036. These purported decisions were announced barely a week after the first round of talks held between Mauritius and the United Kingdom following the understanding reached in New York last

- September to defer, at the United Kingdom's request, consideration of item 87 of the UNGA agenda; and
- iii. the organization of a significantly expanded programme of visits for Mauritians of Chagossian origin to the Chagos Archipelago as part of a purported £40 million package announced by the UK Government in November 2016, which is said to be intended to support improvements to the livelihoods of Chagossians. This purported initiative was also taken barely three weeks after the third round of talks held between Mauritius and the United Kingdom following the above-mentioned understanding reached in New York last September.

Talks between Mauritius and the United Kingdom

10. Three meetings have been held between Mauritius and the United Kingdom following the understanding reached in New York last September, during which the United Kingdom made the following two proposals:

- (a) joint environmental stewardship of the outer islands of the Chagos Archipelago, excluding the island of Diego Garcia (environmental protection, conservation and promotion of marine and land biodiversity; development of sustainable management of fishery stocks in the waters of the Chagos Archipelago; and observation of natural phenomena in the region); and
- (b) bilateral defence engagement between Mauritius and the United Kingdom (training and defence cooperation, covering areas including maritime and aviation security, port security, and governance).

Mauritius has made clear to the United Kingdom that neither of these proposals is acceptable as they do not address the very objective of the talks, namely the completion of the decolonization process of Mauritius and the exercise of full sovereignty by Mauritius over the Chagos Archipelago. The UK's proposal of joint stewardship does not include the island of Diego Garcia and its surrounding maritime zones and is limited to environmental

management only. Mauritius has nevertheless conveyed to the United Kingdom that it is prepared to consider the two proposals in the context of an agreed time bound framework for the return of the Chagos Archipelago to the effective sovereign control of Mauritius.

11. In addition, Mauritius has addressed the security and defence needs invoked by the United Kingdom by reaffirming that it has no objection to the continued use of Diego Garcia for defence purposes in the context of an agreed time bound framework for the return of the Chagos Archipelago to the effective sovereign control of Mauritius. Following the stand recently taken by the United Kingdom that the military base in Diego Garcia is a joint US-UK base, Mauritius has responded that it would be willing, within the framework of the completion of the decolonization process, to guarantee to the United Kingdom and the United States in a binding agreement their continued use of Diego Garcia for defence purposes. Mauritius will stand by this commitment.

The rationale for an advisory opinion

12. The General Assembly has a direct institutional interest in this matter. It has played a historic and central role in addressing decolonization, especially through the exercise of its powers and functions in relation to Chapters XI to XIII of the Charter of the United Nations. Under its 1960 Resolution 1514 (XV)⁴ on the granting of independence to colonial countries and peoples, the General Assembly declared that a denial of fundamental human rights is contrary to the Charter; that the integrity of the national territory of dependent peoples shall be respected; and that any attempt at the disruption of the territorial integrity of a colonial country is incompatible with the purposes and principles of the Charter.⁵

⁴General Assembly Resolution 1514 (XV) (14 December 1960), paras.1, 4, & 6.

⁵General Assembly Resolution 2066 (XX) (16 December 1965), para. 3.

13. In 2010, on the fiftieth anniversary of the adoption of UNGA Resolution 1514 (XV), the General Assembly noted with deep concern that "fifty years after the adoption of the Declaration, colonialism has not yet been totally eradicated". It further declared "that the continuation of colonialism in all its forms and manifestations is incompatible with the Charter of the United Nations, the Declaration and the principles of international law," and considered it "incumbent upon the United Nations to continue to play an active role in the process of decolonization and to intensify its efforts for the widest possible dissemination of information on decolonization, with a view to the further mobilization of international public opinion in support of complete decolonization."⁶
14. In furtherance of its active role in the process of decolonization, the General Assembly has a continuing responsibility to complete the process of the decolonization of Mauritius. To fulfil that function, the General Assembly would benefit from an advisory opinion of the International Court of Justice on the legal consequences of the purported excision of the Chagos Archipelago from Mauritius in 1965.
15. By having recourse to the International Court of Justice the General Assembly would also underscore its resolve to give effect to the mission entrusted to it by the members of the United Nations, namely to complete the process of decolonization.
16. The Government of Mauritius will be submitting a draft resolution pertaining to the request from the General Assembly for an advisory opinion from the International Court of Justice on the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.
17. The Government of Mauritius would be grateful for the support of all Member States in its endeavour.

⁶ General Assembly Resolution 65/118 (20 January 2011), para. 2 & 9.

<http://www.govmu.org/English/News/Pages/Prime-Minister-meets-Chagos-Refugees-Group-Leader-on-advisory-opinion-request-procedure.aspx>



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News

Prime Minister meets Chagos Refugees Group Leader on advisory opinion request procedure



Date: October 31, 2017

Domain: Judiciary; International Relations; Foreign Affairs

Persona: Business; Citizen; Government; Non-Citizen

GIS – 31 October, 2017: The Prime Minister, Minister of Home Affairs, External Communications and National Development Unit, and Minister of Finance and Economic Development, Mr. Pravind Kumar Jugnauth, had a working session yesterday with the Chairman and Leader of the Chagos Refugees Group, Mr Louis Olivier Bancoult, at the New Treasury Building in Port Louis.

The meeting focused on joint efforts being undertaken at the International Court of Justice for Mauritius to effectively exercise its sovereignty over the Chagos Archipelago and for the right of Mauritian citizens, including those of Chagossian origin, to return to and resettle in the Chagos Archipelago.

In a statement following the meeting, Mr Bancoult said the meeting was very positive and cordial. Recalling the historic adoption on 22 June 2017 by the United Nations General Assembly of the resolution seeking International Court's advisory opinion on pre-independence separation of Chagos Archipelago from Mauritius, Mr Bancoult pointed out that the working session reviewed the status regarding the presentations of written statements and comments to the International Court of Justice. The time-limit within which statements on the question may be presented to the Court has been set for 30 January 2018.

According to Mr Bancoult, members of the Chagossian community are finalising their arguments on the violations of rights and sufferings endured in their deportation, and their statements will be ready by next week. He added that all submissions will be made in consultation with the Government.

The Leader of the Chagos Refugees Group stated that the coordinated efforts of everyone, both the Government and the Chagossian community, are required for a positive outcome.

Government Information Service, Prime Minister's Office, Level 6, New Government Centre, Port Louis, Mauritius. Email: gis@mail.gov.mu Website: <http://gis.gov.mu>